Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69;

THE COURT

hereby:

1. **Annuls the individual decisions of 13 November 1964 and 5 October 1965, fixing and amending the tonnage of assessable ferrous scrap and the debt of Acciaierie San Michele SpA under the imported ferrous scrap equalization scheme;**

2. **Orders the High Authority to pay 19/20 of the costs of the action and Acciaierie San Michele SpA to bear the remaining 19/20.**

Hammes Trabucchi Monaco

Delvaux Donner Lecourt Strauß

Delivered in open court in Luxembourg on 2 March, 1967.

H. J. Eversen
Assistant Registrar
For the Registrar

Ch. L. Hammes
President

## OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 14 DECEMBER 1961[1]

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*Mr President,*
*Members of the Court,*

The subject-matter of the two joined cases to which I shall address myself today is the contributions due within the framework of the ferrous scrap equalization scheme. Since the equalization scheme as a whole is known to you from numerous other cases, I shall restrict myself to an examination of the characteristic points of the present case. During the functioning of the equalization scheme the applicant ran a steelworks at Savigliano (Cuneo) with an electric furnace having a capacity of 4.5 metric tons in which it consumed ferrous scrap liable to equalization. It appears that the steel works was set up as a consequence of the purchase and technical alteration of the installations of the 'I.S.A.P.' undertaking, which went into liquidation and was the subject of a composition in the course of 1955 and 1956. This is why the parties disagree over the date from which, with regard to the equalization scheme, the applicant commenced production. Since 1 February 1957 in any event, and until November 1958, that is to say, until the equalization scheme ceased to function, the applicant regularly supplied the Italian regional office with declarations concerning its purchases, and it also paid certain contributions. It emerges from these declarations that during the period in dispute it bought 1 163 metric tons of ferrous scrap and paid contributions amounting in all to 661 176 lire.

The applicant undertaking, like other undertakings consuming ferrous scrap, underwent repeated checks intended to verify the declarations made. Thus the agents of the Société Fiduciaire Suisse were entrusted by the High Authority with carrying out a detailed check on the applicant which lasted from 25 to 30 June 1958 (see the report of 5 July 1958). It appears however that not all

the accounting documents requested were produced. In fact it was only possible to examine the contract for the supply of electricity together with the electricity invoices, which show the amount of electricity used in the steel works from 1 May 1956 to 31 December 1957. In order to check these figures, the High Authority's Directorate-General for Steel requested the applicant, by letter of 27 November 1961, to transmit to it, either directly or through its electricity suppliers, all the invoices relating to its consumption of electricity, together with a certificate that these invoices covered the total consumption of electricity. Since the applicant refused to comply with this request by letter of 27 December 1961, the High Authority on 23 February 1962 adopted a formal decision repeating the order of the Directorate-General for Steel. As we know, this led to an action (Joined Cases 5 to 11 and 13 to 15/62 [1962] E.C.R. 449); the judgment given on 14 December 1962 found that the contested decision was legal. Since the applicant still did not comply with this order, the High Authority was induced to impose fines and periodic penalty payments, pursuant to Article 47 of the ECSC Treaty (decisions of 18 December 1962). These decisions were also contested by the undertakings concerned (Joined Cases 2 to 10/63, Rec. 1963, p. 661). However, on this point also the Court in essence confirmed the High Authority's point of view, in its judgment of 16 December 1963.

In 1962 (that is to say, from 2 to 9 October) the High Authority once again carried out a check on the applicant undertaking (see the report of 19 November 1962), this time through its inspectors; the conclusions of this check, however, did not coincide with those of the first check.

After the adoption of General Decision No 7/63, the applicant and other consumers of ferrous scrap received from the Directorate-General for Steel a letter dated 8 April 1963 giving a provisional assessment of the respective equalization debits and credits at 31 May 1963. Since the High Authority had not yet received the invoices relating to the consumption of electricity, the applicant's contributions were calculated at 8 067 684 lire on the basis of the original statements. The applicant disputed the correctness of the assessment and requested further details with regard to the operational methods of the equalization scheme; this information was supplied by letter of 31 July 1964.

At this period the applicant's financial difficulties appear to have come to a head, and by order of the Tribunale di Saluzzo dated 8 June 1964 the undertaking was placed under a receiving order for one year. In these circumstances the High Authority felt obliged as a matter of urgency to reconsider the applicant's assessment to equalization in the light of the information resulting from the check, which was available to it at that point. These results are set out in a letter from the Directorate-General for Steel dated 18 August 1964, whereby the equalization debt was calculated at 114 055 664 lire. Since the applicant did not agree with this amount either, on 13 November 1964 two other decisions were adopted by the High Authority enabling it to participate as a creditor in the applicant's bankruptcy. The first of those decisions fixed the amount of ferrous scrap for which the applicant undertaking was required to pay contributions on the basis of the consumption of electricity which emerged during the checks (that is, 16 444 metric tons); the second decision fixed the equalization debt, which coincided with that already notified on 18 August 1964, at 114 055 664 lire.

It is against these decisions that the first of the cases we have to consider, namely Application 9/65, is directed.

During those proceedings, the applicant undertaking was declared insolvent by

the Tribunale Civile di Saluzzo, by judgment of 22 June 1965; nevertheless, in a communication of 27 December 1965, the lawyer previously engaged by it also received a mandate from the liquidator to continue to act, so that the matter could be pursued.

While proceedings were still continuing, the High Authority, which had applied to the competent Italian authorities through the Italian Embassy in Luxembourg, received on 9 April 1965 further details concerning the consumption of electricity by the applicant's electric furnace during the period from 1 May 1956 to 30 November 1958. In the light of this information it adopted two fresh decisions, dated 5 October 1965, fixing the applicant's additional consumption of ferrous scrap apart from that appearing in the decision of 13 November 1964 (namely 17 497 metric tons) and the additional contributions due (that is, 122 696 963 lire). On 26 November 1965 the applicant's liquidator contested the two decisions by lodging Application 58/65.

By order of the Court dated 18 January 1966 the cases were joined for the purposes of the written and oral procedure and for the judgment, so that henceforth we have to consider the following applications together:

Case 9/65:

— for the annulment of the decisions of the High Authority of 13 November 1964;
— for a ruling that General Decision No 7/63 is illegal and inapplicable.

Case 58/65:

— for the annulment of the decisions of the High Authority of 5 October 1965;
— for a ruling that General Decisions Nos 7/61 and 7/63 are illegal and inapplicable;
— for an order for the High Authority to pay damages for its wrongful act or omission in the management and supervision of the equalization scheme, particularly owing to the acts of fraud committed in this sphere and the delay in notifying the rates of contribution;
— for the exact amount of the damages to be calculated by an expert.

The High Authority considers that these applications are unfounded and therefore requests that they should be dismissed.

With regard to procedure, I must again remark that the applicant has introduced a series of procedural issues under Article 91 of the Rules of Procedure, not all of which have yet been settled. For this reason on 27 April 1965 it applied for the suspension of proceedings pending the judgment of the Corte Costituzionale to which the Tribunale Civile di Torino has referred the question of the constitutionality of certain provisions of the ECSC Treaty. The Court dismissed this application by an order of 2 June 1965 and at the same time ordered the applicant to bear the costs of those proceedings.

In the second procedural issue of 4 April 1966, the applicant claimed that the High Authority should be asked to explain the importance given in the proceedings to the letter from its Directorate General for Steel on 28 January 1966, intimating to the applicant the new and increased calculation of the contributions payable (252 494 640 lire) after the adoption of General Decision No 19/65 (containing the final rates for the contributions to the ferrous scrap equalization scheme). By an order of 2 June 1966, the Court reserved its decision for the final judgment.

Finally, on 27 June 1966 the applicant requested that the High Authority should be asked to produce the original of a schedule to the letter from the Italian Embassy of 9 April 1965, of which it only possessed a photocopy. Since the original had been lodged with the Registry, the Court found, by order of 13 July 1966 that the photo-

copy conformed to the original. The decision as to the costs of the procedural issue was reserved for the final judgment.

It is this dispute as a whole which must now be considered.

*Legal consideration*

I — Admissibility

The admissibility of the applications was not questioned in the course of the proceedings nor are there grounds for the Court to raise the matter of its own motion. We may therefore pass directly to the essential problems in the action.

II — The substance of the case

In the final analysis, this is first a question whether, in the two decisions of 13 November 1964 and of 5 October 1965, the High Authority correctly calculated the quantity of assessable scrap on which the applicant is obliged to pay an equalization contribution. In addition, questions require to be settled concerning different points of view with regard to the calculation of the contributions. In this case we must examine the legality of the general decisions on ferrous scrap. Finally, the applicant has complained of a wrongful act or omission, that is to say, it has pleaded that defects in the management and supervision of the equalization scheme have resulted in excessive rates of contribution and that the undertakings consuming ferrous scrap have been unable to take into account in their cost prices charges representing the contributions.

1. *Arguments relating directly to the contested individual decisions*

(a) The method employed by the High Authority for calculating the consumption of ferrous scrap

First of all I shall deal with the fundamental question in the case, namely the calculation of the quantity of assessable scrap consumed by the applicant. I shall briefly outline once again how the calculation was made. The High Authority states that the documents submitted to it in the course of repeated checks on the applicant did not show clearly the data required for the equalization scheme (purchases of ferrous scrap, the state of stocks, own arisings). The High Authority therefore resorted to the inductive method, basing its calculations on the amount of electricity consumed in the applicant's furnace for the production of steel. A generally acknowledged coefficient exists which makes it possible to calculate not only the production of steel, but also the quantity of ferrous scrap consumed by the furnace. The first decision of the High Authority was based on the information acquired by the inspectors of the Société Fiduciaire Suisse in June 1958 relating to the consumption of electricity during the period from May 1956 to December 1957; for the rest of the period during which the equalization scheme functioned, its basis was an average monthly consumption of electricity calculated in accordance with those data, as the figures established in 1962 by the inspectors were plainly unrealistic. The total consumption of electricity amounted to 14 909 605 kilowatt-hours which gave a consumption of ferrous scrap equivalent to 16 444 metric tons.

The High Authority learned from the competent Italian authorities (in the final instance from the State electricity company, ENEL) through the Italian Embassy, that it should take as its basis a total consumption of electricity in the applicant's furnace of 30 141 900 kilowatt-hours, and it was able, in a new decision, to calculate an additional quantity of ferrous scrap consumed by the applicant, namely 17 497 metric tons, which corresponds to a consumption of electricity of 15 232 295 kilowatt-hours which it had not previously taken into account.

In these circumstances, the primary problem is whether the application to the applicant of the inductive method can be justified. Article 2 of Decision No 13/58 (Official Journal, 1958, p. 271), to which the applicant also refers, provides:

'Should the undertakings fail to declare the factors for calculating the contributions, the High Authority shall be entitled to estimate these on its own authority. The High Authority shall also be entitled to correct on its own authority declarations in support of which no valid proof can be supplied'.

We must however distinguish between the period for which it cannot be disputed that the applicant has not made declarations (May 1956 to January 1957) and the subsequent period during which the ferrous scrap was declared and in which only the correction of the data is involved.

(aa) *The period from February 1957 to November 1958*

First of all I shall consider the principal period, namely that for which the declarations were properly made.

It may appear superfluous to consider once again whether the inductive method may in principle be applied: in fact in previous proceedings (Joined Cases 5 to 11 and 13 and 15/62 [1962] E.C.R. 449) in which the applicant was also involved and which concerned the production of electricity invoices, the Court has already found that:

'In this case, and having regard to the circumstances, the demand for the production of the invoices at Luxembourg was not excessive and disproportionate to the aim in view. The inspections previously carried out on the spot by officials of the High Authority and of the Swiss Trust Company [the Société Fiduciaire Suisse] gave reasons for seriously doubting the veracity of the declarations made by certain undertakings with regard to their consumption of scrap'.

It is unnecessary, however, to restrict ourselves to this reference, since the present proceedings have proved afresh the accuracy of these findings. It appears from the report of the Société Fiduciaire Suisse produced after the conclusion of the oral procedure that the applicant apparently did not keep a number of normal accounting books (such as those relating to the imports of ferrous scrap, the invoice book, industrial accounts and stock accounts—page 2 of the report) or only kept them after 1958 (such as the books showing the movements of scrap within the undertaking—page 2 of the report), that it had destroyed other documents (weight slips and transport documents—page 2 of the report) or that certain documents were missing (such as the registers of semi-finished products—page 2 of the report) and finally that the applicant's lawyer had expressly refused to produce other documents (such as the journal and the balance sheet book—page 3 of the report) or that the documents produced related only to a limited period (namely January 1957, in respect of certain purchase and sales invoices—page 6 of the report) and, in addition, appeared to be incomplete. Although it is true that in 1962 the applicant seemed more inclined to make its documents available to the inspectors (despite the initial resistance at the time by the applicant's lawyer), it is nevertheless clear from the report in our possession that for this period as well certain documents were lacking (like the register of semi-finished products for 1957—page 6 of the report, contrary to the assertions of the applicant's lawyer in his statement of 11 November 1966) and that the declarations made revealed inaccuracies (with regard to the foundry scrap bought by I.S.A.P.—page 8 of the report), or else that there were irreconcilable contradictions between the books, the declarations and the technical analyses (for example, between the balance sheet book and the declarations concerning

