JUDGMENT OF THE COURT (Sixth Chamber)

23 November 2000 *

In Case C-1/98 P,

British Steel plc (now Corus UK Ltd), established in London, United Kingdom, represented by R. Plender QC, instructed by W. Sibree, Solicitor, with an address for service in Luxembourg at the Chambers of Elvinger, Hoss et Prussen, 15 Côte d'Eich,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber, Extended Composition) of 24 October 1997 in Case T-243/94 *British Steel* v *Commission* [1997] ECR II-1887, seeking to have that judgment set aside in so far as it dismissed its application against Commission Decision 94/258/ECSC of 12 April 1994 concerning aid to be granted by Spain to the public integrated steel company Corporación de la Siderurgia Integral (CSI) and Commission Decision 94/259/ECSC of 12 April 1994 concerning aid to be granted by Italy to the public steel sector (Ilva group) (OJ 1994 L 112, pp. 58 and 64 respectively),

* Language of the case: English.

the other party to the proceedings being:

Commission of the European Communities, represented by N. Khan and P.F. Nemitz, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

Det Danske Stålvalseværk A/S, established in Frederiksværk, Denmark, represented by J.A. Lawrence and A. Renshaw, Solicitors, with an address for service in Luxembourg at the Chambers of E. Arendt, 8-10 Rue Mathias Hardt,

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by P.G. Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

Council of the European Union, represented by J. Carbery, Legal Adviser, and A.P. Feeney, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of E. Uhlmann, General Counsel, Legal Affairs Directorate, European Investment Bank, 100 Boulevard Konrad Adenauer,

Svenskt Stål AB (SSAB), established in Stockholm, Sweden,

and

Ilva Laminati Piani SpA, established in Rome, Italy,

interveners at first instance,

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet (Rapporteur), and M. Macken, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 7 January 1998 British Steel plc, which has since become Corus UK Ltd, (hereinafter 'British Steel') brought an appeal pursuant to Article 49 of the ECSC Statute of the Court of Justice against the judgment of the Court of First Instance of 24 October 1997 in Case T-243/94 *British Steel* v *Commission* [1997] ECR II-1887 (hereinafter 'the contested judgment'), in which the Court of First Instance dismissed its action for the annulment of Commission Decision 94/258/ECSC of 12 April 1994 concerning aid to be granted by Spain to the public integrated steel company Corporación de la Siderurgia Integral (CSI) and Commission Decision 94/259/

ECSC of 12 April 1994 concerning aid to be granted by Italy to the public steel sector (Ilva group) (OJ 1994 L 112, pp. 58 and 64 respectively, hereinafter 'the contested decisions').

Legislative background

2 Article 4(c) of the ECSC Treaty (hereinafter 'the Treaty') provides that 'subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever' are prohibited under the conditions laid down in that Treaty.

3 In addition, the first paragraph of Article 95 of the ECSC Treaty provides:

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

4 Having regard to those provisions and to the need to restructure the steel sector, the Commission relied on Article 95 of the Treaty in order to establish, from the beginning of the 1980s, a Community scheme under which the grant of State aid to the steel industry could be authorised in a limited number of cases.

5 The system adopted by the Commission on the basis of that provision took the form of decisions of general scope commonly known as 'aid codes', which have been subject to successive amendments in order to resolve the specific economic difficulties of the steel industry. The steel aid code in force during the period under consideration in this case was the fifth one, and was laid down by Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry (OJ 1991 L 362, p. 57, hereinafter 'the Fifth Aid Code').

6 Point I in the preamble to the Fifth Aid Code is worded as follows:

'Any aid in any form whatsoever and whether specific or non-specific which Member States might grant to their steel industries is prohibited pursuant to Article 4(c) of the Treaty.

As from 1 January 1986, Commission Decision No 3484/85/ECSC, replaced from 1 January 1989 by Decision No 322/89/ECSC, established rules authorising the grant of aid to the steel industry in certain cases expressly provided for.

The rules cover aid, whether specific or non-specific, financed by Member States in any form whatsoever.

Their aim is firstly not to deprive the steel industry of aid for research and development or for bringing plants into line with new environmental standards. The rules also authorise social aid to encourage the partial closure of plants or finance the permanent cessation of all ECSC activities by the least competitive enterprises. Finally, they prohibit the grant of any other operating or investment

aid to steel firms in the Community, albeit with an exemption regarding regional investment aid in certain Member States.

The strict regime thus established, which now applies to the entire territory of the 12 Member States, has ensured fair competition in this industry in recent years. It is consistent with the objective pursued through the completion of the single market. It also conforms to the rules on State aid laid down in the Consensus on the steel industry concluded between the Community and the United States in November 1989, which is valid until 31 March 1992. It should therefore continue to be applied, albeit with a number of technical modifications.

...'

7 Article 1(1) of the Fifth Aid Code provides:

'Aid to the steel industry, whether specific or non-specific, financed by Member States or their regional or local authorities or through State resources in any form whatsoever may be deemed Community aid and therefore compatible with the orderly functioning of the common market only if it satisfies the provisions of Articles 2 to 5.'

8 Under Articles 2 to 5 of the Fifth Aid Code the following may be regarded as compatible with the common market: aid for research and development (Article 2), aid for environmental protection (Article 3), aid for closures

(Article 4) and regional aid under general regional aid schemes in Greece, Portugal and the former German Democratic Republic (Article 5).

Background to the proceedings before the Court of First Instance

9 According to the contested judgment, after the adoption of the Fifth Aid Code and in view of the deterioration of the economic and financial situation in the steel industry, the Commission presented a restructuring plan to the Council and the European Parliament on 23 November 1992 in Communication SEC (92) 2160 final, involving a series of accompanying measures in the social field, together with financial incentives including Community aid (paragraph 4 of the contested judgment).

10 In its Conclusions of 25 February 1993 the Council welcomed the programme submitted by the Commission with a view to achieving a substantial reduction in excess production capacity. Thereafter, the joint statement of the Council and the Commission entered in the minutes of the Council meeting of 17 December 1993 (hereinafter 'the statement of 17 December 1993') indicated that the Commission reaffirmed in particular 'its commitment to a strict application of the Steel Aid Code... [w]ithout prejudice to the right of any Member State to request a decision under Article 95 of the ECSC Treaty' (paragraphs 5 and 6 of the contested judgment).

11 On 22 December 1993 the Council gave its assent in accordance with the first two paragraphs of Article 95 of the Treaty as regards the grant of aid to six steel undertakings, including the Spanish public integrated steel company Corporación de la Siderurgia Integral (CSI) and the group of undertakings in the Italian public sector (Ilva), and the Commission, on the basis of that assent, authorised by means of the contested decisions the grant of State aid to those two. The aid was intended to accompany the restructuring or privatisation of the undertakings

concerned and was not part of the aid eligible for authorisation under the Fifth Aid Code (paragraphs 7 and 8 of the contested judgment).

12 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 27 June 1994, British Steel plc (hereinafter 'British Steel'), supported by Svenskt Stål AB (SSAB) and Det Danske Stålvalseværk A/S, applied under Article 33 of the ECSC Treaty for the annulment of those two decisions.

13 The action was based on four pleas in law, alleging respectively lack of competence of the Commission to adopt the contested decisions, breach of the principle of the protection of legitimate expectations, infringement of the ECSC Treaty or rules of law concerning its application, and infringement of essential procedural requirements.

The contested judgment

14 With respect to the plea alleging lack of competence of the Commission, the Court of First Instance, after stating in paragraph 42 of the contested judgment that, in the scheme of the Treaty, Article 4(c) did not prevent the Commission from authorising, by way of derogation, State aid compatible with the objectives of the Treaty, held, in paragraph 44, that, in the absence of any specific Treaty provision, the Commission was competent, by virtue of Article 95 of that Treaty, to adopt any general or individual decision necessary for attainment of the objectives of the Treaty and that that provision authorised the Commission to assess which of the two kinds of decision, general or individual, was the most appropriate to attain the objectives pursued.

15 After stating in paragraph 45 of the contested judgment that the Commission had used Article 95 of the Treaty both for adopting general decisions — the 'Aid Codes' — and for adopting individual decisions authorising certain types of specific aid on an exceptional basis, the Court of First Instance went on to say, in paragraph 46, that in the case before it the problem was to determine the object and scope of the Fifth Aid Code and of the contested decisions respectively.

16 Comparing the Fifth Aid Code with the two contested decisions, the Court of First Instance observed, in paragraph 49 of the contested judgment, that their scope was different: the Code referred in general to certain categories of aid which it regarded as compatible with the Treaty and the contested decisions authorised, for exceptional reasons and on one occasion only, aid which could not in principle be regarded as compatible with the Treaty.

