in the common market. It cannot rely on that factor to escape the imposition of a more severe penalty on the ground that it exceeded its aggregate production quota at the same time.

3. An undertaking cannot, in order to neutralize the consequences of a technical breakdown in respect of which it must itself bear the consequences, attempt to modify on its own authority the operation of the rules embodied in Decision No 1831/81. If the application of those rules places the undertaking at a disadvantage, the latter cannot be remedied by failing to comply with the rules relating to the fixing of quotas.

In Case 78/83

UNION SIDÉRURGIQUE DU NORD ET DE L'EST DE LA FRANCE "USINOR", a company whose registered office is at Puteaux (Hauts-de-Seine, France), represented by L. Funck-Brentano, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marlyse Neuen-Kauffman, 21 Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Frank Benyon, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission Decision of 24 March 1983 imposing a fine of 6 312 231 ECU on the applicant for exceeding its production quotas and the parts of those quotas which could be delivered on the common market in the fourth quarter of 1981 is void in part,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts

On 10 November 1981, pursuant to Article 5 and Article 9 (2) of Decision No 1831/81/EEC of 24 June 1981 establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1981, L 180, p. 1), as amended by Decision No 1832/81/EEC of 3 July 1981 including concrete reinforcing bars and merchant bars in the new system of production quotas (Official Journal 1981, L 184, p. 1) and by Decision No 2804/81/ECSC of 23 September 1981 (Official Journal 1981, L 278, p. 1), the Commission notified to the Union sidérurgique du Nord et de l'Est de la France "Usinor" (hereinafter referred to as "Usinor"), a public company with limited liability whose registered office is at Puteaux, Hauts-de-Seine, France, its production quotas and the parts of those quotas which could be delivered on the common market in the fourth quarter of 1981.

On 18 August 1982 the Commission informed Usinor that it had established that the production quota for that quarter had been extended as regards products in Categories Ib (rolled sheet), Id (other coated flat products) and V (reinforcing bars) and that the parts of the quotas which could be delivered on the common market had been exceeded as regards products in Categories Ib, Ic (galvanized sheet), Id and V.

After Usinor had explained to the Commission on 31 August 1982 the reasons for the excess production and the excess deliveries recorded by the latter and after a bilateral meeting was

held on 4 November 1982, the Commission adopted on 24 March 1983 Decision C(83) 376/5 — concerning a fine imposed on Usinor, Paris, under Article 58 of the ECSC Treaty — which was notified to Usinor by letter of 30 March 1983 and was received by it on 5 April 1983.

That decision is based in particular on Article 12 of Decision No 1831/81, as amended for the third time by Decision No 533/82/ECSC of 3 March 1982 (Official Journal 1982, L 65, p. 6).

The first paragraph of Article 12 of Decision No 1831/81 provides that a fine, generally of 75 ECU for each tonne in excess, is to be imposed on any undertaking exceeding its production quotas or that part of such quotas which may be delivered on the common market.

Paragraph 2 of the article provides that if an undertaking's production exceeds its quota by 10% or more, or if the undertaking has already exceeded its quota or quotas during one of the previous quarters, the fine may be up to double that amount per tonne. The same rules are to apply to any excess over the quantities which may be delivered on the common market.

The third paragraph of Article 12 provides that the amount in question is to be increased by 1% for each month by which payment is delayed, with effect from the date fixed in the decision imposing the fine.

In its decision the Commission found that (1) the observations submitted by Usinor regarding the excess production and the excess deliveries were unacceptable; (2) the proceeding had made it possible to establish that during the fourth quarter of 1981 Usinor had exceeded its production quotas in respect of Categories Ib, Id and V by 23 735, 15 036 and 335 tonnes respectively and had exceeded the parts of such production quotas which could be delivered on the common market in respect of Categories Ib, Ic, Id and V by 30 912, 12 168, 18 759 and 3 767 tonnes respectively; (3) the excess production and excess deliveries accounted for more than 10% of the quotas or the parts thereof which could be delivered on the common market, except for excess production and excess deliveries in respect of Categories Ib and V; (4) Usinor had already exceeded its production quotas during the third quarter of 1981 and a fine had been imposed on it by decision of 13 August 1982; (5) the infringements rendered Usinor liable to a fine, pursuant to Article 58 of the ECSC Treaty, not exceeding the value of the tonnages produced in disregard thereof; and (6) paragraphs 1 and 2 of Article 12 of Decision No 1831/81 were to be applied.

In Article 2 of its decision, therefore, the Commission imposed a fine on Usinor amounting to 6 312 236 ECU, equivalent to FF 42 388 525, which was to be paid within two months of the date of notification of the decision and was subject to a surcharge of 1% per month or part thereof in the event of any delay in payment after the expiry of those two months. The decision was enforceable under Article 92 of the ECSC Treaty.

II — Written procedure and conclusions of the parties

On 3 May 1983 Usinor brought an action under Article 33 and the second and third paragraphs of Article 36 of the ECSC Treaty for a declaration that the Commission Decision of 24 March 1983 was void.

By application lodged on 10 June 1983, Usinor applied under the second paragraph of Article 39 of the ECSC Treaty and Article 83 (1) of the Rules of Procedure primarily for an order suspending the operation of the contested decision and alternatively, if appropriate, the adoption of all necessary interim measures.

On 5 July 1983, pursuant to the first paragraph of Article 33 of the Protocol on the Statute of the Court of Justice of the ECSC and the first paragraph of Article 85 and Article 86 of the Rules of Procedure, the President of the Court of Justice made the following order on the application:

1. The operation of Article 2 of Commission Decision C(83) 376/5 of 24 March 1983 shall be suspended until the thirtieth day after notification to the parties of the judgment of the Court in Case 265/82 *Usinor* v *Commission,* on condition that the applicant first provides a bank guarantee for the payment of the fine imposed by that decision together with any default interest which may be calculated, for the purposes of this order, at 1% above the discount rate fixed by the Banque de France.