the stocks of ferrous scrap—page 10 of the report—, the declarations concerning the production of ingots and rolled products—pages 11 and 12 of the report, etc.). But above all—and this is of conclusive importance — the explanations supplied by the applicant itself showed with absolute clarity that, during the period which concerns us, it had failed most seriously in its obligation to supply declarations. It appears from the decision of 13 November 1964 that for the period from February 1957 to November 1958 it contented itself initially with indicating a consumption of bought scrap of 1 163 metric tons, so that after now producing accounting documents with the reply it has been obliged to recognize that during this period it consumed at least 10 046.601 metric tons of assessable scrap, that is to say, ten times the quantity previously declared.

In these circumstances, the High Authority's application of the inductive method is undoubtedly justified.

According to our previous case-law, the only question which must consequently be asked is whether the applicant was in a position to prove afterwards, during the proceedings for example, that the results arrived at by the inductive method could not be upheld and should have been replaced by others. In this case we are concerned with books produced with the reply. Before we examine them in detail, I nevertheless wonder whether procedural reasons do not prevent our taking them into account, as the High Authority thinks, in view of the infringement of Article 42 of the Rules of Procedure. Article 42 (1) provides that:

'In reply or rejoinder a party may indicate further evidence. The party must however explain the delay in indicating it.'

In fact, one searches in vain for express reasons in the statement in question. Nonetheless, a charitable interpretation may perhaps allow us to consider as an implied reason the fact that the applicant refers to the brevity of the period of time for lodging applications and the fact that, when it lodged its application, the undertaking found itself in exceptional circumstances as a result of the commencement of the composition and liquidation proceedings. In any event, I do not wish in this case to propose a strict application of this principle, and on the contrary I suggest that we consider the content of the books produced and settle the question of the state of the evidence objectively.

It appears clear from the outset that two sets of books are irrelevant to the proceedings, that is, the balance sheet book and the four journals. The latter contain only amounts in lire and it is impossible—without consulting the relative documents—to ascertain what operations are discussed and what quantities of goods are concerned. Furthermore, it is clear that the balance sheet book only contains amounts in lire relating to the state of the stocks; moreover, these books are drawn up at the end of each year (1957, 1958 and 1959) and consequently do not give any indication of the movements of ferrous scrap with which the equalization scheme is concerned *in the course of* the various financial years. In these circumstances, all that may be taken into account is a table of the movements of stock in and out ('riepilogo dei movimenti di magazzino'); the applicant endeavours to deduce from this that its consumption of ferrous scrap may be assessed at the most at 10 046.601 metric tons.

In my opinion certain reservations and criticisms must be made in this respect. Thus this book, which contains only one and a half pages for 1957 and approximately two pages for 1958, only makes it possible to deduce certain aggregate figures relating to ferrous scrap acquired (8 864.170 metric tons for 1957, 3 884.092 and 3 953.980 metric tons for 1958) and to the ferrous

scrap delivered for processing within the undertaking (9 046.571 metric tons for 1957, 8 011.272 metric tons for 1958). On the other hand, there is no detailed statement or information on the deductions which the applicant considers should be made for certain own arisings and for ferrous scrap allegedly used in the foundry (which, moreover, does not coincide with the conclusions of the reports of the checks). For this reason I cannot accept as correct the total quantity of assessable scrap (14 834.439 metric tons) calculated in the reply (p. 19), still less the calculation made in the statement of 18 November 1966 on the basis of other figures which gives a final result of 10 046.601 metric tons.

