JUDGMENT OF THE COURT
23 APRIL 1956[1]

Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg v High Authority of the European Coal and Steel Community

Joined Cases 8 and 10/54

Summary

Procedure — Abstention of the High Authority — Capacity to lodge an administrative complaint
cf. para. 1, summary, judgment in Joined Cases 7 and 9/54
(ECSC Treaty, Art. 35)

In Joined Cases 8 and 10/54

ASSOCIATION DES UTILISATEURS DE CHARBON DU GRAND-DUCHÉ DE LUXEMBOURG, represented by its Administrative Board, assisted by Alex Bonn, Advocate in Luxembourg, with an address for service in Luxembourg at its registered office, 8, Avenue de l'Arsenal,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Nicola Catalano, acting as Agent, assisted by Ernest Arendt, Advocate in Luxembourg, with an address for service in Luxembourg at its offices, 2, Place de Metz,

defendant,

GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG, represented by Pierre Pescatore, Legal Adviser to the Ministry for Foreign Affairs with an address for service in Luxembourg at the Ministry for Foreign Affairs, 5, Rue Notre-Dame,

intervener,

Application for, first, the annulment of the implied decision of refusal resulting, under Article 35 of the Treaty, from the silence of the High Authority with regard to the letter of 20 July 1954 in which the applicant requested it to take a decision or make a recommendation concerning the activities of the Office Commercial du Ravitaillement of the Grand Duchy of Luxembourg (Commercial

1 — Language of the Case: French

Supply Office) and concerning the Caisse de Compensation (Equalization Fund) attached to that office by the Ministerial Order of 8 March 1954 (Case 8/54);

secondly, for the annulment 'in so far as is necessary' of the decision of refusal of the High Authority, following from its letter of 27 November 1954, of the request contained in the letter of 20 July 1954 (Case 10/54),

THE COURT

composed of: M. Pilotti, President, J. Rueff and O. Riese (Presidents of Chambers), P. J. S. Serrarens, L. Delvaux, Ch. L. Hammes and A. van Kleffens, Judges,

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

gives the following

JUDGMENT

Facts

1 — Facts and procedure

By application of 16 October 1954 (Application 8/54) the Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg (Association of Coal Consumers of the Grand Duchy of Luxembourg, hereinafter referred to as 'the Association') requested that

'The Court should:

Declare that the present application is admissible and well founded and annul the implied decision of refusal of the High Authority taken after the Association had sent its letter of 20 July 1954;

Declare, consequently, that the High Authority must, by means of a decision or recommendation, order:

1. that the activities of the Office Commercial du Ravitaillement, as the sole importer of coal into the Grand Duchy of Luxembourg, should be brought to an end;

2. that the Caisse de Compensation attached to the Office Commercial du Ravitaillement by the Ministerial Order of 8 March 1954 should be prohibited and abolished;

Order the High Authority to pay the costs.'

The applicant annexed to that application:

1. A copy, certified by the applicant, of the letter which it had sent to the President of the High Authority on 20 July 1954;

2. A copy of the Decree of the Grand Duke of 30 April 1945 and of the Ministerial Order of 8 March 1954.

It subsequently lodged at the Court:

its statute (articles governing its activities);

an authority to represent it from the members of the Administrative Board of the Association in favour of Alex Bonn, Advocate in Luxembourg;
a certificate attesting that Alex Bonn is a member of the Luxembourg Bar.

The defendant informed the applicant by letter of 27 November 1954 that the Caisse de Compensation 'is not of such a nature as to have any effects which are incompatible with the Treaty and cannot therefore be prohibited'.

Following that letter, the applicant, 'so as to avoid a fruitless argument on questions of admissibility', lodged a second application (Application 10/54) on 23 December 1954, the subject-matter of which was the same as that of the previous application and which requested moreover that

'The Court should:

Declare that the present application, which has only been lodged in so far as necessary, is admissible and well founded;
While maintaining the application of 11 October 1954 and requesting primarily that the Court should find the conclusions contained therein well founded, annul in so far as in necessary the decision of refusal of the High Authority, following from its letter of 27 November 1954, of the request of the Association of 20 July 1954;
Declare, consequently, that the High Authority must, by means or a decision or recommendation, order:

1. that the activities of the Office Commercial du Ravitaillement, as sole importer of coal into the Grand Duchy of Luxembourg, should be brought to an end;

2. that the Caisse de Compensation attached to the Office Commercial du Ravitaillement by the Ministerial Order of 8 March 1954 should be prohibited and abolished;

Order the High Authority to bear the costs.'

By decision of 7 January 1955, the High Authority gave the Luxembourg Government a period of until 31 March 1955 either
to repeal the order confirming the activities of the Office Commercial du Ravitaillement,
or to amend its provisions so that they were in accordance with the Treaty.
After two requests for an extension of the period had been made by the defendant and granted by Order of the President on 11 November and on 9 December 1954, the defendant lodged on 12 January 1955 its defences relating to the two above-mentioned applications.
The defence relating to Application 8/54 contends that:

'The Court should:

Take note that the High Authority has an address for service in Luxembourg within the meaning of Article 31 (2) of the Rules of Procedure of the Court at its offices at 2, Place de Metz;

A. Principally:

Declare that the application is inadmissible on the ground that the applicant Association does not have the capacity to institute proceedings;

B. In the alternative:

1. Take note that the High Authority leaves the decision as to the formal admissibility of the application to the discretion of the Court;

2. Declare that there is no need to give judgment on the head of the application requesting the annulment of the implied decision of refusal of the request that the activities of the Office Commercial du Ravitaillement should be brought to an end, because this request has become purposeless;

3. Declare that there is no need to give judgment on the head of the application requesting the annulment of the implied decision of refusal of the request that the Caisse de Compensation for solid fuels should be closed and abolished, since this application has become purposeless;

In any case dismiss the above-mentioned head of the application as unfounded;

C. In any case, order the applicant to bear the costs, fees and expenses.'

The statement of defence relating to Application 10/54 puts forward the same submissions except that the last subparagraph of the fourth paragraph is replaced by the following words:

'Taking into consideration solely the submissions which were put forward in so far as necessary and which were directed against the decision of refusal following from the letter of the High Authority of 27 November 1954, dismiss the above-mentioned head of the application as unfounded and reject any other wider or contrary submissions'.

On 13 January 1955 an order of the President of the Court fixed the date by which the reply was to be lodged at 15 February. On 7 February 1955 the applicant requested the Court to extend that period to 25 March 1955 so as to 'know the attitude which the Luxembourg Government would adopt with regard to that decision' (that of 7 January 1955) 'in order to put forward its own point of view in its reply'. That request was granted in an order of the President of the Court of 11 February 1955.
The replies relating to the two applications were lodged on 22 March 1955.
In the reply relating to Application 8/54 the applicant claims that:

'The Court should:

Dismiss the pleas of inadmissibility and the arguments put forward by the defendant;

I. A. Declare that the applicant has sufficient capacity to institute proceedings before the Court of Justice on the basis of Article 35 of the Treaty and consequently declare that the application lodged by the applicant Association is admissible;

B. Declare that the application containing two heads of claim, which are moreover related, is formally admissible;

II. A. Take note that the applicant, without prejudice to the statement of reasons upon which the decision adopted by the High Authority on 7 January 1955 concerning the Office Commercial du Ravitaillement was based, considers that as a result of that decision its application has become purposeless within the limits settled by the decision; and order the defendant to bear the costs relating thereto;

B. (a) Declare that the application originally directed against the implied decision of refusal resulting from the silence of the High Authority stands in spite of the letter of the High Authority of 27 November 1954 which has no relevance to the dispute; take note that the applicant has maintained and maintains without amendment both its original conclusions and the arguments in support thereof; declare that the question of the admissibility of any application lodged by the applicant against an express decision of refusal of the High Authority does not arise in these proceedings; declare therefore that the application is admissible to the extent to which it has not been settled by the above-mentioned decision of the High Authority;

(b) Declare that the application is well founded and accordingly;

1. Declare that the Caisse de Compensation established by the Ministerial Order of 8 March 1954 constitutes a special charge contrary to Article 4 (c) of the Treaty;

2. Declare that the Caisse de Compensation established by the Ministerial Order of 8 March 1954 constitutes discrimination contrary to Article 4 (b) of the Treaty;
Declare that the operation of the Caisse de Compensation is closely linked to the existence of the monopoly of the Office Commercial du Ravitaillement on imports and that the abolition of the latter must of necessity involve the abolition of the Caisse de Compensation;
Declare that the levy, which amounts to an increase in the price of solid fuel for non-

domestic use, is in breach of the decisions adopted by the High Authority on the basis of Article 63 (2) (a) of the Treaty, that is, Decisions Nos 4/53 of 12 February 1953, 6/53 of 13 March 1953, 15/54 of 19 March 1954, 19/54 of 20 March 1954 and 20/54 of 20 March 1954;

3. Declare in any case that the operation of the Caisse de Compensation established by the Ministerial Order of 8 March 1954 infringes the most fundamental principles of the Common Market as established by the Treaty;

Consequently:

Declare that the High Authority must, by means of a decision or recommendation, order that the Caisse de Compensation attached to the Office Commercial du Ravitaillement by the Ministerial Order of 8 March 1954 should be prohibited and abolished;
Order the High Authority to pay the costs, fees and expenses, without prejudice'.