2. The remainder of the application is dismissed.

3. The costs are reserved.

The written procedure in the main action followed the normal course.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 14 December 1983, made pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court decided to assign the case to the Second Chamber.

After judgment was given by the Court on 19 October 1983 in Case 265/82 *Usinor* v *Commission* — in which Usinor had requested the Court to declare void the Commission Decision of 13 August 1982 imposing a fine on it for exceeding its production quota in respect of Category I in the third quarter of 1981 — and on 29 February 1984 in Case 270/82 *Estel NV* v *Commission,* each of the parties was requested to reply in writing to a question concerning the effect of those judgments on this case.

On 23 March 1984 Usinor informed the Court that it did not intend to raise any objections of illegality against the general decisions relating to the allocation of quotas but intended to maintain its application in so far as it concerned the amount of the fine.

In the final version of its conclusions, Usinor claims that the Court should:

Declare void in part the Commission Decision of 24 March 1983 and, more particularly, annul the supplementary fine imposed on the applicant for repetition of an infringement, the fines imposed on it for exceeding delivery quotas and the basic fines concerning Categories Ib (in part), Id and V;

Order the Commission to pay the costs, including those relating to the proceedings concerning the application for interim measures.

For its part the Commission notified the Court on 4 April 1984 that it intended to maintain the supplementary fine imposed on the applicant for repetition of an infringement.

The Commission contends that the Court should:

Dismiss the application as inadmissible, or in any event as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments put forward by the parties during the written procedure.

According to the indications provided by the *applicant*, which have not been challenged by the Commission, the fines imposed on the former by the contested Commission decision may be broken down as follows:

	Basic fine (75 ECU per tonne)	Supplementary fine for repetition of an infringement (+ 10%)	Supplementary fine for having exceeded the quota by more than 10% (+ 10%)	Total in ECU
Products in Category Ib:				
Deliveries (30 912 tonnes)	2 318 400	231 840		2 550 240
Production (20% of 23 735 tonnes, i.e. 4 747 tonnes)	356 025	35 602		391 627
Products in Category Ic:				
Deliveries (12 168 tonnes)	912 600	91 260	91 260	1 095 120
Products in Category Id:				
Deliveries (18 759 tonnes)	1 406 925	140 692	140 693	1 688 310
Production (20% of 15 036 tonnes, i.e. 3 077 tonnes)	225 525	22 553	22 552	270 630
Products in Category V:				
Deliveries (3 767 tonnes)	282 525	28 252		310 777
Production (20% of 335 tonnes i.e. 67 tonnes)	5 025	502		5 527
Total in ECU	5 507 025	550 701	254 505	6 312 231
equivalent to FF (6.7153)	36 981 324	3 698 123	1 709 078	42 388 525

In the final version of its submissions, the applicant challenges the contested decision essentially on the following grounds in support of its claim that the Court should reduce the fine:

(a) it is inappropriate to impose a penalty for repetition of an infringement. The excess production and excess deliveries in the fourth quarter of 1981 concern categories of pro-

ducts which differ from those forming the subject-matter of the excess in the third quarter;

(b) the double penalty for excess production and excess deliveries is contrary to Article 12 of Decision No 1831/81;

(c) the excess over the quota fixed for Category Ib concerns production which there was no obligation to report;

(d) the excess over the quota for Category Id was the inevitable consequence of an unforeseeable increase in demand for a new product;

(e) in view of the discriminatory nature of Article 14 of Decision No 1831/81, as amended by Decision No 1832/81, there should be a reduction of the fine as regards products in Category V.

The *Commission* considers that all the applicant's submissions are unfounded.

A — Supplementary fine for repetition of an infringement

The *applicant* contests the decision to penalize it for having exceeded its quotas more than once.

(a) The excess production and excess deliveries in the fourth quarter of 1981 as regards Categories Ib, Ic, Id and V do not concern the same product as that forming the subject-matter of the excess in the third quarter which concerns products in Category Ia.

Article 12 of Decision No 1831/81 in no way provides that an excess in a given quarter as regards one or more products constitutes a repetition of an infringement in relation to an excess in a previous quarter as regards one or more products falling within a defferent category. An interpretation along those lines is contrary to the letter and aims of Decision No 1831/81 and would frustrate the legitimate expectations of producers in so far as it runs counter to the interpretation previously given by the Commission itself.

(b) The wording of the second paragraph of Article 12 of Decision No 1831/81 can only be construed as meaning that the fine is to be increased if a manufacturer producing a single product exceeds *its quota* by 10% or more and if an undertaking manufacturing products in different categories exceeds *its quotas* to the same extent. The entire system is based on distinct quotas for each product which are established, supervised, monitored and — where they are exceeded — penalized separately. There can be a repetition of an infringement only where the quota is exceeded twice in respect of the same product.

(c) The binding provisions of the monitoring system and the system of production quotas applicable to certain products should be given a restrictive interpretation in accordance with the principle of proportionality and in order to ensure legal certainty for traders.

In any event, there is no obligation on the part of the Commission to increase the fine since Article 12 provides merely for the possibility of increasing it.

(d) The arguments concerning the efficiency of the system which were put forward by the Commission in order to enable it to rely on the wording of the second paragraph of Article 12 are not persuasive.

A fine of 75 ECU per tonne is a very severe penalty. Excess production or excess deliveries are not the result of deliberate planning: they are attributable to necessity, to a misinterpretation of the

relevant provisions or to a lack of coordination which cannot be ruled out in large groups.