A second objection, with regard to the *probative value* of this document, is still more important; it must first of all be noted that it contains entries made by the applicant itself the content of which has not been checked by distinguished third parties. The large number of registration stamps, initials and certifications in this book do not alter the situation. In fact, on a correct view, it is only a matter of proving the dates when the entries begin and end, or the fact that certain pages have not been changed or suppressed. I should certainly not wish to go to the length of casting doubt on the accuracy of the *content* of this document simply because the applicant also supplied incorrect information to the equalization scheme, that is to say, that it has manifested an evident lack of good faith. Nor would it suffice to refer to the results of the check carried out by the Fiduciaire Suisse and by the inspectors who were apparently confronted with considerable quantities of machine scrap originating from the stocks of the I.S.A.P., which had not been entered; on the basis of the production of ingots the inspectors were able to deduce a considerable consumption of ferrous scrap. What gave grounds for reflexion in the first place was the notification by the Italian authorities of the applicant's consumption of electricity, which gives a consumption of ferrous scrap of approximately 25 000 metric tons, if use is made of a coefficient which until now has always been regarded as correct. We cannot ignore these figures, since we know that in Italy electricity consumption is very strictly checked by the state for fiscal reasons, giving official information in this sphere particular value as evidence.

Nor can we ignore the figures obtained through the Italian Embassy, as the applicant claims, on the ground that they are declarations carrying no authority, emanating from *third parties* who are not parties to the action: in fact the ECSC Treaty expressly authorizes the High Authority (Article 5) to obtain official information and obliges (Article 86) the Member States to assist the Community in attaining the objectives of the Treaty. Finally we may pass over the question raised by the applicant whether the figures quoted do not cover the *total* consumption of electricity by undertaking, since the communication from the Italian Embassy expressly speaks of a 'consumption of electricity relating to the electric furnace for the production of steel' ('consumi di energia elettrica inerenti ai forni elettrici per la produzione di acciaio'), thus avoiding any misunderstanding.

Although, on the basis of these figures and employing the parameter already recognized several times by the Court, one finds not only several very small divergences from the figures supplied by the applicant on its consumption of ferrous scrap, and again, when a comparison is made with these figures, an additional consumption of ferrous scrap in excess of 100% is found, in my opinion it can only be concluded that the documents produced by the applicant must be incomplete and of no probative value. This impression is confirmed when one considers that the

figures produced by the applicant coincide more or less with the calculations of the High Authority, which were made on the basis of the information obtained by the Société Fiduciaire Suisse on the applicant's consumption of electricity. Thus it appears from Schedule 1 to the statement of defence in Case 9/65 that the agents of the Société Fiduciaire Suisse saw in 1958 accounting documents which must have referred to *two* months, whilst according to the certificate produced with the reply, issued on 13 December 1960, for undertakings of this size ('large consumers' to whom electricity was supplied for purposes other than lighting, domestic use or motors) the rule was to make out *monthly* electricity invoices.

It is a necessary consequence of all these considerations that the applicant's efforts to prove the contrary with the aid of the documents produced must fail. We could only arrive at another conclusion if we were in possession of individual documents relating to the period in dispute: according to the declarations of the applicant's lawyer of 11 November 1966, it is probable that these documents are still in existence, at least in part, and there was all the more reason to retain them since after the checks in 1958 and in 1962 considerable differences in the consumption of ferrous scrap emerged. The Court might perhaps ask the Italian authorities whether the data notified by them in fact only cover the consumption of electricity in the applicant's electric furnace. But in view of the unequivocal terms of that communication, I think that a request for more detailed information may be dispensed with for the production period from February 1957 to November 1958, and I suggest that we adopt the results of the calculations made by the High Authority by the inductive method, subject to any modifications which may appear necessary as a result of the considerations set out above.

*(bb) The period from May 1956 to January 1957*

It is even more difficult to consider the period for which the applicant has not made declarations, on the ground that there was in fact no production of steel. As we have seen in the statement of facts, in 1956 the applicant acquired some of the plant which formed part of the assets of the composition of the I.S.A.P. undertaking, which had a foundry at Savigliano, for the purpose of constructing a steelworks and rolling-mill. This conversion lasted throughout 1956, so that the actual production of steel could only have started on 1 February 1957. Up to that point, apart from the conversion work, the sole work carried out was to meet orders placed with the I.S.A.P. undertaking's foundry which it had also taken over and which, as we know, are irrelevant to the equalization of ferrous scrap.

If those statements were correct, the contested decisions would in fact have to be annulled, at any rate partially, since they assume that the undertaking consumed ferrous scrap for its production of steel before 1 February 1957.

On this point also it appears that an appraisal of the evidence does not give a result favourable to the applicant. In this case too much emphasis should not be placed on the applicant's argument that during 1956 it made no *purchase* of scrap; this is of no importance, as the High Authority emphasizes, because for the purposes of the equalization of ferrous scrap, it is sufficient that steel has been produced from stocks of *available* scrap. Similarly, I shall not restrict myself to declaring improbable, as does the High Authority, the applicant's argument that it carried out work in the foundry with the available ingots of steel, since it is quite improbable that ingots, that is to say, semi-finished products, were used for the foundry.

