ORDER OF THE PRESIDENT OF THE COURT
20 APRIL 1983 [1]

IRO Industrie Riunite Odolesi SpA
v Commission of the European Communities

Case 348/82 R

Application for the adoption of interim measures — Suspension of operation — Suspension of operation of a decision imposing a fine — Conditions governing the grant of interim measures — Form of a guarantee
(ECSC Treaty, Art. 39, second para.)

In Case 348/82 R

IRO INDUSTRIE RIUNITE ODOLESI SPA, whose registered office is at 12 Via Brescia, Odolo (Brescia), Italy, represented by G.A. Bergmann of the Milan Bar, F. Massoni of the Brussels Bar and G. Pellicano of the Milan Bar, with an address for service in Luxembourg at the Chambers of André Elvinger, 15 Côte d'Eich,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, 200 Rue de la Loi, B-1049 Brussels, represented by Sergio Fabro, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION to suspend the operation of Commission Decision C(82) 1631/3 of 24 November 1982 concerning a fine imposed on the applicant under Article 58 of the ECSC Treaty,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

1 — Language of the Case: Italian.

ORDER

I — Summary of the facts

In the light of market trends and the situation in the steel industry, the Commission, by general Decision 2794/80/ECSC of 31 October 1980 (Official Journal L 291, p. 1), instituted a monitoring system and a system of production quotas for the period between 1 November 1980 and 30 June 1981. However, that system has been extended to the present time subject to certain amendments, in particular by Commission Decision 1831/81/ECSC of 24 June 1981 (Official Journal L 180, p. 1), which was in turn amended by Commission Decision 2804/81/ECSC of 23 September 1981 (Official Journal L 278, p. 1).

According to Article 4 of Commission Decision 1831/81/ECSC the Commission is to fix production quotas on a quarterly basis for several groups of products. According to Articles 6 to 10 those quotas are to be fixed for each undertaking on the basis of the reference production of that undertaking and the application of abatement rates to the reference production. Article 5 provides that the Commission is to inform each undertaking of its reference production and the production quotas resulting from an application of the abatement rates.

By a letter dated 4 August 1981 the Commission informed the applicant of its reference production and production quotas for different types of steel products in respect of the third quarter of 1981.

By Decision C(82) 1631/3 of 24 November 1982 the Commission established that the applicant had exceeded the production quota allocated to it for the third quarter of 1981 by 4 999 tonnes in respect of product Categories V (reinforcing bars) and VI (merchant bars) and therefore imposed a fine of 374 925 (three hundred and seventy-four thousand nine hundred and twenty-five) European currency units, or 502 601 959 (five hundred and two million six hundred and one thousand nine hundred and fifty-nine lire). That sum was to be paid within two months of the date of the notification of the decision and was subject to a surcharge of 1 % per month or part thereof in the event of any delay in paying. The applicant was notified of that decision on 6 December 1982.

By a letter dated 30 November 1982 the Commission informed the applicant that, in the event of proceedings' being brought before the Court in respect of the decision imposing the fine, it would be prepared to delay execution thereof provided that a bank guarantee was provided for payment of the fine, if it remained payable, together with default interest if appropriate.

On 31 December 1982 the applicant brought an action under Article 33 of the ECSC Treaty claiming that the decision of 24 November 1982 imposing the fine should be declared void. That action is pending before the Court.

II — Written procedure

By application lodged at the Court Registry on 15 March 1983 the *applicant* applied under the second paragraph of Article 39 of the ECSC Treaty and Article 83 (1) of the Rules of Procedures to suspend the operation of Commission

Decision C(82) 1631/3 of 24 November 1982.

In its application the applicant states that it has brought an action for a declaration that that decision is void. It contends that it would suffer serious and irreparable damage if the contested decision were to be put into effect before the Court of Justice had delivered judgment in the main action because the payment of the fine would involve the termination of its activities.

In its observations lodged at the Court Registry on 23 March 1983 the *defendant,* the Commission, contends that the Court should dismiss the application to suspend the operation of its decision of 24 November 1982 submitted by the applicant and that it should reserve the costs.

In support of its conclusions the defendant states in essence that it has not been shown to be necessary on either factual or legal grounds to order suspension. The applicant has not submitted any argument indicating that there is sufficient likelihood that the main action is admissible or well founded. Without wishing to repeat at the stage of the interlocutory proceedings the arguments which it has put forward in its defence in the main action the defendant refers to the fact that it is not disputed that the quota has been exceeded.

Furthermore, the defendant contends that the applicant has not shown that the measure which it seeks is necessary and urgent in order to avoid serious and irreparable damage. In that connection it points out that the applicant does not even refer to the possibility of obtaining suspension against production of a bank guarantee and that it has not yet requested to be allowed to pay the fine by instalments. The defendant also points out that it has not yet requested the Italian authorities to issue an order for the enforcement of the contested decision.

III — Oral procedure

Having been duly summoned, the parties presented oral argument at the hearing of the application for the adoption of the interim measure on 19 April 1983.

Decision

1 According to Article 39 of the ECSC Treaty actions brought before the Court do not have suspensory effect. The Court may, however, if it considers that cicrcumstances so require, order that application of the contested decision be suspended and may prescribe any other necessary interim measures.

2 Although the Commission contends that the Court should dismiss the application it is clear from its written and oral submissions that it does not

object to the making of the order for suspension provided that the applicant produces a bank guarantee for payment of the fine, if it remains payable, together with default interest if appropriate. In adopting this view the Commission is abiding by a course of action which it adopted in 1981 and which may be regarded as justified provided that consideration is given in appropriate cases to the question whether there are special reasons why it should not be followed. The applicant, however, has not submitted any argument showing special reasons for the setting-aside of the proviso to which the Commission wishes the suspension to be subjected. There are therefore no grounds for departing from that condition.

On those grounds,

THE PRESIDENT,

by way of interim decision,

hereby orders as follows:

1. **The operation of Article 2 of Commission Decision C(82) 1631/3 of 24 November 1982 shall be suspended on condition that the applicant first produces a bank guarantee acceptable to the Commission guaranteeing payment of the fine imposed by the contested decision and default interest calculated at 1 % above the discount rate fixed by the Bank of Italy.**

2. **The costs are reserved.**

Luxembourg, 20 April 1983

P. Heim
Registrar

J. Mertens de Wilmars
President