17 In paragraphs 50, 51, 53 and 54 of the contested judgment, the Court of First Instance stated:

'50 In that light, the applicant's view that the Code is binding, exhaustive and definitive cannot be upheld. The Code constitutes a binding legal framework only for the types of aid enumerated by it which are compatible with the Treaty. In relation thereto, it establishes a comprehensive system intended to ensure uniform treatment, in the context of a single procedure, for all aid within the categories which it defines. The Commission is only bound by that system when assessing the compatibility with the Treaty of aid covered by the Code. It cannot therefore authorise such aid by an individual decision conflicting with the general rules established by that code...

51 Conversely, aid not falling within the categories exempted from the prohibition by the provisions of the Code may benefit from an individual derogation from that prohibition if the Commission considers, in the exercise

of the discretion which it enjoys under Article 95 of the Treaty, that such aid is necessary for attainment of the objectives of the Treaty. The Aid Code is only intended to authorise generally, and subject to certain conditions, derogations from the prohibition of aid for certain categories of aid which it lists exhaustively. The Commission is not competent under the first and second paragraphs of Article 95 of the Treaty, which are concerned only with cases not provided for by the Treaty... to prohibit certain categories of aid, since such a prohibition is already imposed by the Treaty itself, in Article 4(c). Aid not falling into categories which the Code exempts from that prohibition thus remains subject exclusively to Article 4(c). It follows that, where such aid nevertheless proves necessary to attain the objectives of the Treaty, the Commission is empowered to rely on Article 95 of the Treaty in order to deal with that unforeseen situation, if need be by means of an individual decision...

...

53 In those circumstances, the contested decisions cannot be regarded as unjustified derogations from the Fifth Aid Code but constitute measures based, like that code, on the first and second paragraphs of Article 95 of the Treaty.

54 It follows that the plea alleging lack of competence has no basis: the Commission could not in any circumstances, by adopting the Aid Code, relinquish the power conferred on it by Article 95 of the Treaty to adopt individual measures in order to deal with unforeseen situations. Since in this case the Aid Code does not cover the economic situations which prompted it to adopt the contested decisions, the Commission was entitled to rely on Article 95 of the Treaty in order to authorise the aid in question, provided that it observed the conditions for the application of that provision.'

18 With respect to that plea in law, the Court of First Instance held, in paragraph 55 of the contested judgment, that the decisions at issue were not vitiated by any lack of competence on the part of the Commission to adopt them.

19 As regards the plea alleging breach of the principle of the protection of legitimate expectations, the Court of First Instance, after stating in paragraph 75 of the contested judgment that the Fifth Aid Code did not pursue the same object as the decisions at issue, which had been adopted to deal with an exceptional situation, held that that code was not in any event capable of giving rise to legitimate expectations as to the possibility of granting individual derogations from the prohibition of State aid, on the basis of the first and second paragraphs of Article 95 of the Treaty, in an unforeseen situation such as that which prompted the adoption of the contested decisions.

20 The Court of First Instance pursued its reasoning as follows:

'76 Furthermore, and in any event, it is settled case-law of the Court of Justice that: "whilst the principle of the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained"...

77 The proper functioning of the common market in steel clearly involves the obvious need for constant adjustments to fluctuations in the economic situation and economic operators cannot claim a vested right to the maintenance of the legal situation existing at a given time...

78 In that context, the applicant should, on any view, having regard to its very substantial economic importance and its participation on the ECSC Consultative Committee, have realised that an overriding need to adopt effective measures to safeguard the interests of the European steel industry would arise and that recourse to Article 95 of the Treaty might justify the adoption of *ad hoc* decisions by the Commission, as had already happened on several occasions whilst the Aid Code was in force. In that connection, the Commission rightly refers to Commission Decision 89/218/EEC of 23 December 1988 [concerning aid that the Italian Government proposes to grant to the public steel sector], and Decision 92/411/ECSC of 31 July 1992 on the granting of aid to steel undertakings by the Danish and Dutch Governments (OJ 1992 L 223, p. 28), which authorised certain State aid outside the aid code in force at the time of their adoption.'

21 The Court of First Instance concluded, in paragraph 79 of the contested judgment, that the decisions did not contravene the principle of the protection of legitimate expectations.