The reply relating to Application 10/54 puts forward the same submissions except for the two following amendments;

First paragraph:

'The Court should:

Join the two applications because they are related;
Dismiss the pleas of inadmissibility and the arguments put forward by the defendant':

After II B(a): the following paragraph is added:

'In the alternative and if the refusal of the High Authority resulting from its letter of 27 November 1954 must be considered as an express decision, declare the application against that decision admissible'.

By order of the President of 25 March 1955, Cases 8/54 and 10/54 were joined 'for all procedural purposes'.
In the common rejoinder in Joined Cases 8 and 10/54, following the order for joinder, the defendant contends that

'The Court should:

Declare that the conclusions previously put forward are well founded'.

The following four events occurred between the lodging of the reply and the lodging of the rejoinder:

1. The issue of the Decree of the Grand Duke of 2 April 1955 amending the system of import tax and turnover tax on solid mineral fuels;

2. The issue of the Ministerial Order of 12 September 1955 repealing with effect from 2 April 1955 the Ministerial Order of 8 March 1954 concerning the operation, so far as solid fuel is concerned, of the Caisse de Compensation for solid fuels attached to the Office Commercial du Ravitaillement;

3. The issue of the Ministerial Order of 30 September 1955 repealing the Ministerial Order of 8 March 1954 on the importation of solid fuels and declaring the importation thereof to be free, the Government reserving to itself certain rights of intervention. That order was to take effect from 1 October 1955;

4. The lodging, a few hours before the lodging of the rejoinder, of an application to intervene on the part of the Luxembourg Government, claiming that:

'The Court should:

Take note of the Luxembourg Government's application to intervene; declare that application to intervene admissible and well-founded; moreover, take note that the intervener supports the submissions of the High Authority requesting that the application lodged by the Association should be dismissed;
Order the applicant in the main action to bear the costs of the application to intervene'.

The applicant in the main action contested that the application to intervene was well founded in the written observations which it submitted pursuant to Article 71 (3) of the Rules of Procedure. The Court examined the application in accordance with Article 71 (4) when the parties had presented oral argument and the Advocate General had delivered his opinion at the hearing on 19 November 1955.
By order of 24 November 1955, the Luxembourg Government was 'granted leave to intervene', while 'the examination of the submissions and arguments put forward in the application to intervene and of their admissibility was reserved for the final judgment;.
At the hearing on the same date, the Court informed the parties that it would accept until 7 December 1955 'preparatory notes on the future oral argument which the parties consider appropriate to submit to it as a result of the hearing on the application to intervene'.
The applicant made use of that opinion and submitted 'additional observations' on 6 December 1955.
In these observations, the applicant refers to those submitted on the same date by the Groupement des Industries Sidérurgiques Luxembourgeoises in Joined Cases 7 and 9/54 which relate in particular to the following points:

The Groupement rejects the arguments put forward by the High Authority in its rejoinder which are based on the fact that the Luxembourg iron and steel industry has not 'declared that the Decree of the Grand Duke of 2 April 1955 is incompatible with the provisions of the Treaty,' the economic effects of which Decree 'are identical to those of the Ministerial Order of 8 March 1954'. It states that it has not hitherto declared that the new system is incompatible with the provisions of the Treaty because it considered it appropriate to await the decision of the Court in the proceedings pending before it.
The Groupement on the contrary bases an argument in favour of its reasoning on 'the attitude adopted by the Luxembourg Government which abolished the Caisse de Péréquation (Equalization Fund)' since this attitude 'seems to indicate that it felt, to say the least, such serious doubts with regard to the previous system that it preferred to avoid a judgment of the Court'.
The Groupement considers that it is possible 'that a State of the Community can achieve, by virtue of powers which it has reserved to itself, certain economic results, particularly for social purposes, by means of a system which is compatible with the Treaty, while another system leading to the same result would not be in accordance with the provisions of that Treaty'.
The Groupement refutes, moreover, the arguments of the Luxembourg Government based on

the applicant's lack of capacity to institute proceedings in view of the special nature of the proceedings;
the interpretation of Article 4 of the Treaty which, according to the intervener, cannot 'provide a sufficient basis for an application nor a sufficient basis for a decision of the Court';
the fact that 'the applications have become purposeless and that the Groupement has no interest in proceeding with them'.