On the other hand, we must consider whether the High Authority has put forward factors rendering it very probable that the applicant commenced its steel production long before 1 February 1957. This appears to be the case. In fact it appears improbable that the conversion work in question lasted for almost one year without usable steel being produced in that period. We must not forget that the applicant undertaking was formed on 25 October 1955, that on 1 December 1955 it concluded a contract for the renting of premises for its undertaking and that consequently, from that date (or at any rate from 1 January 1956, according to the declaration which it made to the registrar of companies), it was possible to begin the conversion of the plant and not only from the middle of May, as it now claims. But the figures found by the Société Fiduciaire Suisse in connexion with the consumption of electricity are even more important than these general considerations. They show not only that a contract for the supply of electricity was concluded with effect from 1 May 1956, but again, and this thanks to an examination of the original invoices, that in May and June 1956, and especially in September and October 1956, considerable quantities of electricity were used in the applicant's furnace (during May and June 493 500 kilowatt-hours, during July and August 652 300 kilowatt-hours, during September and October 925 500 kilowatt-hours and finally during November and December 913 300 kilowatt-hours). If these figures are compared with those for 1957, which show variations of 915 500 and 1 332 900 kilowatt-hours) and if in addition it is considered that the number of its staff scarcely changed from 1956 to 1957 (which the applicant tacitly admits) it must necessarily be concluded that, from 1956, the applicant's plant was producing steel in considerable quantity.

But, even if for the first period in dispute it were thus possible to consider as proved the fact that the applicant did not supply declarations in breach of its obligations arising from the general decisions on ferrous scrap, the admissibility in principle of the inductive method is also well established by virtue of Article 2 of Decision No 13/58 and it is for the applicant to prove the truth of its statements.

This has by no means been done. In essence the applicant merely disputes the accuracy of the figures quoted in connexion with its consumption of electricity; further, it questions whether the figures relate only to the electric furnace, although it is clear from the report of the Société Fiduciaire Suisse that very careful distinction has been drawn between the different uses for which the electricity was intended and although the applicant, if it wishes, might still prove that its doubts are well founded, by producing copies at least of its earlier electricity invoices. Nevertheless it offers to prove by the evidence of witnesses the truth of its statement that its works did not produce steel before 1 February 1957. In the past, the Court has always refused to accept proof by witnesses of facts which are more than ten years' old; it has always required documentary proof from the undertakings concerned which are in such a position. This position should be maintained in the present case.

Thus, according to the rules of evidence employed before the Court, I cannot do otherwise than acknowledge the correctness of the calculations made by the High Authority through the inductive method, and also with regard to the applicant's first production period, unless other arguments, which I shall now consider, can alter this finding.

(b) Other arguments directly concerning the individual decisions

I shall anticipate the results of my considerations: in my opinion the other

submissions directly concerning the individual decisions are of no avail to the applicant, since they consist almost exclusively of arguments which the Court has already considered in other cases and which are not supplemented in the present case by any new and convincing factors.

(aa) Thus it is impossible in this case to substitute for the method of assessing the consumption of ferrous scrap in terms of the consumption of electricity another method consisting of assessing the consumption of ferrous scrap in terms of the probable duration of the work to produce steel in the applicant's furnace. We know from other cases that the results obtained by this latter method are no more accurate than those obtained by the method employed by the High Authority. This finding is confirmed if the calculation made in Application 9/65 is compared with the figures which the applicant itself subsequently supplied. Similarly, there are no grounds for replacing the coefficient employed (900 kilowatt-hours per metric ton of steel produced) by a higher one, taking into account, for example, the capacity of the furnace, the power of the transformer, the age of the applicant's plant and other factors of which further details have not been given. In this respect too, the Court has already emphasized several times the legality of a formula arrived at by a team of experts who have taken a variety of factors into account. With regard to the fact that that applicant found itself in exceptional and appreciably different circumstances, I do not have sufficient points of reference (beyond the remarks contained in the reports of the checks), since the applicant has contented itself with an offer of proof by witnesses which it is quite impossible to employ. Furthermore, there are no grounds for departing from the percentage which the formula elaborated by the experts and used by the High Authority lays down for own arisings, owing to the inaccurate data supplied by the applicant with regard to waste scrap within its undertaking. The Court might possibly have been able to agree with it on this matter if its statements had been supported by some form of proof (for example, by the production of business documents).

(bb) The applicant's argument that the High Authority infringed Article 86 of the Treaty by entrusting to a private undertaking the task of inspecting the applicant undertaking, without notifying the Italian authorities of this, may be rejected, relying also on the case-law of the Court (see, for example, Case 31/59, Rec. 1960, at p. 173). It is clear from this case that the High Authority was merely exercising the power to obtain information conferred upon it by Article 47 of the Treaty and that there can be no talk of an illegal delegation of its powers to private undertakings. Nor can there be objections on those grounds that the checks were not followed by drawing up minutes signed by both parties in accordance with the rules of tax law. Be that as it may, we know from the existing reports that the High Authority's inspectors tried unsuccessfully to obtain the counter-signature of the applicant's representatives.

(cc) Finally, the submission of infringement of an essential procedural requirement, which itself may be broken down into various individual complaints, does not appear to be well founded either. According to the criteria previously evolved in the case-law of the Court, the individual decisions which we have considered are sufficiently explained by the findings of fact which preceded them. It was impossible to show there all the details relating to the statement of facts, for example an exact description of the details of what occurred in the course of the various checks, or else—this is significant for the second contested decision—what national body supplied the High Authority with addi-

tional information on the applicant's consumption of electricity. Such isolated factors in a statement of facts on the contrary are reserved for the defendant to argue in the course of proceedings. With regard to the alleged infringement of Article 36 of the Treaty, by the fact that the applicant was not given the opportunity to submit its comments on the information obtained by the High Authority *before* the contested decisions were adopted, it is well established in your case-law that this submission cannot be maintained (see Case 18/62), as an estimated assessment does not constitute a sanction within the meaning of Article 36. It must be admitted moreover that by means of its initial letters the High Authority *theoretically* commenced administrative proceedings before adopting the individual decisions within the framework of the system for the equalization of ferrous scrap. Nevertheless, the fact that the High Authority refrained from doing so in the applicant's case (this refers to the second contested decision) seems understandable owing to the declaration of insolvency and the applicant's reaction in the past to such administrative letters. In those circumstances, none of the arguments which have just been considered is capable of proving the illegality of the contested individual decisions.

2. *Objection of illegality with regard to the general decisions on ferrous scrap*

As in other cases, the applicant endeavours in addition to destroy the basis on which the individual decisions rest and through the objection of illegality to obtain a ruling that General Decisions Nos 7/61 and 7/63 are inapplicable. I can also be relatively brief on this topic, in the light of your case-law.

(a) Thus we know from Cases 111/63, 37/64 and 39/64 that, contrary to what the applicant thinks, the assent of the Council of Ministers was not indispensable for adopting the general decisions within the framework of the *winding-up* of the scheme for the equalization of ferrous scrap; on the contrary the assent referred to in Article 53 of the Treaty is only required for *making* such arrangements and laying down the *essential procedures* for their functioning. Since Decisions Nos 7/61 and 7/63 are only implementing regulations within the meaning of the definition which has just been given, it is thus possible to adopt them without the participation of the Council of Ministers.

(b) Similarly, the Court has already emphasized on several occasions that, for the adoption of a *general* decision within the framework of the equalization of ferrous scrap, the obligation to state reasons must not be too strictly interpreted. For this reason, contrary to what the applicant thinks, the two decisions in question may not be declared illegal on the ground that they did not enumerate *all the procedures* for calculating and amending the rates of contribution, but restricted themselves to showing in the tables which they contain the results of their extensive calculations. We must also reject the argument that Article 78 of the Treaty was infringed; it is in fact clear from the declarations of the High Authority that the scrupulous checking by the auditor extended to the equalization scheme in general.

(c) Furthermore, according to the case-law of the Court, it is impossible to object to the *provisional nature* of the equalization assessments. It follows from the High Authority's declarations, which the Court has recognized as well founded, that it is impossible owing to the number of undertakings participating the equalization scheme, the number of commercial operations to be kept in view and the necessity of making various detailed checks, to fix finally the amounts of the contributions due

immediately after each equalization period. It is therefore necessary to accept as inevitable a gradual approach to the final settlement, which now appears possible (see for example, Case 108/63, [1965] E.C.R. 1).

(d) Finally, contrary to what the applicant thinks, it may not be considered as proof that in the management and winding-up of the equalization scheme, the High Authority failed to comply with certain essential recommendations drawn up by the Council of Ministers, pursuant to which the equalization contributions could only be increased for very good reasons, and that a perceptible increase in the consumption of ferrous scrap had to be avoided. This plea could be dismissed under Article 33 of the Treaty alone in that, having regard to the objectives of Article 3 (c) which must also be observed, it would require an evaluation of the general economic situation, which the Court can only make on certain specified conditions which are quite absent in the present case. Furthermore, as to whether the payment of interest, the interest due, the payment of premiums to certain undertakings, the alleged advantages conferred on steel foundries and manufacturers of alloy steels together with the determination of an unrealistic equalization price are lawful or not, reference may also be made to what was stated in previous cases, in the course of which all that is necessary to say has been said (see for example, Case 18/62, Rec. 1963, at p. 567, and Case 30/65, Rec. 1966, at p. 81).

Thus in my opinion the present case also fails to put forward sufficient basic factors to make it possible to question the legality of the general decisions and to declare the individual decisions to which they gave rise illegal.

3. *The claims for damages*

I shall now consider the applicant's claim for damages put forward on the basis of the alleged wrongful act or omission on the part of the High Authority in the management and supervision of the equalization scheme: in fact, it is alleged that the High Authority did not prevent the commission of widely-known acts of fraud and that it was dilatory in intimating the rates of contributions.

According to your case-law, it is impossible, provisionally at least, to submit such claims in so far as they relate to fraudulent acts within the framework of the equalization of ferrous scrap (cf. Joined Cases 9 and 25/64, Rec. 1965, at p. 439). On the contrary, the Court considers that it is necessary to wait until the final conclusion of all the actions brought by the High Authority to recover the equalization allowances wrongly paid, before it can give a ruling on the damages suffered by undertakings which took part in the equalization scheme. For this reason the new information on this point, which the applicant has frequently asked to plead as evidence, is irrelevant at present.

With regard to the alleged damage caused by the dilatory notification of the rates of contribution, which prevented the applicant from properly taking into account the equalization charges when fixing its own prices, I conclude from the judgment given in Joined Cases 14, 16, 17, 20, 24, 26 and 27/60 and 1/61 (Rec. 1961, at p. 334 et seq.) that this temporary uncertainty cannot in general cause harm, since it was offset by other advantages of the equalization scheme and the undertakings were in a position to take into account the effects which normally result from it in their sale prices. The vague declarations made in the course of the proceedings do not lead me to consider that the applicant was in a different position in this respect. In any event, in the course of proof, it is not for the Court to discover with the aid of technical and economic experts the factors necessary

for the statement of reasons for a claim of the essentials of which the applicant itself failed to provide any evidence whatsoever.

In the circumstances, I consider that the claims for damages also have no chance of success in this case.

4. *Procedural issues and the decision on the costs*

The legal position as it was when the applications were filed justifies this appraisal. I have already emphasized in other cases—and I come now to the applicant's application for the adoption of an interim measure which has not yet been settled—that the subsequent adoption of General Decision No 19/65 finally fixing the equalization of ferrous scrap (and also, in consequence, the High Authority's letter of 28 January 1966 which is based on that decision) is irrelevant to the appraisal of applications already commenced. The clear purpose of the letter in question was merely to notify the applicant of the final data of the equalization assessment decided on 31 December 1965 and to allow it to submit an administrative appeal on the ground of the modification of the criteria which had taken place. The other problems which have not been considered in substance in this case might be settled in the course of a new action, after the adoption of a formal decision which is reserved to the High Authority. But for the present it is impossible for procedural reasons to consider the new facts. Since this appraisal may be justified by the terms of the letter and the High Authority's well-known mode of procedure, I consider that there is no reason to take these measures into account in the decision on the costs. This also holds good for the settlement of the costs in the later procedural issue, as there were no objective grounds for doubting that the copy submitted by the High Authority conformed to the original.

Consequently, the costs must be borne by the applicant.

## III — Conclusion

I am therefore of the opinion that:

The applications are admissible but unfounded. The applicant must bear the costs, including those of the procedural issue which has not yet been decided.

## ORDER OF THE COURT
## 22 JUNE 1965[1]

In Case 9/65

ACCIAIERIE SAN MICHELE SPA, having its registered office in Turin, represented by its sole director, Adriano Vigna, assisted by Arturo Cottrau,

1 — Language of the Case: Italian.