22 British Steel's other two pleas in law were also rejected by the Court of First Instance.

The appeal

23 British Steel puts forward two grounds of appeal, alleging lack of competence on the part of the Commission to adopt the contested decisions and breach of the principle of the protection of legitimate expectations.

The first ground of appeal

24 British Steel's first ground of appeal comprises two parts, the second being an alternative to the first.

25 Its main contention is that, by deciding in paragraphs 50 and 51 of the contested judgment respectively:

— on the one hand, that the Fifth Aid Code constitutes a binding legal framework only for the types of aid enumerated by it which are compatible with the Treaty and that that code is intended to prohibit all aid not expressly enumerated in it, and,

— on the other, that the Commission is empowered, notwithstanding the existence of the code, to rely on Article 95 of the Treaty in order to adopt individual decisions, such as the contested decisions, even though the code is exhaustive, so that the Commission is not empowered, whilst the code is in force, to authorise by individual decisions aid other than that covered by the code itself,

the Court of First Instance erred in law as regards interpretation of the scope of the Fifth Aid Code and, therefore, the extent of the Commission's competence.

26 As regards the purpose of the Fifth Aid Code which, according to the appeal, is to prohibit all aid not covered by the code, British Steel puts forward two arguments derived from the preamble and the main body of that code respectively.

27 First, British Steel relies in particular on the fourth paragraph of point I of that code, which refers to the prohibition of granting 'any other operating or investment aid to steel firms in the Community...' and to the first and third paragraphs of the same point. According to British Steel, the word 'other' refers to the prohibition of aid not enumerated in that code. It submits that that position is corroborated by the fifth paragraph of point I, which refers to the conformity of that prohibition with 'the Consensus on the steel industry concluded between the Community and the United States in November 1989 [and] valid until 31 March 1992', which, having been adopted by Commission Decision 89/636/ECSC of 11 December 1989 on the conclusion of an arrangement and a consensus with the United States of America concerning trade in certain steel products (OJ 1989 L 368, p. 98) prohibited such forms of aid.

28 Second, British Steel contends that Article 1(1) of the Fifth Aid Code, although not expressly prohibiting State aid but enumerating the categories which may be exonerated from the prohibition contained in the Treaty, must be interpreted as imposing a prohibition where the aid does not fall into those categories. It follows that the statement made by the Court of First Instance in paragraph 51 of the contested judgment that the prohibition of certain categories of aid 'is already imposed by the Treaty itself, in Article 4(c)' is not correct, in so far as the Commission was not competent, under the first paragraph of Article 95 of the Treaty, to declare that only the aid enumerated in Article 1(1) of the Fifth Aid Code was compatible with the Treaty.

29 It must be made clear, as far as that argument is concerned, that although the fourth paragraph of point I in the preamble to the Fifth Aid Code indicates that

the rules contained in the previous aid codes 'prohibit the grant of any other operating or investment aid...', the fact remains that that statement in the preamble is not supported by any provision of that code. It follows that those words in the preamble cannot by themselves change the scope of the Fifth Aid Code.

30 Article 1(1) of that code contains no general prohibition of aid but simply defines in general terms the scope of the derogation provided for in Article 4(c) of the Treaty. Accordingly, that provision of the Fifth Aid Code is not intended to exclude the adoption of other measures derogating from the prohibition laid down in Article 4(c) of the Treaty.

31 That interpretation clearly follows from the statement of 17 December 1993, according to which the strict application of the Fifth Aid Code was to be '[w]ithout prejudice to the right of any Member State to request a decision under Article 95 of the ECSC Treaty'.

32 Moreover, it is borne out, first, by the first paragraph of point I of the said preamble, which clearly indicates that it is by virtue of Article 4(c) of the Treaty and not by virtue of the Fifth Aid Code itself, that '[a]ny aid in any form whatsoever... which Member States might grant... is prohibited' and, second, by the second paragraph of point I, which does not say that the earlier aid codes prohibited aid in general but makes it clear, on the contrary, that they introduced rules 'authorising the grant of aid... in certain cases expressly provided for'.

33 As regards British Steel's argument based on the fifth paragraph of point I of the preamble to the Fifth Aid Code, which refers to the conformity of the Community rules on aid with 'the Consensus on the steel industry concluded between the Community and the United States', that reference is not relevant to this case,

since, even if such incompatibility existed, it would derive solely from the measures adopted on the basis of the first paragraph of Article 95 of the Treaty, the purpose of which is to authorise aid not falling within the scope of that consensus.

34 Consequently, Article 1(1) of the Fifth Aid Code, which contains no general prohibition of State aid, must be interpreted as meaning that the Commission is not competent, under that code, to approve, in accordance with the simplified procedures introduced by the latter, aid not covered by Articles 2 to 5 of that code, and that, on the contrary, it is competent to adopt, pursuant to Article 95 of the Treaty, supplementary measures, whether general or individual, approving aid not covered by the Fifth Aid Code.

35 In support of its contention that the Fifth Aid Code is exhaustive, British Steel also puts forward two arguments based on the history of the aid codes and the Commission's practice regarding decisions addressed to other undertakings, which, in its view, provide guidance for interpretation of that code.

36 First, British Steel submits that the history of the aid codes shows, in particular from 1 January 1986, the date of entry into force of Commission Decision No 3484/85 of 27 November 1985 establishing Community rules for aid to the steel industry (OJ 1985 L 340, p. 1), known as the 'Third Aid Code', a progressive narrowing down of the Commission's competence regarding the grant of State aid, which made the following codes, including the fifth, exhaustive. It follows that the statement by the Court of First Instance, in paragraph 51 of the contested judgment, that the Fifth Aid Code 'is only intended to authorise generally, and subject to certain conditions, derogations from the prohibition of aid for certain categories of aid which it lists exhaustively' conflicts with that exhaustiveness.

37 Second, British Steel invokes, in support of its contention as to the exhaustive nature of the Fifth Aid Code, a number of individual decisions refusing to approve the grant of aid or requiring the reimbursement of aid already paid on the ground that it was not authorised by that code. In its view, reliance on that ground shows that the code is exhaustive, since, if the position were otherwise, the grounds relied on by the Commission could not, by themselves, justify the refusal of authorisation or reimbursement of the aid.

38 In particular, British Steel contends that the exhaustive nature of the code is demonstrated by the fact that it was amended by Decision 92/411, known as 'the CO_2 decision', in order to allow a derogation for aid to the Danish and Dutch steel industries by reduction of the taxes payable for emissions of carbon dioxide.

39 As regards, first, British Steel's argument based on the history of the aid codes, it must be observed that the progressive limitation of their scope cannot endow the Fifth Aid Code with an exhaustive character.

40 As was observed in paragraph 32 of this judgment, aid is prohibited not under the code but pursuant to Article 4(c) of the Treaty, a provision from which derogations may be made on the basis of the first paragraph of Article 95 of the Treaty. It follows that the progressive limitation of the scope of the aid codes before the fifth one must be seen not as a total prohibition preventing the Commission from taking action under Article 95 of the Treaty but as a delimitation of its delegated authority to take decisions without seeking unanimous approval from the Council when it considers, in a case not covered by the Treaty, that aid is necessary, in view of exceptional circumstances, in order to attain the Treaty objectives.

41 Second, as regards the individual decisions referred to by British Steel in support of its contention that the Fifth Aid Code is exhaustive, it need merely be pointed out that the fact that the Commission refused a grant of aid or ordered reimbursement of aid already paid cannot constitute evidence of the exhaustive nature of that code because, as is apparent from the statement of 17 December 1993, although, outside the scope of the aid code, *ad hoc* decisions are always possible where the Member State concerned takes the initiative to seek application of Article 95 of the Treaty, that does not mean that the Commission is always required to grant the aid applied for.

42 In particular, with regard to British Steel's argument that the Fifth Aid Code was amended by the CO_2 decision, it need merely be observed that the latter was adopted as an individual decision and not as a provision amending the Fifth Aid Code.

43 Consequently, the Court of First Instance was right to hold, first, in paragraph 50 of the contested judgment, that the Fifth Aid Code represented a binding legal framework only for aid compatible with the Treaty and enumerated by it and, second, in paragraph 51, that the Commission is empowered to have recourse to Article 95 of the Treaty in order to adopt individual decisions.

44 In those circumstances, the main part of the first ground of appeal must be rejected as unfounded.

45 In its alternative plea in the first ground of appeal, British Steel contends that, even if the Court of First Instance's interpretation as to the scope of the Fifth Aid Code is correct, the Court erred in law by failing to annul the part of Decision 94/258 which authorised 'social aid up to a maximum of [ESP] 54.519 billion' because such aid came fully within the scope of Article 4 of the Fifth Aid Code, which deals with social aid and aid for closures.

46 It needed merely be stated that the argument contained in the alternative plea relied on in the first ground of appeal was not put forward at first instance.

47 Under Articles 113(2) and 116(1) of the Rules of Procedure fresh submissions not contained in the original application may not be raised in an appeal (Case C-18/91 PV v *Parliament* [1992] ECR I-3997, paragraph 21). It follows that the alternative plea relied on in the first ground of appeal is manifestly inadmissible.

The second ground of appeal

48 In this ground of appeal, British Steel contends that, by rejecting its argument that the existence of the Fifth Aid Code caused it to entertain a legitimate expectation that the Commission would not adopt any specific decisions authorising state aid in categories not covered by the code, the Court of First Instance did not take account of the Commission's conduct, which gave the firm impression that it would not authorise restructuring aid during the currency of that code.

49 In particular, British Steel criticises paragraph 78 of the contested judgment, in which the Court of First Instance found that British Steel itself, represented by one of its directors, had participated in the ECSC Consultative Committee and should therefore have appreciated the necessity for the Commission to have recourse to Article 95 of the Treaty in order to adopt *ad hoc* decisions. It adds that that part of the contested judgment contains an error in that, under the rules of the Consultative Committee, its members act in a personal capacity and not as agents of their respective companies.

50 Furthermore, according to British Steel, the CO_2 decision, authorising exemption for Danish and Dutch companies from certain environmental taxes, is not comparable with the contested decisions, in that it did not concern restructuring aid and could not therefore affect its legitimate expectations.

51 In that connection, it must be noted that, after referring, in paragraph 75 of the contested judgment, to the finding made in paragraphs 46 to 52 of the same judgment that the Fifth Aid Code did not pursue the same purpose as the contested decisions, which were adopted to deal with an exceptional situation, the Court of First Instance was right to infer that the code was not capable in any circumstances of giving rise to legitimate expectations regarding the possibility of derogating from that code, in exceptional cases, by means of individual decisions based on Article 95 of the Treaty.

52 The Court of First Instance was also correct, in reliance on the settled case-law of the Court of Justice (see Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 33), to hold, in paragraph 77 of the contested judgment, that '[t]he proper functioning of the common market in steel clearly involves the obvious need for constant adjustments to fluctuations in the economic situation and economic operators cannot claim a vested right to the maintenance of the legal situation existing at a given time'. British Steel could not legitimately expect that a given legal situation would remain unchanged even though the economic conditions in the steel market were subject to changes which, in some cases, called for specific measures of adjustment.

53 As regards the Court of First Instance's finding in paragraph 78 of the contested judgment concerning British Steel's representation on the ECSC Consultative Committee, that finding was one of fact which comes within the exclusive jurisdiction of the Court of First Instance and cannot be examined by the Court of Justice in the context of an appeal (see, to that effect, Case C-354/92 P *Eppe* v *Commission* [1993] ECR I-7027, paragraph 29, and Case C-191/98 P *Tzoanos* v *Commission* [1999] ECR I-8223, paragraph 23).

54 As regards the CO_2 decision relied on by British Steel in support of its ground of appeal, it demonstrates, on the contrary, that the approval of aid not within the scope of the Fifth Aid Code was possible and, therefore, that the adoption of that decision could not cause British Steel to entertain any legitimate expectation.

55 It follows that British Steel's second ground of appeal cannot be upheld.

56 In those circumstances, British Steel's appeal must be dismissed in its entirety.

Costs

57 Under Article 69(2) of the Rules of Procedure, which is applicable to the appeal procedure pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has requested that British Steel be ordered to pay the costs and British Steel has been unsuccessful, it must be ordered to pay the costs. The first subparagraph of Article 69(4) of the Rules of Procedure provides that Member States and institutions which intervene in the proceedings are to bear their own costs and, under the third subparagraph of Article 69(4), the Court may order interveners other than those mentioned in the preceding subparagraphs to bear their own costs. Accordingly, the Italian Republic, the Kingdom of Spain, the Council and Det Danske Stålvalseværk A/S will be ordered to bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Dismisses the appeal;**

2. **Orders British Steel plc, now Corus UK Ltd, to pay the costs;**

3. **Orders the Italian Republic, the Kingdom of Spain, the Council of the European Union and Det Danske Stålvalseværk A/S to bear their own costs.**

Gulmann Puissochet Macken

Delivered in open court in Luxembourg on 23 November 2000.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber