JUDGMENT OF THE COURT (Second Chamber)
10 June 1986 *

In Joined Cases 81 and 119/85

Union sidérurgique du nord et de l'est de la France ('Usinor'), a company incorporated under French law whose registered office is at Puteaux (France), represented by Lise Funck-Brentano, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marlyse Neuen-Kauffmann, 21 rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Etienne Lasnet, acting as Agent, with an address for service in Luxembourg at the Chambers of Georges Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission's decision of 20 February 1985 fixing Usinor's steel production and delivery quotas for the first quarter of 1985 (Case 81/85) and the Commission's decision of 29 March 1985 (Case 119/85) are void, inasmuch as they refuse to increase Usinor's reference production for Category Ic and Id products,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, O. Due and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

after hearing the Opinion of the Advocate General delivered at the sitting on 23 April 1986,

gives the following

* Language of the Case: French.

JUDGMENT

(The accounts of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By applications lodged at the Court Registry on 1 and 29 April 1985, the Union sidérurgique du nord et de l'est de la France, a limited company whose registered office is situated at Puteaux (Hauts-de-Seine, France), brought two actions under the second paragraph of Article 33 of the ECSC Treaty seeking (in Case 81/85) a declaration that the Commission's individual decision of 20 February 1985 is void and (in Case 119/85) a declaration that the Commission's individual decision of 29 March 1985 and, in so far as is necessary, the letter of 18 March 1985 are void, in so far as those decisions refuse to increase Usinor's reference production in respect of Category Ic and Id products. In addition, the applicant seeks a declaration from the Court that Commission Decisions No 2177/83/ECSC of 28 July 1983 (Official Journal L 208, 1983, p. 1) and No 234/84/ECSC of 31 January 1984 (Official Journal L 29, 1984, p. 1), on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry, are unlawful inasmuch as they have withdrawn the possibility of increasing reference production. Finally, the applicant seeks compensation for the damage which it claims to have suffered.

2 By order of the Second Chamber of the Court of 18 February 1986, the two cases were joined for the purposes of the oral procedure and the judgment.

3 Before those applications are considered, it is necessary to recall the context in which the contested decisions were adopted.

4 Commission Decision No 1831/81/ECSC of 24 June 1981 establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal L 180, 1981, p. 1) provided that the Commission was to carry out, on certain conditions and in respect of certain categories of products, an adjustment to the reference production if the undertaking brought new production plant into operation under

an investment programme on which the Commission had not delivered a negative opinion. That possibility of adjusting the reference production was restricted by Commission Decision No 1696/82/ECSC of 30 June 1982 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal L 191, 1982, p. 1) and is no longer provided for in Decisions No 2177/83 and No 234/84. Commission Decision No 470/85/ECSC of 25 February 1985 amending Decision No 234/84/ECSC on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal L 58, 1985, p. 7) again allows the Commission to grant additional quotas in respect of Category Id on certain conditions.

5 On 24 May 1982, in accordance with Commission Decision No 3302/81/ECSC of 18 November 1981 on the information to be furnished by steel undertakings about their investments (Official Journal L 333, 1981, p. 35), the applicant gave the Commission advance notice of a plan to invest in a new galvanizing plant. On 10 February 1983 the Commission delivered a favourable opinion, taking the view that the plan was in conformity with the general objectives of the Community.

6 On the basis of that favourable opinion, the applicant requested the Commission, by letter of 27 April 1984, to increase its reference production for the second quarter of 1984 in respect of Category Ic and Id products.

7 On 20 June 1984 the Commission replied that Usinor's request would be examined by the Directorate for Steel.

8 By letter of 5 July 1984 the applicant informed the Commission that its new galvanizing plant had been brought into service.

9 On 31 December 1984 the Commission notified Usinor of its production and delivery quotas for the first quarter of 1985, which were calculated on the basis of its existing annual reference production and reference quantities. On 20 February 1985 it sent the applicant a further notification adjusting the production quotas in accordance with the new abatement rates established by Decision No 313/85/ECSC of 6 February 1985 (Official Journal L 34, 1985, p. 23).

10 After the applicant had instituted proceedings in Case 81/85, the Commission suggested, in a letter of 18 March 1985 and in a further letter of 29 March 1985, that Usinor should request an adjustment pursuant to Decision No 470/85, which had recently been adopted.

11 The Commission objects that the two applications are inadmissible on the ground that they were submitted out of time.

12 The Commission contends in the first place that since the possibility of granting additional reference quantities was withdrawn by Decision No 2177/83 and was no longer provided for in Decision No 234/84, which was in force at the time when the request was made, it was legally impossible for it to accede to that request. If the applicant considered that its rights were infringed by the withdrawal of the possibility of granting additional reference quantities, it should have contested those general decisions.

13 With regard to the first objection of inadmissibility, it should be pointed out that the applicant may still, even after the expiry of the period for challenging a general decision, plead the illegality of that decision in proceedings instituted against an individual decision based upon the general decision (see the judgments of 13 June 1958 in Case 15/57 *Compagnie des Hauts Fourneaux de Chasse* [1958] ECR 199; of 13 June 1958 in Case 9/56 *Meroni* [1958] ECR 133; of 13 June 1958 in Case 10/56 *Meroni* [1958] ECR 157; and of 17 July 1959 in Joined Cases 32 and 33/58 *SNUPAT* [1959] ECR 127). In this case, it must be acknowledged that the decision refusing to increase the reference production is necessarily based upon the fact that Decision No 234/84, which was in force at the time when the individual decision was adopted, makes no provision for such an adjustment, and that there is a direct legal relationship between that individual decision and the general decision (see the Court's judgment of 31 March 1965 in Case 21/64 *Macchiorlati Dalmas e Figli* [1965] ECR 175). Moreover, it must be pointed out that the applicant's principal claim is not that Decision No 234/84 should be declared unlawful but that it should be interpreted in such a way as to allow the increases sought by the applicant to be granted on a temporary basis in order to take account of the rights acquired by it in the past.

14 The Commission also contends that the failure to adopt an express decision in reply to the applicant's letter of 27 April 1984 must be regarded as an implied rejection providing a basis for an action for failure to act under Article 35 of the ECSC Treaty. It claims that the applicant took no action within the period prescribed by that provision.

15 With regard to the second objection of inadmissibility, it must be borne in mind that, if a request is to set in motion the procedure for an action for failure to act under Article 35 of the ECSC Treaty, it must be sufficiently clear and precise to enable the Commission to ascertain in specific terms the content of the decision which it is being asked to adopt (see the judgments of 6 April 1962 in Joined Cases 21 to 26/61 *Meroni* [1962] ECR 73 and of 8 July 1970 in Case 75/69 *Hake* [1970] ECR 535). Moreover, it must be clear from the request that its purpose is to compel the Commission to state its position.

16 In this case, it should be noted that, although the letter of 27 April 1984 reveals sufficiently clearly that the purpose of the applicant's request was to secure the grant of an additional reference production totalling 155 000 tonnes per annum as from the second quarter of 1984, it does not clearly indicate that the Commission was being called upon to adopt a formal decision in response to that request. On the contrary, by expressing its readiness, at the end of the letter, to provide any details which the Commission might require, the applicant itself contemplated the possibility of further discussions and thus acknowledged that the letter could not mark the commencement of a mandatory period for the adoption of a decison.

17 The two objections of inadmissibility raised by the Commission must therefore be rejected.

18 However, it is for the Court to consider of its own motion whether the contested decision of 20 February 1985 is in fact the decision in which the Commission replied for the first time — if only by implication — to the applicant's request.

19 In that regard, it is necessary first of all to determine the purpose of the applicant's request.

20 In seeking an increase in its annual reference production as from the second quarter of 1984, the applicant was endeavouring to obtain additional production quotas in respect of Categories Ic and Id as from that quarter.

21 Consequently, the decision which must be regarded as an implied rejection of that request and which is therefore capable of adversely affecting the applicant can only be the first decision adopted after the submission of the request, in which the production quotas for the third quarter of 1984 were fixed without taking into account the request for the adjustment of the reference production as from the second quarter of 1984. The applicant did not challenge that decision within the period prescribed for the initiation of proceedings.

22 The contested decision of 20 February 1985 fixing the production quotas for the first quarter of 1985, in so far as it does not take into account the adjustment of the reference production sought by the applicant by letter of 27 April 1984, merely reaffirms the decisions previously adopted. That is clear, moreover, from a comparison with the individual decision of 31 December 1984 (annexed to the application) fixing the production quotas for the first quarter of 1985, which adopts the reference production for 1984 without taking account of the increases sought by the applicant and which, in that respect, is identical to the two preceding decisions fixing the production quotas for the third and fourth quarters of 1984. The contested decision of 20 February 1985 merely adjusted the production quotas for the first quarter of 1985 in accordance with the new abatement rates introduced by Decision No 313/85, without amending the reference production in any way.

23 Accordingly, the application in Case 81/85 must be dismissed inasmuch as it is not directed against the decision adversely affecting the applicant.

24 As regards the application for damages, this must also be declared inadmissible having regard to the wording of Article 34 of the ECSC Treaty, which allows such an application to be brought only after the decision which allegedly caused the damage has been declared void and after it has been established that the High Authority does not intend to take the steps needed to redress the illegality found to exist.

25 With regard to the application in Case 119/85, it should be noted, as the Commission has rightly pointed out, that the letter of 29 March 1985 whereby it suggested that Usinor should submit a further request for the adjustment of its reference production pursuant to Decision No 470/85, is merely intended to provide information and is not therefore in the nature of a decision capable of being challenged by legal proceedings.

26 Accordingly, the application in Case 119/85 must also be dismissed as inadmissible.

Costs

27 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the applicant has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the applications as inadmissible;

(2) Orders the applicant to pay the costs.

Bahlmann Due Schockweiler

Delivered in open court in Luxembourg on 10 June 1986.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber