JUDGMENT OF THE COURT (Second Chamber)
15 December 1994 *

In Case C-320/92 P,

Finanziaria Siderurgica Finsider SpA, in liquidation, whose main office is in Rome, represented by G. Greco, of the Milan Bar, and N. Schaeffer, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of the latter, 12 Avenue de la Porte-Neuve, Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) in Case T-26/90 of 5 June 1992 between Finsider and the Commission, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by A. Aresu, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

THE COURT (Second Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini, and J. L. Murray (Rapporteur), Judges,

* Language of the case: Italian.

Advocate General: M. Darmon,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 15 December 1993,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 28 July 1992, the Società Finanziaria Siderurgica Finsider SpA ('Finsider'), pursuant to Article 49 of the Statute of the Court of Justice of the ECSC, brought an appeal against the judgment of 5 June 1992 in Case T-26/90 *Finsider* v *Commission* [1992] ECR II-1789 in which the Court of First Instance refused, first, to annul the decision of the Commission of 21 March 1990 imposing a fine on the applicant for exceeding quotas and, secondly, to reduce the amount of that fine.

2 As may be seen from the judgment under appeal (paragraphs 1 and 9) that Commission Decision No 2794/80/ECSC of 31 October 1980 (OJ 1980 L 291, p. 1) introduced a system of production quotas for certain steel products. That system was extended for 1986 and 1987 by Commission Decision No 3485/85/ECSC of 27 November 1985 (OJ 1985 L 340, p. 5) and, for the first six months of 1988, by Commission Decision No 194/88/ECSC of 6 January 1988, extending the system of monitoring and production quotas for certain products of undertakings in the steel industry (OJ 1988 L 25 p. 1, hereinafter 'Decision No 194/88'). The system ended on 30 June 1988.

3 On 9 June 1988 Finsider asked the Commission for authorization to produce and deliver in the common market during the second quarter of 1988 a quantity of steel in excess of the quota allocated for that period (paragraph 7 of the judgment under appeal).

4 The request was based on Article 11(3)(e) of Decision No 194/88 which allows the Commission to authorize, under certain conditions, an undertaking to obtain an advance on part of the quotas for the following quarter.

5 Pursuant to Article 58(4) of the ECSC Treaty, the Commission found, by decision of 21 March 1990, that, without being authorized, Finsider had exceeded the quotas which had been assigned to it for the second quarter of 1988. The Commission imposed on the company a fine of ECU 2 153 550 by way of sanction (paragraph 31 of the judgment under appeal).

6 On 18 May 1990 Finsider brought an action before the Court of First Instance for the annulment of that decision and, in the alternative, for a reduction of the fine. The application was dismissed it its entirety by the judgment of the Court of First Instance of 5 June 1992, against which Finsider brings the present appeal.

7 In support of its appeal, Finsider essentially criticizes the Court of First Instance for having

— disregarded the judgment of the Court of Justice in Joined Cases 218/87, 223/87, 72/88 and 92/88 *Hoogovens Groep and Others* v *Commission* [1989] ECR 1711, in which Articles 5 and 17 of Decision No 194/88 were annulled;

— infringed the principle of the protection of legitimate expectations;

— interpreted incorrectly Article 11(3)(e) of Decision No 194/88;

— held that the Commission had given adequate reasons for its decision;

— considered that the request for an advance on quotas could be rejected by implication;

— considered that the Commission had provided it with sufficient information to establish that quotas had been exceeded; and

— refused to reduce the amount of the fine.

The first plea in law

8 In its first plea in law in law Finsider claims that the Court of First Instance disregarded the judgment in *Hoogovens Groep and Others* v *Commission*, cited above, in which the Court of Justice annulled Articles 5 and 17 of Decision No 194/88.

9 Article 5 was worded as follows:

'1. The Commission shall fix each quarter, for each undertaking, the production quotas and the part of such quotas which may be delivered in the common market:

— on the basis of the reference production and quantities referred to in Articles 4(4) and 6,

— by applying the abatement rates referred to in Article 8 to such reference production and quantities.

2. Within the limits laid down in Article 4(3) the Commission may, if necessary, adjust the quotas fixed pursuant to paragraph 1.'

10 According to Finsider, that provision constituted the legal basis enabling the Commission to fix the steel quotas for the first two quarters of 1988. Since that provision had been annulled in the judgment in *Hoogovens Groep and Others* v *Commission*, the quotas fixed for 1988 had been rendered invalid, thus making it impossible to find that the quotas had been exceeded in any way.

11 In that respect, it should be noted, as the Court of First Instance observed, that in the judgment in *Hoogovens Groep and Others* v *Commission*, paragraph 26, the Court of Justice held that Article 5 of Decision No 194/88/ECSC took over the wording of Article 5 of Decision No 3485/85/ECSC and that, consequently, it must be annulled for the same reasons as those which led to the annulment of the latter provision in the judgment in Joined Cases 33/86, 44/86, 110/86, 226/86 and 285/86 *Peine-Salzgitter* v *Commission* [1988] ECR 4309.

12 In the last-mentioned judgment, Article 5 was not annulled in so far as it empowered the Commission to fix quotas, but in so far as it did not enable delivery quotas to be established on a basis which the Commission considered fair for undertakings having ratios between their delivery quotas and production quotas which were significantly lower than the Community average.

13 It follows that the Commission could fix the quotas for 1988 provided it observed the requirement of fairness emphasized by the Court of Justice, that those quotas could be used in order to determine whether Finsider had exceeded the

quantity which had been allocated to it and that, consequently, contrary to Finsider's view, the Court of First Instance had not disregarded the judgment in *Hoogovens Groep and Others* v *Commission*.

14 The second provision to which Finsider refers in its first plea in law, namely Article 17 of Decision No 194/88, which was also annulled in the judgment in *Hoogovens Groep and Others* v *Commission*, authorized undertakings to convert a portion of the difference between the production and delivery quotas allocated to them into delivery quotas:

'Each quarter, for a category of products to be decided by them, undertakings shall be permitted to convert a portion of the difference between their production quota derived from their reference production and the proportion of the quota which may be delivered in the common market derived from their reference quantity into quotas for delivery in the common market at the rate of 1: 0.85.'

15 Finsider argued before the Court of First Instance that the application of that provision during the period between 1 January 1987 and 30 June 1988 had allowed certain undertakings to increase their deliveries of steel and that the excessive competition in the common market had resulted in a significant decrease in its deliveries. Since Article 17 was annulled by the Court of Justice, the Commission should have set off the alleged excess of which Finsider is accused against the loss of deliveries suffered by it.

16 In reply to that argument, the Court of First Instance found that the Commission had taken account of the consequences of the annulment of Article 17 by decreasing, for that period and for the two categories of products referred to in the decision, the excesses initially calculated (paragraph 65 *in fine* of the judgment under appeal).

17 In the context of the appeal, Finsider claims that the Commission should also have taken into consideration the reduction in deliveries brought about by the application of Article 17 during periods other than the second quarter of 1988 and for categories other than those referred to in the decision. The Court of First Instance was wrong in law to reject that argument.

18 In that respect, it should be noted that Article 34 of the ECSC Treaty provides as follows:

'If the Court declares a decision or recommendation void, it shall refer the matter back to the High Authority. The High Authority shall take the necessary steps to comply with the judgment. If direct and special harm is suffered by an undertaking or group of undertakings by reason of a decision or recommendation held by the Court to involve a fault of such a nature as to render the Community liable, the High Authority shall, using the powers conferred upon it by this Treaty, take steps to ensure equitable redress for the harm resulting directly from the decision or recommendation declared void and, where necessary, pay appropriate damages.

If the High Authority fails to take within a reasonable time the necessary steps to comply with the judgment, proceedings for damages may be instituted before the Court.'

19 It follows from that provision that the Commission must take the appropriate measures to make good any harm caused by an act of a nature such as to render the Community liable.

20 Thus, the Court held in its judgment in Case 30/59 *Steenkolenmijnen* v *High Authority* [1961] ECR 1 that it may not dictate to the High Authority the

decisions which should be consequent upon a judgment annulling a measure but must confine itself to referring the matter back to the High Authority.

21 It is also apparent from the wording of Article 34 that, if the Commission has not carried out its obligation under that provision, the undertaking may institute proceedings for damages. According to the case-law of the Court, it must establish the existence of fault, damage and a causal link, since the mere illegality of the annulled act is not sufficient to render the Community liable (see the judgment in Case C-363/88 and C-364/88 *Finsider and Others* v *Commission* [1992] ECR I-359).

22 It follows that the Community judicature cannot compel the Commission to take into account, for the purpose of calculating the degree to which an undertaking is alleged to have exceeded a quota, the effects of the annulment of an act which is said to have caused damage to that undertaking. The competence of the Court is limited to ascertaining whether the conditions for obtaining redress, namely fault, damage and causal link, are fulfilled.

23 The Court of First Instance was therefore right in holding that 'it is not for the Court to impose upon the Commission ... the manner in which it ought to take the necessary measures in order to comply with a judgment of annulment delivered by the Court of Justice' in the context of Article 34 of the ECSC Treaty (paragraph 65 of the judgment under appeal).

24 The first plea must therefore be rejected.

The second plea in law

25 Secondly, the Court of First Instance is criticized by Finsider for having considered that it knew that advances were in principle refused where the quotas were to be abolished and that, in those circumstances, it could not legitimately believe itself authorized to exceed the quota allocated to it. The applicant claims that in adopting that position the Court of First Instance infringed the principle of the protection of legitimate expectations.

26 In that respect, the Court of First Instance, exercising its power to find the facts, stated that 'the applicant [could not] claim to have been taken by surprise by the end of the quota system, since the Commission clearly indicated in the preamble to Decision No 194/88 that it would maintain the quota system for a further two quarters for certain products but would couple this with "a relaxation in quotas in the second quarter in preparation for liberalization [of the market] after 30 June 1988"' (paragraph 97). That finding constitutes a sufficient basis for holding that the principle of the protection of legitimate expectations was not infringed.

27 Finsider further claims that 'advances of this type were certainly granted to other undertakings ... on the basis of formal decisions of the Commission' and that 'these are facts which are completely ignored by the judgment which is the subject of this appeal'.

28 In that respect, it should be pointed out that at no time has Finsider submitted any factual evidence which could substantiate its assertion and that, moreover, it is not open to the Court when ruling on questions of law in the context of an appeal, to make any determination on matters of fact which may be submitted to it by the parties.

29 The second plea must therefore be rejected.

The third, fourth and fifth pleas in law

30 The third, fourth and fifth pleas concern the decision of 21 March 1990 imposing a fine on Finsider for exceeding quotas, in so far as that act is said to constitute a 'decision' adopted by the Commission rejecting the request for an advance on quotas. According to Finsider, the Court of First Instance wrongly held that that 'decision' complied with Article 11(3)(e) of Decision No 194/88, that it was sufficiently reasoned and that it could be adopted by implication.

31 In that respect, it should first be noted that the decision of 21 March 1990 merely finds that Finsider exceeded its quotas contrary to Decision No 194/88 and, in consequence of that excess, imposes a penalty on that company (see Articles 1 and 2 of that decision).

32 Furthermore, it is stated in the fourth recital in the preamble to Decision No 194/88 that 'an immediate return to market rules could result in prices falling too sharply' and that 'it therefore seems appropriate to keep ... the quota system for a further two quarters'. Thus, the quota system ended on 30 June 1988.

33 According to Article 11(3)(e) of that decision, an advance may be granted on the quotas for the following quarter. That presupposes that quotas are fixed by the Commission for that subsequent quarter. Furthermore, such an interpretation follows from the objective of the provision, which is to introduce a degree of flexibility into the quota system without, however, allowing, save at the cost of

impairing that system, an increase in the quantity of steel which may be produced and/or delivered by a particular undertaking.

34 It follows that, since the quota system ended on 30 June 1988, no advance could be granted during the second quarter of 1988. Article 11(3)(e), cited above, thus became devoid of purpose from the end of the first quarter and the Commission was no longer competent to adopt at the end of that period a decision granting or refusing an advance.

35 In responding to Finsider's the request for an advance, the Commission could do no more than remind that company that the quota system expired at the end of the second quarter of 1988, a purely informative measure which could not be regarded as a 'decision' within the meaning of Article 14 of the ECSC Treaty. Moreover, it was to that effect that, by letter of 2 August 1988, a Head of Division of the Commission wrote to Finsider as follows:

'We wish to inform you that the said article [Article 11(3)(e) of Decision No 194/88] enables "an advance" on quotas to be made: it embodies an implicit condition to the effect that quotas should be granted for the following quarters. Since the quota system is no longer in force as from the end of June, Article 11(3)(e) is no longer applicable' (see paragraph 11 of the judgment under appeal).