After the rejoinder had been lodged on 30 September 1955, the written procedure was closed in accordance with Article 34 (1) of the Rules of Procedure of the Court.
In accordance with Article 34 (1) of the Rules of Procedure of the Court, the President appointed Jacques Rueff as Judge-Rapporteur on 30 September 1955.
The preliminary report laid down in Article 34 of the Rules of Procedure concluded that a preparatory inquiry was necessary.
By order made at the hearing on 30 November 1955 the Second Chamber of the Court requested the parties to provide certain written information before 14 December 1955.
The parties supplied the information requested on 12 December.
By order of 14 December 1955, the Second Chamber of the Court ordered the closure of the preparatory inquiry and fixed the time-limit laid down in Article 45 of the Rules of Procedure for the lodging by the parties of their final written conclusions at 7 January 1956.

Those conclusions were lodged on 4 and 7 January respectively. They confirm the previous conclusions.
In accordance with Article 45 (2) of the Rules of Procedure of the Court, the President of the Court fixed the date for the oral proceedings at 1 February 1956 and, if need be, on the following days.
The hearings were held on 7 and 8 February 1956.
During those hearings the parties presented oral argument.
At the hearing on 8 February 1956 the Advocate General delivered the following opinion:
The applications should be dismissed as inadmissible and the applicant should be ordered to bear the costs, including the costs of the application to intervene'.

2 — Submissions and arguments of the parties

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

1. *As regards admissibility* the High Authority first puts forward the argument that the applicant Association lacks capacity.
It considers that the latter is not 'a producer undertaking under Article 80 or an association of undertakings under Article 48. Even if it were necessary to regard it as an undertaking or a distribution agency within the meaning of Article 80 it would only be able to institute proceedings in special cases concerning the matters laid down in Articles 65 and 66 of the Treaty. An application based on Article 35 (or, moreover, based on Article 33) must be held to be inadmissible for lack of capacity. Finally, the applicant Association could not counter this argument by claiming that the Groupement des Industries Sidérurgiques Luxembourgeoises is one of its members. In fact, the applicant Association has a legal personality distinct from that of its members.'
The applicant rejects the argument that the conditions required under Article 33 may also be required where Article 35 is applied.
'Although Article 33 restricts the right to institute proceedings laid down therein to the undertakings or associations referred to in Article 48, Article 35 does not do the same and does not limit the undertakings and associations entitled to raise a matter and to institute proceedings if necessary. The absence of a reference to Article 48 is significant and in the circumstances the restrictive interpretation of Article 35 advocated by the High Authority places on that provision a limitation which it does not contain'.
In its opinion, 'both undertakings, the definition of which is contained in principle in Article 80, and associations, a broad concept according to the definition laid down in Article 46, have the right provided for in Article 35'.
The High Authority maintains its interpretation of Article 35 in the rejoinder: 'The absence of an express reference to Article 48 in Article 35 does not seem to be a determining factor for the interpretation of the provision because Article 35 does not refer to Article 46 either as the applicant claims that it does by implication. If an express reference was indispensable, as the applicant seems to believe, those who drafted the Treaty would not have failed, precisely in order to eliminate all possible doubt, to refer in the wording of Article 35 to Article 46 in the same way as they had referred to Article 48 in the wording of Article 33'.
The High Authority then puts forward the following two arguments:

(a) May 'two distinct questions be raised' in the same application? The defendant raises this question in its defence and then specifies in the rejoinder that the applicant provides no evidence to show that the two questions are related. It declares, however, that it 'has not raised the formal inadmissibility of the application originating the proceedings' and that it 'preferred to leave that point to the discretion of the Court'.
The applicant replies in the affirmative and observes, first, that

'There is no provision prohibiting a party from making its application relate to several heads of claim; such a plea of inadmissibility cannot be inserted to supplement the rules';

secondly, that

'The two heads of claim contained in a single application are evidently closely related whatever the attitude adopted by the High Authority towards the two applications'

and that the fact that they are related authorizes it to refer to the decision given by the Court in the Judgment in Case 1/54.

(b) Does not the letter of 27 November 1954 stating the reasons upon which the refusal of the defendant was based make Application 7/54 inadmissible? The defendant maintains, first, that a new factor of this kind involves 'the amendment of the original conclusions', ... 'the amendment of the applicant's claim and thus the amendment of the very subject-matter of the proceedings ... 'the putting forward by the applicant of fresh submissions', in other words a 'genuine renewal of the procedure'. In its opinion it is impossible to permit 'the action to be continued on the basis of Article 35'?
In its reply the applicant defends the admissibility of the first application by maintaining that 'the right to lodge an application against the implied decision of refusal was acquired on the expiry of the period of two months laid down in Article 35 of the Treaty'.
In its rejoinder the defendant does not raise any new argument to that reply. It refers to its previous defence and specifies that it 'certainly did not wish to raise a formal plea of inadmissibility to the applicant's application'. In fact, it admits that 'the comments of the High Authority could not in any case result in preventing the Court from giving a decision on the substance of the problem'.
This argument is therefore simply submitted to the Court because 'although it has no practical significance for the purposes of the proceedings instituted by the applicant, it has an interest as a matter of principle for the executive of the Community which awaits guidance from the case-law of the Court so as to be able to take account thereof in its future actions'.

(c) Does the applicant still have a legal interest in proceeding with its action at law after the repeal by the Ministerial Order of 12 September 1955, as from 2 April 1955, of the Ministerial Order of 8 March 1954 concerning the operation of the Caisse de Compensation for solid fuels attached to the Office Commercial du Ravitaillement? Since the reply had already been received at the Court at the date on which this new factor occurred, the Second Chamber asked the applicant during the above-mentioned preparatory inquiry:

'Do the rules with which the Luxembourg Government has replaced the system in question seem to the applicant to give it what it would have obtained if the High Authority had not refused its request of 14 July 1954?
If the answer is in the affirmative, in what in its opinion, does the interest which it maintains in proceedings with its action at law consist?'

The applicant replied to these questions that:

'The new system established by the Luxembourg Government maintains the previous special charge and the previous discrimination under a different form. However, since the Caisse de Compensation has been abolished for the future, applications such as those lodged by the Association have become purposeless as regards the future:
On the other hand, as the Luxembourg Government maintained the Caisse de Compensation for the period prior to 2 April 1955, the question at issue, which is whether the Caisse de Compensation is compatible with the provisions of the Treaty, remains unanswered with regard to the past and must be decided by the Court, which has exclusive jurisdiction over it. The measure of the interest of the Association in the question is the amount of the equalization increases payable by the Luxembourg iron and steel industry for the period in question, from 1 March 1954 to 31 March 1955, in other words, 28171984 Belgian francs. With regard to the other importers of industrial coal of the

Grand Duchy who are members of the Association, the amount of 120333 metric tons at 8 francs per metric ton, in other words 962664 francs, is involved. This amount, which was included in the price invoiced by the Office Commercial du Ravitaillement, had to be paid by the consumers'.

2. *As regards the plea of infringement of the Treaty,* the applicant states that by maintaining the Office Commercial du Ravitaillement and the Caisse de Compensation the Luxembourg Government has failed to fulfil the obligation on Member States under Article 86 of the Treaty and that the High Authority should have recorded that failure in application of Article 88.
In order to show that the Office Commercial du Ravitaillement and the Caisse de Compensation are not in conformity with the Treaty, it relies on Articles 3(b), 4(b), 4(d) and 66(7) on the one hand and on Article 4(c) on the other.
Since the applicant has stated that, as a result of the decision of 7 January 1955, its application 'had become purposeless within the limits settled by the decision', there is no need to refer to the arguments relating to the legality of the Office Commercial du Ravitaillement in relation to the Treaty. The arguments concerning that office are only summarized here to the extent to which they have a bearing on the corresponding problem raised by the Caisse de Compensation.
The arguments invoked by the parties with regard to the Caisse de Compensation attached to the Office Commercial du Ravitaillement may be summarized as follows:

I. The Caisse de Compensation is incompatible with the decisions adopted by the High Authority on the basis of Article 63 (2) on the system of prices for solid fuels in the Common Market.
The defendant replies by recalling that:

'The maximum prices are imposed on coal-producing undertakings and the fixing of maximum prices does not prevent duties, taxes or any other general charge being levied on the products at the time of consumption or at any stage of distribution'.

II. The abolition of the Office Commercial du Ravitaillement deprives the Caisse de Compensation of its substantive and legal basis and must entail the abolition of the latter.
According to the applicant, 'the Office can only increase the price of fuels if it is itself the buyer and reseller of those fuels, that is, if it holds the monopoly on their importation into the Grand Duchy of Luxembourg'.
For that reason 'it follows from the recitals in the preamble to the decision of the High Authority of 7 January 1955 that the latter... intented to abolish the Office's import monopoly in solid fuels'.
'Consequently... the abolition of the import monopoly of the Office deprives the Caisse de Compensation of its substantive and legal basis and must therefore entail the abolition of the latter'.
The defendant replies that its decision of 7 January 1955 which declared that the activities of the Office were incompatible with the provisions of the Treaty ' has nothing to do with the legality of the equalization of domestic coal', for 'the abolition of the monopoly which was requested by the High Authority involved the necessity of amending the detailed rules for the collection of the levy but certainly did not involve the necessity of abolishing the equalization system in addition'.

III. The Caisse de Compensation is incompatible with the fundamental principles of the Common Market.
This argument was only raised in the reply. The applicant states therein that:

'The fundamental principles of the Common Market as conceived in the Treaty must have the practical effect of obtaining for all consumers in the Common Market who buy the same product of the Community from the same producer the same ex works price'.
...

'Only the actual transport costs and the fis-

cal charges in force in each Member State may be added to that ex works price in order to make up the delivered price.'

In the opinion of the applicant, however, 'the levy cannot be considered as a fiscal charge'.
Whilst making all reservations as to the admissibility of that submission which does not appear in the applications, reservations based on Article 22 of the Statute of the Court of Justice and Article 29 of the Rules of Procedure, the defendant replies in the rejoinder that

'there is nothing to prevent the Member States from imposing on industries or products of the Community duties or charges in order to use the receipts therefrom in whole or in part for the purpose of subsidizing domestic coal'.

It declares, however, that it does not understand

'why a purely fiscal system is permissible and, on the other hand, an equalization system the economic effects of which are wholly comparable, if not identical, must be considered as incompatible with the provisions of the Treaty'.

IV. The equalization system established by the Caisse de Compensation infringes the provisions of Article 4 (c) of the Treaty.
The applicant states in its letter of 20 July 1954 to the High Authority and in the application that the establishment of the Caisse de Compensation for solid fuels 'involved the levying of a special charge on consumers of solid fuel for non-domestic use'.
This argument is put forward in the reply in which the applicant studies the effects of the levy separately according to whether the levy relates to hard coke or industrial coal:

(a) So far as hard coke is concerned, it states, with supporting figures, that 'the levy exclusively affects the Luxembourg iron and steel industry since the latter is practically the only consumer of that type of fuel in the Grand Duchy of Luxembourg' and that consequently 'the Luxembourg Government specifically intended to make the Luxembourg iron and steel industry alone bear the financing of the subsidy for solid fuels for domestic use by introducing an equalization levy on hard coke'.

(b) So far as imported industrial coal is concerned, the applicant states that the levy 'affects the operation of undertakings in the industries which come within Article 80 of the Treaty, that is, industries producing industrial coal which supply this type of fuel to the industry of the Grand Duchy of Luxembourg'. However, it 'is imposed on those undertakings in their capacity as competitors with liquid fuel'.
The levy therefore in its opinion constitutes 'national intervention in the prices of Community products by means... of special charges, intervention which is in itself prohibited by the Treaty'.

The defendant replies that:

So far as the coal industry is concerned, a special charge cannot be imposed on it for that industry 'does not exist in Luxembourg';
So far as the iron and steel industry is concerned, the levy is not imposed on it alone since the levy is imposed on all the industries in Luxembourg which are coal consumers. It concludes from this that the levy 'is incontestably in the nature of a general charge';
'Because of its very limited amount' the levy is not capable 'of affecting the conditions of competition in the Common Market'.

In the rejoinder, the defendant, whilst admitting that 'in view of the industrial structure of Luxembourg, charges imposed on non-domestic consumers are in fact essentially imposed on the iron and steel industries to a doubtless considerable extent' refuses to conclude 'that the economic structure of Luxembourg precludes the Government from taking any economic measures in relation to the industries including tax measures as they would all have to be

treated as special measures for the iron and steel industry and on those grounds prohibited'.
Regardless of the rebuttal of the arguments of the applicant, the defendant puts forward with regard to various points of the Treaty the interpretation which seems to it to be in accordance with the intention of those who drafted it and to be capable of shedding light on the question whether the Caisse de Compensation is compatible with the Treaty;

It first suggests a criterion enabling a distinction to be made between special charges and general charges: 'In the first place, it is necessary for that subsidy, aid or charge to be of a special nature, that is, for it to concern exclusively undertakings or products of the Community'... 'As soon as the subsidy, aid or charge concerns a group which includes the undertakings or products of the Community but goes beyond them what is involved is a general measure which could only come if necessary within the application of Article 67';
It then establishes a distinction 'between subsidies, aids or charges affecting undertakings and those affecting products of the Community'. In the second case 'any subsidy, aid or special charge applicable at any one point of distribution is prohibited only if its indirect result is either to distort competition or to involve a benefit for or advantage to undertakings of the Community';
The defendant finally justifies its restrictive interpretation of the wording of Article 4(c) by means of two arguments based, first, on Article 11 of the Convention on the Transitional Provisions and, secondly, on the 'power retained by the Member States, in particular in tax matters'.

The first argument, an argument reasoning to the converse, is based on the fact that 'the provision refers only to charges imposed on products of the Community themselves.'
The second argument is based on the fact that the Member States have the right to increase or to create charges or duties 'even if they are imposed only on products of the Community'; it is therefore 'permissible to impose on those products a charge which is not in the nature of a tax and which, on the one hand, has the same economic effects and, on the other, is not incompatible with the other prohibitions laid down by Article 4'.

V. The equalization system established by the Caisse de Compensation is alleged to infringe Article 4(b) of the Treaty.
The application states that 'the establishment in the Grand Duchy of Luxembourg of a Caisse de Compensation for solid fuels has involved... the creation of discrimination between consumers of solid fuels for non-domestic use of the European Coal and Steel Community and Luxembourg consumers of this type of fuel...'
The reply states that this discrimination comes within Article 4(b) (special charge) and not within Article 67, (an action by a Member State which is liable to provoke a serious disequilibrium).
In fact, the levy:

(a) is not a duty: it does not serve 'to cover all public charges' since the Ministerial Order of 8 March 1954 'appropriates it specially and exclusively';

(b) 'may not be considered as a charge either since it consists in a levy imposed on certain individuals by virtue of a specific service provided for them by the Administration'.

In addition, the instrument avoids those words and is moreover an order, 'whereas under Luxembourg law a charge can only be introduced by a law pursuant to Article 99 of the Constitution'.
In the opinion of the applicant therefore 'the revenue thereby obtained is in the nature of a price and... consequently, the equalization levy is nothing other than a price increase'.
The defence refutes the argument based on Article 4(b) by assuming that the levy constitutes a general charge permitted by Article 4(c) and that the differences between the general charges of the countries of the Community cannot constitute the discrimination referred to in Article 4(b).
The defendant adds that 'the fact that a

general measure adopted by one of the Member States does not correspond to the general measures adopted by the other Member States can never be considered as dicrimination'... 'Substantial differences exist between the legislation of other Member States in particular in the tax and social security fields', because Member States have remained sovereign in those matters.

For that reason:

Article 26 of the Treaty gives the Council of Ministers the task of harmonization;
Article 67 of the Treaty enables the High Authority to intervene 'in cases in which national measures of economic policy would have a repercussion in competition for coal and steel'.

In the rejoinder the defendant adds to these arguments its interpretation of the concept of discrimination. In its opinion, 'the concept of discrimination prohibited by Article 4... as stated specifically in particular as regards prices by Article 60 (1) and as regards transport by the first paragraph of Article 70, involves a difference in treatment between comparably placed persons. The difference in treatment therefore ceases to constitute prohibited discrimination when it is justified by a difference in the situations of the persons concerned'.
However, '... the governments, precisely because they are sovereign in the field of general economic policy, may apply different treatment to groups of persons which differ economically and socially'.
Finally, the important factor, according to the defendant, is to examine 'whether the difference in treatment established by one government between groups of interested persons within the context of its economic policy distorts competition in the market'.
The interpretation of the defendant is completed by the following reply to the questions put during the preparatory inquiry:

'The principal intervention measures taken by the High Authority in fields which may reveal certain similarities with the subject-matter of the present proceedings have been the following:

1. By Decision No 25/53 (Journal Officiel of 13 March 1953, p. 83) adopted under Article 11 of the Convention on the Transitional Provisions, the High Authority decided on the abolition, reduction or continuation under specific conditions of certain special charges imposed on German coal mines. By Decision No 17/54 of 20 March 1954 (Journal Officiel of 24 March 1954, p. 266), the High Authority decided on the abolition of all special charges imposed on German coal mines, including those concerning price reductions for supplies to domestic consumers.
This abolition was decided on in application of the provisions of Article 11 of the Convention on the Transitional Provisions and of Article 4 (c) of the Treaty because they were special charges imposed on undertakings of the Community. There is no contradiction between those decisions and the position which the High Authority has adopted with regard to the request made by the Association des Utilisateurs de Charbon du Grand Duché de Luxembourg.

2. A ministerial order adopted in France on 30 March 1953, had established an equalization system for domestic coal imported from other countries of the Community. This question formed the subject-matter of an application to the Court of Justice by the Belgian Government (Case 4/53), an application which was subsequently withdrawn. Because of the intervention of the High Authority, certain substantial amendments were made to the French system so as to eliminate discriminatory effects which were incompatible with the provisions of the Treaty.

3. By Decisions No 29/53 (Journal Officiel of 21 May 1953, p. 129) and No 23/54 (Journal Officiel of 31 March 1954, p. 293) of 30 March 1953 and 29 March 1954, the High Authority authorized the Netherlands Government, under the third paragraph of Article 24 of the Convention on the Transitional Provisions, to maintain until 31 March 1955 an equalization fund financed by a levy on the Netherlands coal production.
A similar authorization was not necessary for the Luxembourg equalization fund be-

cause it was not financed by a levy on national coal production and therefore did not require any authorization from the High Authority under the above-mentioned Article 24.

4. The French Government had, in April 1954, issued an order for the purpose of correcting the distortion resulting from the difference between domestic inland waterway freights and international inland waterway freights. The High Authority had indicated that the above-mentioned system contained discriminatory elements which were incompatible with the provisions of the Treaty. As a result of an exchange of correspondence and after consulting the Council of Ministers under Article 2 (4) of the Convention on the Transitional Provisions, the French Government, deferring to the point of view of the High Authority, amended the above-mentioned order so as to remove from the equalization system which it had adopted all elements which were incompatible with the provisions of the Treaty'.

3. *So far as the submission alleging the infringement of essential procedural requirements is concerned,* the applicant claims 'in the alternative... that the implied decision of refusal is vitiated by nullity for infringement of essential procedural requirements, inasmuch as it is not based on any express ground'. The express refusal of the defendant occurred before the defendant had lodged its statement of defence and the High Authority did not therefore formally give its views on that submission; it merely pointed out that the decision requested by the applicant was 'now express and states in detail the reasons on which it is based, since the High Authority clearly explained in its letter of 27 November 1954... the legal reasons why it was unable to accept the point of view of the Association'.

LAW

THE COURT

for the purpose of giving judgment in the present cases, puts forward the following considerations in law:

1. Admissibility of Applications 8/54 and 10/54

A — *Capacity of the applicant to raise the matter with the High Authority in application of Article 33 of the Treaty*

Article 35 enables 'undertakings or associations' to raise a matter with the High Authority.
The associations referred to in this expression may only be associations of undertakings within the meaning given to the word 'undertaking' by Article 80 of the Treaty for the purposes of the whole Treaty.
If in fact this were not so, an association could find itself in a position to institute proceedings where none of the individual members of which it is formed could have done so on its own.
In the absence of any indication to the contrary, the Treaty does not establish such differences in the treatment of an association and the members of which it is formed.

It is necessary to inquire whether the applicant fulfils the above-mentioned condition.

The Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg has been formed between:
The Fédération des Industriels Luxembourgeois
The Groupement des Industries Sidérurgiques Luxembourgeoises
The Groupement des Négociants de Combustibles en Gros
The Société Nationale des Chemins de Fer Luxembourgeois and
Mr Léon Brasseur, Engineer, representing the Gas Works of the Grand Duchy of Luxembourg.
Under Article 1 of its statute, its objects are:

(a) To defend and represent the interests of coal consumers within the framework of the objectives pursued by the European Coal and Steel Community;

(b) To give opinions on questions of interest to coal consumers which any organ of the European Coal and Steel Community or any other authority may submit to it.

It is also, as its title expressly indicates, an association of coal consumers.
The fact that the Groupement des Industries Sidérurgiques Luxembourgeoises is one of its members does not alter this character and, moreover, that body has already lodged on its own account an application with the same purpose.
Article 1 of the statute of the Association leaves no doubt that its object is to defend and to represent the interests of its members in their capacity as coal consumers and to give opinions on questions of interest to coal consumers.
For those reasons, without this finding prejudging the necessary capacity to lodge an application under other articles of the Treaty, the Association des Utilisateurs de Charbon du Grand-Duché is not one of the associations enabled to raise the matter with the High Authority in application of the provisions of Article 35.
For that reason, Applications 8/54 and 10/54 are inadmissible.
In those circumstances, the applicant must be ordered to bear the costs.

Upon reading the pleadings;
Upon hearing the parties to the main action and the intervener;
Upon hearing the opinion of the Advocate General;
Having regard to Articles 4, 33, 35, 48, 67, 80, 86 and 88 of the ECSC Treaty;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to the Rules of Procedure of the Court of Justice and the Rules of the Court on costs;
Taking note of the applicant's statement that, without prejudice to the statement of the reasons upon which the decision taken by the High Authority on 7 Jan-

uary 1955 concerning the Office Commercial du Ravitaillement was based, it considers that as a result of that decision its application has become purposeless within the limits settled by the decision;

THE COURT

hereby:

Dismisses the applications in Joined Cases 8 and 10/54;

Orders the applicant to bear the costs including those of the intervener.

Pilotti Rueff Riese

Serrarens Delvaux Hammes van Kleffens

Delivered in open court in Luxembourg on 23 April 1956.

M. Pilotti
President

J. Rueff
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF THE ADVOCATE GENERAL

(see Joined Cases 7 and 9/54 p. 204)

ORDER OF THE COURT
24 NOVEMBER 1955[1]

Having regard to the application submitted by the Luxembourg Government on 30 September 1955 to intervene in the actions pending before the Court of Justice of the European Communities

between

ASSOCIATION DES UTILISATEURS DE CHARBON DU GRAND-DUCHÉ DE LUXEMBOURG

and

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY

(Joined Cases 8 and 10/54);

1 — Language of the Case: French