Furthermore the Commission disregards the true state of the market when it maintains that a system restricting the concept of repetition of an infringement to cases in which quotas are exceeded repeatedly in respect of the same product would leave large undertakings free to choose which quotas for the different categories of products they wish to exceed and enable them permanently to destabilize the market in iron and steel products. There is no demand on the market for all the products available enabling a multiple producer to exceed its quota at one time in respect of one product and at another time in respect of a different product.

(e) The Commission's interpretation leads to discrimination against multiple producers and, more particularly, against integrated undertakings which comprise for legal purposes a large number of industrial establishments under separate management. It is virtually impossible for such undertakings to avoid exceeding their quotas at all as regards all categories of products during the same period. However, it is relatively simple for a producer manufacturing a single product or an undertaking comprising only one or a small number of factories to comply with the quotas allocated to it, even if it manufactures products in several categories.

(f) The Commission undertook by an internal decision to classify as a repetition of an infringement only cases where a quota is exceeded repeatedly in respect of the same product. All producers were notified of that interpretation.

The new definition of a repetition of an infringement, which was given by the Commission for the first time when the contested decision was adopted, has particularly grave consequences because it involves the application of the criterion of a repetition of an infringement throughout the entire period covered by Decision No 1831/81. At the very least, the Commission should have notified all undertakings before the first quarter of 1981 of its new interpretation of the concept of repetition of an infringement. That interpretation cannot be applied retroactively and the fines accordingly imposed on the applicant (which amount to 550 701 ECU) should therefore be cancelled.

The *Commission* points out that the severe penalties provided for by the second and third paragraphs of Article 12 of Decision No 1831/81 are the only means of ensuring compliance with the quota system.

(a) In order to deter undertakings from creating by repeated and substantial excess production or excess deliveries an imbalance between supply and demand on the market during a period of crisis it is necessary to be able to increase the "normal" fine. The level and frequency of excess during the period when production quotas apply must be taken into account when fines are set. In the absence of such provisions, successive quota systems, which are introduced every time for periods of limited duration and which regulate the market strictly by dividing the year into quarters, are far less likely to succeed.

(b) In the exercise of the power conferred upon it by Article 12, the Commission increases the fine by 10% of 75 ECU per tonne in the case of undertakings operating at a loss and by 25% in the case of profit-making undertakings and it doubles those amounts (to 20% and 50% respectively) where the quota is exceeded by more than 10% or is exceeded repeatedly if both conditions are satisfied.

Those rates are well below the 100% limit which is permitted by Article 12 and constitute the only "internal decisions" adopted by the Commission in that respect.

The penalties are intended to have a deterrent effect. A system in which heavier penalties are imposed only where the quota is exceeded repeatedly in respect of the same category of products would not only discriminate between producers manufacturing a single product and multiple producers, but it would also create an absurd situation. Large undertakings would be free to choose which quotas for the different categories of products they wished to exceed and would thus permanently destabilize the market in iron and steel products.

The contention to the effect that it is particularly difficult for a multiple producer to avoid exceeding its quotas at all as regards all categories of products cannot be accepted. That view is gainsaid by the very conduct of the applicant.

The contested decision does not infringe either Article 12 of Decision No 1831/81 or Article 58 (2) of the ECSC Treaty; on the contrary, it ensures that the system achieves its purpose more successfully and perhaps more rapidly.

(c) As far as the principle of proportionality is concerned, it must be emphasized that the amount of the fine is appropriate in view of the nature of the infringement — which was a second infringement of the Commission's decisions — irrespective of whether it was committed by a large or by a small undertaking, by a producer manufacturing a single product or by a multiple producer.

(d) As regards the alleged legitimate expectations of the steel undertakings, it must be remembered that oral statements by officials of the Commission and minutes drawn up by the undertakings' association are not binding on the Commission. In any event, the statements in question were allegedly made in the spring of 1983 and are in no way connected with the applicant's excess production and excess deliveries in the fourth quarter of 1981.

B — Imposition of a double penalty

The *applicant* contends that the Commission unlawfully imposed a double penalty upon it for exceeding production quotas and quotas for deliveries on the common market. In its view, therefore, the contested decision should be declared void as regards the excess over the delivery quotas for Categories Ib (356 025 ECU), Id (225 525 ECU) and V (5 025 ECU).

(a) That double penalty is contrary to the logic of the system and to the interpretation formerly placed by the Commission itself on Article 12 of Decision No 1831/81 and on the provisions of that decision concerning quotas and failure to abide by them.

The fact that the excess deliveries on the common market are greater than the excess production shows that the production quotas were used entirely for deliveries on the common market and that there was accordingly a fall in exports to non-member countries. Consequently, by imposing a penalty on the applicant for exceeding deliveries on the common market, the Commission is also

penalizing products which form the subject-matter of excess production since such excess was used entirely for deliveries on the common market. By penalizing the excess in both cases, the Commission is penalizing the same tonne of products twice over.

(b) The imposition of a double penalty under Decision No 1831/81 serves no purpose since the period of validity of that decision has expired and the conduct of the undertakings can no longer be influenced by it.

(c) Since the rules laid down by Article 58 of the ECSC Treaty constitute a derogation from the general rules, to be applied in special cases, the provisions concerning fines must be given a restrictive interpretation and the principle *nulla poena sine lege* must be applied particularly strictly. It is clear from the ninth recital in the preamble to Decision No 2794/80/ECSC of 31 October 1980 establishing a system of steel production quotas for undertakings in the coal and steel industry (Official Journal 1980, L 291, p. 1), from Article 9 of that decision and from Article 12 of Decision No 1831/81, that no increase in the penalty is envisaged where both the production quota and the quota for deliveries on the common market have been exceeded.

(d) The Commission cannot, of its own accord and in disregard of the procedures laid down by the Treaty for the adoption of legislation, impose a penalty more severe than that provided for by Article 12 of Regulation No 1831/81.

The imposition of new, more severe penalties which are not provided for in the general decision constitutes a misuse of power which must of necessity result in a declaration by the Court that the contested individual decision is void.

(e) During discussions with representatives of Eurofer (European Confederation of Iron and Steel Industries), the Commission undertook not to impose a double penalty. If the applicant had entertained the slightest doubt in that regard, it would have acquired additional production quotas which would have enabled it to avoid being penalized for exceeding its production quotas. It frustrates the legitimate expectations aroused in producers, in particular the members of Eurofer, by the interpretation which they were given of the system of penalties, to impose on them a double penalty which they could not foresee at the beginning of the fourth quarter of 1981.

To accept the Commission's reasoning would lead to the view that there is no place for mutual trust and cooperation between the Commission and Eurofer. Relations based on mutual trust are essential, however, if the quota system is to function properly since Eurofer serves as a communication channel for the Commission to ensure the success of the measures decided upon.

(f) The Commission adopted and informed traders of a course of action which it subsequently altered by taking a new approach retroactively. The principle of legal certainty requires that rules imposing charges on the taxpayer must be clear and precise so that he may know without ambiguity what are his rights and obligations and may take steps accordingly. If, as seems most unlikely, the Court were to regard as lawful the double penalty which the Commission claims to be able to impose, it would have to rule that the principle of non-retroactivity precludes the imposition of a penalty in respect of the fourth quarter of 1981.

The *Commission* considers that the contested fine does not constitute a double penalty, is entirely consistent with Article 12 of Decision No 1831/81 as regards the point at issue and in no way frustrates the legitimate expectation of steel undertakings.

(a) It is clearly apparent from the wording of Article 12 of Decision No 1831/81 that fines are fixed in accordance with objective criteria for all undertakings. As a general rules, the fine varies only in accordance with the extent to which the quota has been exceeded. Subjective considerations relating to the specific circumstances of each undertaking or of all the undertakings belonging to an association have no place in that system. The severity of the system is justified by the need to ensure that the quota system operates effectively. The gravity of the crisis in the iron and steel industry compels the Commission to adopt special measures which must be strictly and automatically applied if discrimination between undertakings, which is capable of adversely affecting the system as a whole, is to be avoided.

Article 5 of Decision No 1831/81 provides that steel undertakings are to be subject each quarter to two obligations. They must ensure that production of various iron and steel products is not in excess of the quantities fixed and they must not deliver on the common market a part of the quota greater than that determined by the Commission. Steel undertakings might infringe those rules every quarter, in respect of each category of products, in two different ways. They could exceed either the production quota or the part of that quota which may be delivered on the common market. The logic of the system requires that penalties be imposed for excesses in both cases. It is clear from Article 12 that a fine is imposed on an undertaking both for exceeding the production quota and for exceeding the part of the quota which may be delivered on the common market. If, in a given quarter, those two quotas are exceeded in respect of a single category of products, a fine is imposed in respect of the excess in each case. The purpose of Article 12 is to penalize effectively every infringement of the quota system.

If, where the quota and the part of the quota which may be delivered on the common market are exceeded, the Commission were able only to penalize one excess or the other, the system established by Article 5 would be jeopardized.

(b) The Commission denies penalizing the same excess twice over. It would be a case of two penalties in respect of the same infringement if the entire production of iron and steel undertakings were sold on the common market. In that case, if the production quota were exceeded, it would inevitably lead to an increase in deliveries on the common market and to penalize both the excess production and the excess deliveries would amount, in such a case, to the infliction of punishment twice over in respect of one and the same infringement.

An undertaking may, however, exceed its production quota because it has the opportunity to increase its deliveries on the world markets. In that case, the part of the quota which it may deliver on the common market would not be exceeded. Conversely, an undertaking may comply with its production quota but exceed the

part of that quota which may be delivered on the common market, where its exports to non-member countries have fallen. Two different situations are involved which do not necessarily coincide with one another. Where the excess production and the excess deliveries coincide in a specific case, they may be classified as unequivocal infringements liable to attract a more severe penalty. To exceed the production quota at the same time as the part of the quota which may be delivered on the common market constitutes a more serious infringement in respect of which Article 12 provides for the imposition of two fines. Article 12 does not fix a double fine in respect of a single infringement.

It would be unfair to penalize an undertaking which commits two infringements — excess production and excess deliveries — in the same manner as an undertaking which commits a single infringement.

(c) To speak of a "more severe punishment" is to miss the point. There have been two penalties for two different infringements since the adoption of Decision No 1831/81. The Commission did not adopt a more stringent provision "in the meantime". Article 12 remains unchanged

(d) Oral statements by Commission officials must be formally approved by the competent authorities, namely by the Commission or by one of its Members who is authorized to do so. Silence on the part of the Commission is not tantamount to agreement.

A legitimate expectation on the part of an individual may arise only in relation to provisions of Community law from which he expects or is entitled to derive certain rights and not in relation to a statement allegedly made by an official which is in no way binding on the Commission. Article 12 of Decision No 1831/81 provides for the imposition of a fine in the event of any excess. Moreover, the concept of legitimate expectation implies that individuals have every right to expect a favourable system under which they derive certain rights to be retained, if its abolition, with immediate effect and without notice, may be detrimental to their interests. In this case, however, the allegedly advantageous system from which the applicant claims to derive certain rights was not introduced until after the applicant had exceeded its quotas and parts of quotas in the fourth quarter of 1981.

(e) At no time did the Commission intend to ask Eurofer for a legal interpretation of its decisions or for advice regarding the imposition of fines.

C — Excess over the quotas in respect of Category Ib

The *applicant* contends that certain products in Category Ib should not have been regarded or reported as such. The basic penalty imposed on the applicant for exceeding the quota for that category should be reduced by 60 525 ECU, corresponding to an excess of 4 034 tonnes, on the ground that the detailed rules for the allocation of quotas were incorrectly applied.

(a) As a result of certain technical difficulties which arose during the fourth quarter of 1981, the applicant was compelled to resort to sub-contractors in order to supply its customers in due time with products in Category Ic (galvanized

sheet). The quota system provides that where an undertaking itself processes a product in Category Ib (coils for cold rolling) into products falling within Category Ic, the production of coils for cold rolling is not covered by the quotas allocated to that undertaking since quotas were allocated to it exclusively in respect of the finished product falling within Category Ic. Since the applicant was compelled to assign to sub-contractors the quotas for Category Ib covering the galvanized sheet sub-contracted by them, the applicant did not report the coils for cold rolling which it manufactured and in respect of which it had not been allocated a quota.

(b) That approach is consistent with the objectives pursued by Article 58 of the ECSC Treaty. It does not involve any increase in the production of the pre-products in question or of the finished products, and the quantity of products in Category Ic which is marketed remains within the quotas for Category Ic allocated to the applicant.

(c) The applicant notified in due time the Commission's inspectors who only made their position known belatedly, at a time when the applicant could no longer obtain additional production quotas pursuant to Article 11 (4) of Decision No 1831/81.

The difficulties which arose in the fourth quarter of 1981 are attributable to the fact that the wording of Decision No 1831/81 is couched in excessively broad terms and to the Commission's failure to provide in due time, that is to say before the expiry of the transitional period, information concerning the procedure which it wished to see followed. When the difficulties in question arose, no solution had yet been proposed by the Commission

(d) The Commission acknowledged belatedly that it was necessary to find a general solution for undertakings which were in a position similar to that of Usinor in the fourth quarter of 1981. It therefore adopted Decision No 1619/83/ECSC of 8 June 1983 (Official Journal 1983, L 159, p. 56) which provides in particular that "in order to facilitate exchange of quotas between undertakings it is necessary to establish for transfer, quotas for products which are not covered by the quota system because their further processing has taken place within the same undertaking". If the Commission had adopted Decision No 1619/83 sooner, the applicant would have applied for the allocation of notional quotas for Category Ib, to which it was not entitled under the previous system. Under the new system, it would have assigned the production quotas for Category Ic to its sub-contractors, which are galvanizing undertakings, and it would have obtained from the Commission additional quotas for Category Ib to cover the coils for cold rolling supplied to its sub-contractors. The solution to the question of transfers of production which was finally adopted by the Commission leads to the same result as the solution advocated by the applicant. It would be quite anomalous to penalize the applicant for the excess recorded, since the applicant was unable to avoid it and endeavoured to find a practical solution, in view of the absence of clear and precise legal provisions on the matter.

(e) The fact that the applicant was able to comply during the first quarter of 1982 with the instructions given by the Commission for the interpretation of Decision No 1831/81 can be explained by the fact that the Commission had finally stated its position. It does not follow from this that the Commission's interpretation of a measure which was worded in excessively general terms was justified.

(f) None of the solutions belatedly recommended by the Commission could be adopted.

The acquisition from third parties of the quotas for Category Ib which were required in the first two months of the fourth quarter of 1981 could not have been reported within the prescribed period. To suggest that permission could have been sought to carry over the quotas for Category Ic is wholly unrealistic for commercial reasons. To request galvanizing undertakings to manufacture cold-rolled sheet is unrealistic for technical reasons.

(g) On a market as competitive as the steel market, in which it is advisable not to lose customers and in which vigilant competitors, particularly those from non-member countries, are ever present, priority must be given to satisfying the customer. The Commission disregards such matters. Its position is contrary to the principle of proportionality. It leads to the imposition of a penalty for a purely technical excess which is the result of compelling constraints.

The *Commission* considers that the contested quotas were allocated in accordance with Decision No 1831/81, that it cannot be reproached for any delay or injustice and that there is no reason for adopting the applicant's interpretation.

(a) It is clear from Article 1 of Decision No 1831/81 and from Annex I thereto that, as regards the allocation of quotas, the only products excluded from Category Ib are, apart from two specific products, material intended for production in *the same* undertaking of coated products. Those provisions are unequivocal and the applicant's "hypothetical" interpretation is unacceptable.

(b) If undertakings rely on hypothetical situations and propose specific interpretations of the relevant provisions they do so at their own risk.

(c) There was no delay on the part of the Commission's inspectors in stating their position.

(d) The applicant could have resorted to other methods in order to avoid the contested excess production and excess deliveries. It could have obtained from third parties the quotas for Category Ib which it needed in the first two months of the quarter in question. It could have requested the Commission for permission to carry over its quotas for Category Ic, pursuant to Article 11 (3) of Decision No 1831/81. It could have requested third parties to manufacture the sheet *and* to galvanize it, in return for a similar concession after the technical difficulties in question had been overcome. The reasons given by the applicant for discarding those alternative possibilities cannot be accepted. Instead of complying with Community law as a matter of priority, the applicant was motivated by considerations of profit.

(e) The reference to Decision No 1619/83 is of no relevance. That decision took effect for the most part after the events in question. The applicant is no longer entitled to challenge the basis on which its quotas were fixed. Decision No 1619/83 does not in any circumstances cover alleged instances of *force majeure* — such as that relied upon in the present case — which are covered by other provisions such as Article 11 (3) of Decision No 1831/81.

D — Excess over the quotas in respect of Category Id

The *applicant* contends that the excess over the quotas for Category Id consists largely of monogal, an entirely new product. The speed and the extent of the development of that product prevented it from being taken into account when the reference quantities were fixed and rendered the excess inevitable inasmuch as, on a market in recession, the applicant would have been seriously at fault had it failed to satisfy demand for the product.

The Commission belatedly recognized the problem raised by the transfer of demand to the new product and did not adopt Decision No 1619/83 until it was too late; in that decision it acknowledged that the rapid growth in demand for that product constituted a radical change in the steel market, which caused unexpected difficulties with the application of the quota system.

It is contrary to the spirit and the letter of the Treaty and to Article 16 of Decision No 1831/81 to impose a fine on the applicant in respect of the excess in question.

The *Commission* points out that since the applicant did not contest the level of the parts of the quotas allocated to it for the product in question, it can no longer do so in these proceedings.

Generally, it should be noted that, having regard to the state of the market in the products falling within Category Id during the fourth quarter of 1981, the quotas allocated appeared to be adequate, and in any event capable of permitting as between undertakings transfers which could have covered the excess in question. In this specific case, the applicant failed to inform the Commission of its position as regards monogal and merely exceeded its quotas.

As regards the application of Decision No 1619/83, an undertaking must establish the existence of certain factors, in particular that its customers wish to purchase a product in Category Id rather than a product in Categories Ib or Ic. Moreover, any adjustment in Category Id involves a corresponding reduction in Categories Ib or Ic.

E — Excess over the quotas in respect of Category V

The *applicant* considers that Article 14 of Decision No 1831/81, as amended by Decision No 1832/81, discriminates against some undertakings by reducing their possibilities of applying for an adjustment of their reference production. It discriminates against integrated undertakings whose quotas for each product are calculated on the basis of their aggregate production without taking account of the large number of small and medium-size undertakings which are under independent management even though for legal purposes they form part of a single group.

In this case, the contested excess is attributable to the operations of a small factory manufacturing a single product which is situated in the Paris region and which, had it not been legally incorporated in the Usinor group, could have benefited from the adjustment provided for by Article 14 of Decision No 1831/81.

The quota system created exceptional difficulties for that factory, which is geographically isolated in the Paris region and which was confronted with special problems, namely the number of

days lost as a result of short-time work and social disputes. It did not qualify for an adjustment of its references under the provisions of Article 2 (3) in conjunction with those of Article 14 of Decision No 1831/81.

In view of the discriminatory nature of those provisions, preventing the sole undertaking engaged in the manufacture of concrete reinforcing bars within the Usinor group from taking advantage of the possibilities of adjustment which are available to competing undertakings operating under the very same conditions, the Court should, in the exercise of its unlimited jurisdiction, reduce the fine concerning the products in Category V, having regard to the circumstances in which the quotas were exceeded.

The *Commission* contends that the objection of illegality raised against Article 14 of Decision No 1831/81 is inadmissible since the contested decision is not based on any aspect of that provision but is founded on Article 12.

Moreover, the applicant failed to establish that the overriding principle embodied in Article 58 (2) to the effect that quotas must be determined on an equitable basis and the principles laid down in Articles 2, 3 and 4 of the Treaty were not complied with in Decision No 1831/81. The applicant has adduced no evidence in support of its contention that Decision No 1831/81 gives rise to discrimination.

It was necessary to restrict the exemptions for undertakings producing concrete reinforcing bars and other merchant bars to a group of undertakings which can be clearly distinguished from the others both by the size of their plants and by their dependence on a limited range of products.

Contrary to the applicant's contention, its subsidiary was not faced with exceptional difficulties since its capacity utilization rate in the fourth quarter of 1981 was, more favourable than that of most of its competitors.

The applicant has not provided any justification for a reduction of the fine imposed in respect of the excess production and excess deliveries of products in Category V.

IV — Oral Procedure

The applicant, represented by L. Funck-Brentano, and the Commission of the European Communities, represented by F. Benyon, presented oral argument and answered questions put to them by the Court at the sitting on 21 June 1984.

The Advocate General delivered his Opinion at the sitting on 15 November 1984.

Decision

1 By application lodged at the Court Registry on 3 May 1983, the Union sidérurgique du Nord et de l'Est de la France "Usinor" (hereinafter referred to as "Usinor"), a company whose registered office is at Puteaux, Hauts-de-Seine, France, brought an action under the second paragraph of Article 33 of the ECSC Treaty seeking — according to the final version of its conclusions

— to have declared partially void Commission Decision C(83) 376/5 of 24 March 1983 imposing a fine of 6 312 231 ECU on the applicant for exceeding its production quotas and the parts of those quotas which could be delivered on the common market in the fourth quarter of 1981.

2 According to the documents before the Court, on 10 November 1981 the Commission notified Usinor of a decision fixing its quotas for the fourth quarter of 1981, pursuant to Commission Decision No 1831/81/ECSC of 24 June 1981, establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1981, L 180 p. 1), as amended by Decision No 1832/81/ECSC of 3 July 1981 including concrete reinforcing bars and merchant bars in the new system of production quotas (Official Journal 1981, L 184, p. 1) and by Decision No 2804/81/ECSC of 23 September 1981 (Official Journal 1981, L 278, p. 1). The decision fixing the quotas was not contested by Usinor.

3 On 18 August 1982 the Commission notified Usinor that it had established that the production quota for the quarter in question had been exceeded as regards products in Categories Ib (rolled sheet), Id (other coated flat products) and V (reinforcing bars) and that the parts of the quotas which could be delivered on the common market had been exceeded as regards products in Categories Ib, Ic (galvanized sheet), Id and V. The Commission gave Usinor an opportunity to explain its position, and on 24 March 1984, adopted the decision which is the subject-matter of these proceedings.

4 It is clear from the detailed explanation of the fine, which was produced by Usinor and was not contested by the Commission, that it comprises three elements, namely the basic fines imposed where the quotas are exceeded in the various categories referred to (a distinction being drawn between the proportion of the fine imposed for excess production and the proportion imposed for excess deliveries), the supplementary fines imposed for repetition of an infringement and, finally, the supplementary fines imposed where certain quotas are exceeded by more than 10%.

5 By application lodged at the Court Registry on 10 June 1983, Usinor applied under the second paragraph of Article 39 of the ECSC Treaty and Article

83 (1) of the Rules of Procedure primarily for an order suspending the operation of the contested decision. The application was granted, subject to certain conditions by order of the President of the Court of 5 July 1983.

6 According to the final version of Usinor's submissions, following the oral procedure, the applicant challenged the contested decision on five grounds which may be summarized as follows:

(a) The supplementary penalty for repetition of an infringement has become devoid of purpose in the light of the judgment of 19 October 1983 in Case 265/82 between the same parties, in which the Court cancelled the fine imposed on Usinor for the third quarter of 1981.

(b) The double penalty for excess production and excess deliveries is contrary to Article 12 of Decision No 1831/81.

(c) Part of the excess over the quota for Category Ib concerns production which there was no obligation to report.

(d) The excess over the quota for Category Id was the inevitable consequence of an unforeseeable increase in demand for a new product.

(e) In view of the discriminatory nature of Article 14 of Decision No 1831/81, as amended by Decision No 1832/81, there should be a reduction of the fine as regards products in Category V.

Supplementary fine for repetition of an infringement

7 By Decision of 13 August 1982 the Commission imposed a fine on Usinor for exceeding the production quota allocated to it for the third quarter of 1981 in respect of Category Ia. In its decision of 24 March 1983 relating to the following quarter, which is the subject-matter of these proceedings, the Commission imposed on the basis of the aforesaid decision a supplementary fine of 10% on Usinor for repetition of an infringement, in accordance with the provisions of Article 12 of Decision No 1831/81.

8 In these proceedings Usinor put forward a number of arguments in which it sought to demonstrate that the imposition of that supplementary fine was unlawful. However, those arguments have ceased to be relevant since the Court cancelled the fine in question in its aforesaid judgment of 19 October 1983. Usinor contended that, consequently, there was no longer any basis for the imposition of a supplementary fine for repetition of an infringement.

9 However, in reply to a question put to it by the Court in that connection, the Commission refused to accept that argument. The Commission drew attention to the fact that the judgment of 19 October 1983 established that the quota for the third quarter had indeed been exceeded; the Court merely cancelled the fine in the light of the circumstances of the case.

10 That defence on the part of the Commission cannot be accepted. It is clear from the judgment of 19 October 1983 that in the Court's view only a "purely formal" infringement was committed as regards the third quarter of 1981. The Court therefore exercised its unlimited jurisdiction and cancelled the fine. It follows that, as far as the third quarter is concerned, the circumstances in which the quota was exceeded are not sufficient to support the charge that there was a repetition of an infringement for the purposes of Article 12 of Decision No 1831/81 as regards the fourth quarter

11 The imposition of a supplementary fine on the applicant for repetition of an infringement which, according to the table submitted by it, amounts to 550 701 ECU, or FF 3 698 123, must therefore be declared unlawful.

Double penalty

12 In its application, Usinor advanced a series of arguments in which it sought to demonstrate that the imposition by the Commission of a supplementary penalty on an undertaking which exceeded in respect of the same category its production quotas at the same time as its quotas for delivery on the common market was tantamount to penalizing the undertaking twice over in respect of the same quantities of steel.

13 The applicant's attention was drawn to the fact that whilst these proceedings were in progress the Court was moved to reject a similar argument which had been put forward in a parallel case, namely Case 270/82 *Estel* v

Commission [1984] ECR 1195, decided by judgment of 29 February 1984. In that judgment the Court held that an undertaking which fails to fulfil its obligations by exceeding both its production quotas and its delivery quotas at the same time commits two distinct infringements which entail the imposition of two fines to be calculated separately.

14 After taking note of that precedent, the applicant, without contesting the judgment, informed the Court that it none the less intended to maintain this submission for two reasons.

15 First, it was necessary to distinguish a situation in which excess production was greater than excess deliveries on the common market (which arose in the *Estel* case) from the converse situation (which arose in this case where excess deliveries were greater than excess production). In the *Estel* case, the Court acknowledged that whilst delivery quotas were intended to ensure a balance on the domestic market, the purpose of production quotas was essentially to prevent surplus production which could be disposed of only by way of export. In this case, the excess over the delivery quotas was greater than the excess over the production quotas, which demonstrates that there was no excess as regards deliveries to non-member countries.

16 Secondly, the applicant relies on the principle of the protection of legitimate expectation on the ground that the Commission gave Eurofer (European Confederation of Iron and Steel Industries) certain assurances, which were passed on by Eurofer to its members, to the effect that the Commission intended to abandon the system of double penalties.

17 The applicant's first argument disregards the scope of the system of penalties established by the Commission pursuant to Article 12 of Decision No 1831/81 whereby the largest excess, whatever its nature, is taken as a basis for the penalty, whilst the smallest excess is penalized by the imposition of a supplementary fine of 20%. If an undertaking such as the applicant exceeds its quota for delivery on the common market to a greater extent than its aggregate production quota, that undertaking clearly contributes towards the

creation of an imbalance in the common market. It cannot rely on that factor to escape the imposition of a more severe penalty on the ground that it exceeded its aggregate production quota at the same time. Scrutiny of the figures shows that it is precisely by means of its excess production that Usinor has largely succeeded in maintaining its exports to non-member countries, in spite of the fact that it seriously exceeded its quotas for delivery on the common market.

18 As regards the assurances which Usinor claims to have received from the Commission through Eurofer, it is clear from the documents submitted to the Court that on a specific occasion the question of the imposition of double penalties was actually discussed during an exchange of views between Eurofer and the officers of the Commission. However, it is apparent from the same documents that at no time did the Commission give the slightest assurance concerning the application of the system of penalties attaching to the quota system. In any event, as the Court has repeatedly emphasized, the Commission or its officers cannot modify that system or mitigate its harshness by means of unofficial statements (see in particular the judgment of 11. 5. 1983 in Joined Cases 303 and 312/81 *Klöckner* [1983] ECR 1507, paragraph 34 of the decision).

19 This submission must therefore be rejected.

Excess over the quotas in respect of Category Ib

20 The applicant contended that part of the excess over the quota for that category, namely a quantity of 4 034 tonnes, was attributable to the consequences of a technical fault which occurred in its galvanizing establishments. The applicant claimed that in order to satisfy its customers it was obliged to sub-contract sheet in Category Ib to galvanizing undertakings and to assign production quotas in respect of Category Ic to them. Under the system established by Decision No 1831/81, as set out in detail in Questionnaire No 313 which is annexed thereto, sheet which is galvanized in the same undertaking and which falls within Category Ic may be deducted from the quota allocated in respect of Category Ib. The applicant therefore considered itself entitled to deduct the tonnage in question from that category since the galvanization was carried out in the above-mentioned circumstances by third parties acting on its behalf.

21 In that regard, the Commission contended in particular that the undertaking could have resolved that problem either by purchasing or by exchanging quotas in due time or by requesting permission to carry over unused quotas to the following quarter.

22 The Commission's view must be endorsed. The applicant cannot, in order to neutralize the consequences of a technical breakdown, attempt to modify on its own authority the operation of the rules embodied in Decision No 1831/81. According to the express and consistent provisions of Article 1 of the decision under the third indent of "Category Ib", of Annex I under No 1 of "Category Ic" and of Questionnaire No 313 in Annex II under Code No 12203, only the tonnages processed by the same undertaking may be deducted from Category Ib. If it proves impossible, for whatever reason, to carry out the conversion process in the same undertaking and sheet is sub-contracted to third parties, it falls within Category Ib and not within Category Ic. If the application of those rules places the undertaking at a disadvantage, that effect is attributable to events in respect of which the undertaking itself must bear the consequences. The disadvantage cannot be remedied by failing to comply with the rules relating to the fixing of quotas.

23 Therefore this submission must also be rejected.

Excess over the quotas in respect of Category Id

24 The applicant contended that the excess over the quotas for this category consisted largely of monogal, an entirely new product. The speed and extent of the development of that product prevented it from being taken into account when the reference quantities were fixed and rendered the excess inevitable inasmuch as, on a market in recession, the applicant would have been seriously at fault had it failed to satisfy demand for the product.

25 The Commission pointed out that since the applicant did not contest the amount of the parts of the quota allocated to it for the product in question it could no longer do so in these proceedings.

26 It is sufficient to state, in reply to the arguments put forward by the applicant, that the view that a desire to satisfy demand can relieve undertakings of the duty to comply with the system of rules laid down by the provisions relating to the establishment of production quotas is unacceptable in any circumstances. In that connection, it is appropriate to refer to the considerations set out in the judgment of this Court of 11 October 1984 in Case 103/83 between the same parties, in which the same question was raised.

27 Therefore this submission must also be rejected.

Excess over the quotas in respect of Category V

28 The applicant contended that the excess over the quotas for Category V was attributable to the operations of a small factory manufacturing a single product which, had it not been legally incorporated in the Usinor group, could have benefited from the adjustment provided for by Article 14 of Decision No 1831/81. It considered that Article 14, as amended by Decision No 1832/81, discriminated against some undertakings by reducing their possibilities of applying for an adjustment of their reference production.

29 The Commission contended that the objection of illegality raised by the applicant against Article 14 of Decision No 1831/81 was inadmissible since the contested decision was not based on any aspect of that provision but was founded on Article 12, relating to penalties.

30 In that regard, it is sufficient to point out that this submission, whatever its merits may be, is directed against the decision fixing the quotas and the applicant therefore has no *locus standi* to contest, in proceedings challenging the imposition of fines for exceeding the quota allocated to it, a decision which it did not contest within the prescribed period. As regards the substance of the problem, it is appropriate to refer once again to the aforementioned judgment of 11 October 1984.

31 Therefore this submission must also be rejected.

32 It is clear from the foregoing considerations that the fine must be reduced by the deduction of the supplementary fine imposed on the applicant for repetition of an infringement and that all the other heads of claim must be rejected.

Costs

33 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under the first subparagraph of Article 69 (3), where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs in whole or in part.

34 Since the applicant has been successful on one head, the parties must be ordered to bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Reduces the fine imposed on Union sidérurgique du Nord et de l'Est de la France "Usinor" by Commission Decision C(83) 376/5 of 24 March 1983 to 5 761 530 (five million seven hundred and sixty-one thousand, five hundred and thirty) ECU, that is to say FF 38 690 402 (thirty-eight million six hundred and ninety thousand, four hundred and two);**

2. **Orders the parties to bear their own costs, including those relating to the proceedings concerning the application for interim measures.**

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 13 December 1984.

P. Heim
Registrar

O. Due
President of the Second Chamber