36 Accordingly, the Court of First Instance was wrong in law in considering, at paragraph 71 of the judgment under appeal, that 'in so far as the decision at issue indicated the magnitude of the excess found and the rate of the fine imposed in

the context of the procedure in question, it constitutes an implicit, yet certain, decision rejecting the advances requested by the applicant'.

37 However, where the grounds of a judgment of the Court of First Instance disclose an infringement of Community law but the operative part of the judgment is shown to be well founded for other legal reasons, the appeal must be dismissed (judgment in Case C-30/91 *Lestelle* v *Commission* [1992] ECR I-3755, paragraph 28).

38 Such is the situation in the present case because, since the Court of Justice has found that the Commission had not adopted a decision on the request for advances and, moreover, could not do so, the pleas directed against the decision of 21 March 1990, cited above, in so far as it constitutes, in Finsider's view, a rejection of its request for advances, are devoid of purpose.

The sixth plea in law

39 Sixthly, Finsider maintains that the Court of First Instance was wrong in considering that the Commission had provided it sufficient information to establish that quotas had been exceeded. According to the applicant, the Commission should also have sent to the Court a copy of the calculations made or a copy of the minutes setting out the elements of the calculation presented during the bilateral meeting during which the excess was discussed.

40 In that respect, the Court of First Instance found that 'by its letter of 23 February 1989, the Commission ... set out the calculations which caused it to find that the applicant had exceeded its quotas for the second quarter of 1988. Following that letter, the applicant was able to put over its comments at the meetings held on

3 March 1989, 24 May 1989 and 24 January 1990 and in its letters of 15 March, 12 June, 14 July, 1 August and 8 September 1989 and of 7 February 1990. Subsequently, the Commission took account in the contested measure of the applicant's comments with regard to the application of Article 7 of Decision No 194/88, and informed it of this by letter dated 5 June 1989. In contrast, it rightly refused to take account of the advances requested under Article 11(3)(e) of Decision No 194/88, as appears from the minutes of the meeting held on 24 May 1989. Likewise, it rightly refused to take account in the present proceedings of the effects of the judgment of annulment of 14 June 1989 in so far as they did not relate to the second quarter of 1988 and to the categories of products in question (Ia and Ib). Moreover, at the hearing the parties agreed that the Commission showed the applicant, at the informal meeting held on 24 January 1990, the calculations which it had made in order to determine the magnitude of the quotas of which the applicant had been deprived as a result of the application of Article 17 of Decision No 194/88, which was subsequently declared void by the Court, in particular as regards the categories of products and the quarter at issue' (paragraph 108).

41 From those findings of fact, which it is for the Court of First Instance to make (see, in particular, the judgment in Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 12), that court could properly infer that the Commission had 'given the applicant an opportunity to submit its comments on the alleged exceeding of quotas' (paragraph 108).

42 It follows that the sixth plea must be rejected.

The improper refusal to reduce the amount of the fine

43 Finally, Finsider states that the Court of First Instance dismissed its application for a reduction of the fine on the basis of grounds different from those put forward

by the Commission, although the substitution of grounds is contrary to Community law and, without taking into account the plea alleging breach of legitimate expectations.

44 In that respect, it is sufficient to observe that, in the judgment under appeal, the Court of First Instance replied to the arguments submitted by Finsider in support of its application to have the fine reduced and that, since it had already rejected the complaint based on breach of the principle of the protection of legitimate expectations, it took into account all the factors of relevance for the purpose of appraising the amount of the fine. It therefore rightly considered, in the exercise of its power of appraisal, 'that it is not appropriate to reduce the fine imposed on the applicant' (paragraph 114 of the judgment under appeal).

45 In the alternative, Finsider requests the Court to reconsider the amount of the fine, in view of the arguments submitted before it in the context of this appeal, without however setting aside the judgment of the Court of First Instance on the ground of an error in law.

46 It is not for the Court of Justice, where it is deciding questions of law in the context of an appeal, to substitute, on grounds of fairness, its own appraisal for that of the Court of First Instance adjudicating, in the exercise of its unlimited jurisdiction, on the amount of a fine imposed on an undertaking by reason of its infringement of Community law.

47 It follows that the arguments submitted by Finsider in support of the reduction of the fine must be rejected.

48 The appeal must therefore be dismissed in its entirety.

Costs

49 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the applicant to pay the costs.

Schockweiler Mancini Murray

Delivered in open court in Luxembourg on 15 December 1994.

R. Grass
Registrar

F. A. Schockweiler
President of the Second Chamber