JUDGMENT OF THE COURT (Sixth Chamber)
23 November 2000 *

In Case C-441/97 P,

Wirtschaftsvereinigung Stahl, established in Düsseldorf, Germany,

Thyssen Stahl AG, established in Duisburg, Germany,

Preussag Stahl AG, established in Salzgitter, Germany,

and

Hoogovens Staal BV, formerly Hoogovens Groep BV, established in IJmuiden, Netherlands,

represented by J. Sedemund, Rechtsanwalt, Berlin, and, in the case of Hoogovens Staal BV, by E.H. Pijnacker Hordijk, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. May, of the Luxembourg Bar, 398 Route d'Esch,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber, Extended Composition) of 24 October 1997 in

* Language of the case: German.

Case T-244/94 *Wirtschaftsvereinigung Stahl and Others* v *Commission* [1997] ECR II-1963, seeking to have that judgment set aside in so far as it dismissed their action for the annulment of Commission Decision 94/259/ECSC of 12 April 1994 concerning aid to be granted by Italy to the public steel sector (Ilva group) (OJ 1994 L 112, p. 64),

the other parties to the proceedings being:

Commission of the European Communities, represented by P.F. Nemitz, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by P.G. Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie Adélaïde,

Council of the European Union, represented by S. Marquardt and A.P. Feeney, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of E. Uhlmann, General Counsel, Legal Affairs Directorate, European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Ilva Laminati Piani SpA, established in Rome, Italy,

interveners at first instance,

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet (Rapporteur), and F. Macken, Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 16 December 1999,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 30 December 1997 Wirtschaftsvereinigung Stahl, Thyssen Stahl AG, Preussag Stahl AG and Hoogovens Staal BV brought an appeal pursuant to Article 49 of the ECSC Statute of the Court of Justice against the judgment of the Court of First Instance of 24 October 1997 in Case T-244/94 *Wirtschaftsvereinigung Stahl and Others* v

Commission [1997] ECR II-1963 (hereinafter 'the contested judgment'), in which the Court of First Instance dismissed their action for the annulment of Commission Decision 94/259/ECSC of 12 April 1994 concerning aid to be granted by Italy to the public steel sector (Ilva group) (OJ 1994 L 112, p. 64, hereinafter 'the contested decision').

Legislative background

2 Article 4(c) of the ECSC Treaty (hereinafter 'the Treaty') provides that 'subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever' are prohibited under the conditions laid down in that Treaty.

3 In addition, the first paragraph of Article 95 of the ECSC Treaty provides:

'In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the Commission is necessary to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.'

4 Having regard to those provisions and to the need to restructure the steel sector, the Commission relied on Article 95 of the Treaty in order to establish, from the beginning of the 1980s, a Community scheme under which the grant of State aid to the steel industry could be authorised in a limited number of cases.

5 The system adopted by the Commission on the basis of that provision took the form of decisions of general scope commonly known as 'aid codes', which have been subject to successive amendments in order to resolve the specific economic difficulties of the steel industry. The steel aid code in force during the period under consideration in this case was the fifth one and was laid down by Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry (OJ 1991 L 362, p. 57, hereinafter 'the Fifth Aid Code').

6 Point I in the preamble to the Fifth Aid Code is worded as follows:

'Any aid in any form whatsoever and whether specific or non-specific which Member States might grant to their steel industries is prohibited pursuant to Article 4(c) of the Treaty.

As from 1 January 1986, Commission Decision No 3484/85/ECSC, replaced from 1 January 1989 by Decision No 322/89/ECSC, established rules authorising the grant of aid to the steel industry in certain cases expressly provided for.

The rules cover aid, whether specific or non-specific, financed by Member States in any form whatsoever.

Their aim is firstly not to deprive the steel industry of aid for research and development or for bringing plants into line with new environmental standards. The rules also authorise social aid to encourage the partial closure of plants or finance the permanent cessation of all ECSC activities by the least competitive

enterprises. Finally, they prohibit the grant of any other operating or investment aid to steel firms in the Community, albeit with an exemption regarding regional investment aid in certain Member States.

The strict regime thus established, which now applies to the entire territory of the 12 Member States, has ensured fair competition in this industry in recent years. It is consistent with the objective pursued through the completion of the single market. It also conforms to the rules on State aid laid down in the Consensus on the steel industry concluded between the Community and the United States in November 1989, which is valid until 31 March 1992. It should therefore continue to be applied, albeit with a number of technical modifications.

...'

7 Article 1(1) of the Fifth Aid Code provides:

'Aid to the steel industry, whether specific or non-specific, financed by Member States or their regional or local authorities or through State resources in any form whatsoever may be deemed Community aid and therefore compatible with the orderly functioning of the common market only if it satisfies the provisions of Articles 2 to 5.'

8 Under Articles 2 to 5 of the Fifth Aid Code the following may be regarded as compatible with the common market: aid for research and development (Article 2), aid for environmental protection (Article 3), aid for closures

(Article 4) and regional aid under general regional aid schemes in Greece, Portugal and the former German Democratic Republic (Article 5).

Background to the proceedings before the Court of First Instance

9 According to the contested judgment, after the adoption of the Fifth Aid Code and in view of the deterioration of the economic and financial situation in the steel industry, the Commission presented a restructuring plan to the Council and the European Parliament on 23 November 1992 in Communication SEC (92) 2160 final, involving a series of accompanying measures in the social field, together with financial incentives including Community aid (paragraph 4 of the contested judgment).

10 In its Conclusions of 25 February 1993 the Council welcomed the programme submitted by the Commission with a view to achieving a substantial reduction in excess production capacity. Thereafter, the joint statement of the Council and the Commission entered in the minutes of the Council meeting of 17 December 1993 (hereinafter 'the statement of 17 December 1993') indicated that the Commission reaffirmed in particular 'its commitment to a strict application of the Steel Aid Code... [w]ithout prejudice to the right of any Member State to request a decision under Article 95 of the ECSC Treaty' (paragraphs 5 and 6 of the contested judgment).

11 On 22 December 1993 the Council gave its assent in accordance with the first two paragraphs of Article 95 of the Treaty as regards the grant of aid to six steel undertakings, including the group of undertakings in the Italian public sector (Ilva), and the Commission, on the basis of that assent, authorised, by means of the contested decision, the grant of State aid to that group. The aid was intended to accompany the restructuring or privatisation of the group and was not part of the aid eligible for authorisation under the Fifth Aid Code (paragraphs 7 and 8 of the contested judgment).

The action for annulment and the contested judgment

12 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 24 June 1994, Wirtschaftsvereinigung Stahl, Thyssen Stahl AG, Preussag Stahl AG and Hoogovens Groep BV applied under Article 33 of the Treaty for the annulment of the contested decision.

13 Their action for annulment was based on seven pleas in law, alleging, first, breach of the Fifth Aid Code; second, infringement of Article 95 of the Treaty; third, breach of the principle of proportionality; fourth, breach of the principle of non-discrimination; fifth, breach of the obligation to state reasons; sixth, irregularity of the decision-making procedure, and, seventh, breach of the rights of the defence.

14 As regards the plea alleging breach of the Fifth Aid Code, the applicants contended, in particular, that by authorising aid not meeting the conditions laid down by that code the Commission had misused its powers.

15 In relation to their plea alleging breach of Article 95 of the Treaty, they also argued that the contested decision did not meet the conditions for application of the first paragraph of that provision in that the aid which it authorised did not pursue an aim covered by the objectives set out in Articles 2 to 4 of the Treaty and was not necessary to attain those objectives.

The contested judgment

16 The Court of First Instance dismissed the action for annulment in its entirety.

17 In relation to the plea alleging breach of the Fifth Aid Code, which, according to the applicants, constituted a misuse of powers by the Commission, the Court of First Instance observed in paragraph 34 of the contested judgment that in the scheme of the Treaty Article 4(c) did not prevent the Commission from authorising, by way of derogation, State aid compatible with the objectives of the Treaty, and went on to hold in paragraph 36 that in the absence of any specific provision the Commission was competent to adopt any general or individual decision necessary for attainment of the objectives of the Treaty, and that that provision authorised the Commission to assess in each case which of the two kinds of decision, general or individual, was the most appropriate to attain the objectives pursued.

18 After stating in paragraph 37 of the contested judgment that the Commission had used Article 95 of the Treaty both for adopting general decisions — the 'Aid Codes' — and for adopting individual decisions authorising certain types of specific aid on an exceptional basis, the Court of First Instance went on to say, in paragraph 38, that in the case before it the problem was to determine the object and scope of the Fifth Aid Code and of the contested decision respectively.

19 Comparing the Fifth Aid Code with the contested decision, the Court of First Instance observed, in paragraph 41 of the contested judgment, that their scope was different: the Code referred in general to certain categories of aid which it regarded as compatible with the Treaty and the contested decision authorised, for

exceptional reasons and on one occasion only, aid which could not in principle be regarded as compatible with the Treaty.

20 In paragraphs 42 and 43 of the contested judgment, the Court of First Instance stated:

'42 In that light, the applicants' view that the Code is binding, exhaustive and definitive cannot be upheld. The Code constitutes a binding legal framework only for the types of aid enumerated by it which are compatible with the Treaty. In relation thereto, it establishes a comprehensive system intended to ensure uniform treatment, in the context of a single procedure, for all aid within the categories which it defines. The Commission is only bound by that system when assessing the compatibility with the Treaty of aid covered by the Code. It cannot therefore authorise such aid by an individual decision conflicting with the general rules established by that Code...

43 Conversely, aid not falling within the categories exempted from the prohibition by the provisions of the Code may benefit from an individual derogation from that prohibition if the Commission considers, in the exercise of the discretion which it enjoys under Article 95 of the Treaty, that such aid is necessary for attainment of the objectives of the Treaty. The Aid Code is only intended to authorise generally, and subject to certain conditions, derogations from the prohibition of aid for certain categories of aid which it lists exhaustively. The Commission is not competent under the first and second paragraphs of Article 95 of the Treaty, which are concerned only with cases not provided for by the Treaty... to prohibit certain categories of aid, since such a prohibition is already imposed by the Treaty itself, in Article 4(c). Aid not falling into categories which the code exempts from that prohibition thus remains subject exclusively to Article 4(c). It follows that, where such aid nevertheless proves necessary to attain the objectives of the Treaty, the Commission is empowered to rely on Article 95 of the Treaty in order to deal with that unforeseen situation, if need be by means of an individual decision...'

21 The Court of First Instance continued:

'45 In those circumstances the contested decision cannot be regarded as an unjustified derogation from the Fifth Aid Code but constitutes a measure based, like that code, on the first and second paragraphs of Article 95 of the Treaty.

46 It follows that the applicants' view that the contested decision was adopted to favour the undertaking to which the aid in question was granted, by modifying the Aid Code covertly, has no basis whatsoever. The Commission could not in any circumstances, by adopting the Aid Code, relinquish the power conferred on it by Article 95 of the Treaty to adopt individual measures in order to deal with unforeseen situations. Since in this case the scope of the Code did not cover the economic situation which prompted the Commission to adopt the contested decision, the Commission was entitled to rely on Article 95 of the Treaty in order to authorise the aid in question, provided that it observed the conditions for the application of that provision.'

22 The Court of First Instance therefore rejected, in paragraph 47 of the contested judgment, the allegation of misuse of powers.

23 As regards the plea alleging infringement of Article 95 of the Treaty, the Court of First Instance stated first, in paragraph 72 of the contested judgment, that the Commission is empowered, by virtue of the first and second paragraphs of Article 95 of the Treaty, to authorise State aid within the Community whenever the economic situation in the steel industry renders the adoption of measures of that kind necessary with a view to attainment of one of the objectives of the Community.

24 After noting, in paragraph 74 of the contested judgment, that, at the beginning of the 1990s, there was a sudden and serious crisis in the European steel industry as a result of the combined effect of several factors, the Court of First Instance examined, first, whether in the context of that crisis the aim of the contested decision was in line with the objectives of the Treaty and, second, whether authorisation for the aid in question was necessary with a view to attaining those objectives.

25 In paragraphs 79 to 83 of the contested judgment, the Court of First Instance stated:

'79 Against that background, it must be borne in mind first of all that, in view of the diversity of the objectives determined by the Treaty, the Commission's role consists, according to settled case-law, in ensuring that those various objectives are reconciled at all times, exercising the discretion available to it in order to meet the requirements of the common interest...

80 In this case, the Court finds that the contested decision reconciles various objectives of the Treaty, with a view to safeguarding important interests.

81 The rationalisation of the European steel industry through the restructuring of certain groups, including Ilva, the closure of obsolete or uncompetitive plant, the reduction of excess capacity, privatisation of the Ilva group in order to ensure its viability and the shedding of jobs within "reasonable" limits — to use the Commission's words — mentioned in that decision contribute to attainment of the objectives of the Treaty, having regard to the sensitive nature of the steel industry and the fact that continuation, or indeed aggravation, of the crisis was liable to give rise to extremely serious and enduring disturbances of the economies of the Member States concerned. It is not disputed that the industry is of essential importance in a number of Member States, in particular Italy, by reason of the location of steel plants in regions where there is low employment and the importance of the economic interests at stake. In those circumstances, any decisions to close plant and

shed jobs, and the transfer of control of the undertakings concerned to private companies acting exclusively in accordance with the logic of the market, would have been likely to create, without support measures by the public authorities, difficulties of the greatest public importance, particularly by exacerbating the problem of unemployment and creating the risk of a major economic and social crisis.

82 In those circumstances the contested decision, by seeking to resolve those difficulties by reorganising the Ilva steel group, is incontestably designed to safeguard "continuity of employment" and to avoid provoking "fundamental and persistent disturbances in the economies of the Member States", as required by the second paragraph of Article 2 of the Treaty. Moreover, it pursues the objectives embodied in Article 3 concerning, *inter alia*, "maintenance of conditions which will encourage undertakings to expand and improve their production potential" (paragraph (d)) and the promotion of "orderly expansion and modernisation of production, and the improvement of quality, with no protection against competing industries" (paragraph (g)). It is designed to rationalise the European steel industry, in particular through definitive closure of obsolete or uncompetitive plant (for example in Bagnoli) and the irreversible reduction of production capacity for certain products (for example at Taranto, in Italy) with a view to dealing with excess capacity (see Article 2 of the contested decision). It, together with the other five individual decisions mentioned above, authorising State aid and adopted on the same day, thus forms part of a comprehensive programme for restructuring of the steel industry on an enduring basis and reduction of production capacity in the Community (see paragraphs 4 to 6 above). Accordingly, it must be emphasised that the aim of the aid in question is not simply to ensure the survival of the beneficiary undertaking — which would run counter to the common interest — but to restore its viability whilst keeping the impact of the aid on competition to a minimum and ensuring compliance with the rules of fair competition, in particular regarding the conditions for privatisation of the Ilva group.

83 It follows that the contested decision is intended to safeguard the common interest, in accordance with the objectives of the Treaty. The applicants' view that the decision is not conducive to the attainment of those objectives must therefore be rejected.'

26 When considering whether the aid granted to the Ilva steel group was necessary in order to attain the objectives of the Treaty, the Court of First Instance, after referring in paragraph 87 of the contested judgment to the settled case-law according to which, in relation to pleas involving a complex economic and technical assessment, the Court's review must be limited to verifying that the facts are materially accurate and that there has been no manifest error of assessment, stated in paragraph 89 that the applicants had adduced no specific evidence to show that the Commission had committed a manifest error in assessing whether the aid in question was necessary and, in particular, whether it could facilitate reorganisation of the beneficiary undertaking.

27 The Court of First Instance observed in paragraph 90 of the contested judgment that a mere assertion, referring only to the ineffectiveness of earlier aid, that the aid in question would probably not be capable of producing the intended results constituted nothing more than purely speculative and hypothetical conjecture. According to the Court, any attempt to extrapolate for the future results obtained in the past, without examining in detail the specific conditions imposed by the contested decision in order to achieve reorganisation of the beneficiary undertaking in order to ensure its viability, could not constitute evidence of failure by the Commission to comply with the Treaty.

28 In paragraphs 91 to 94 of the contested judgment, the Court of First Instance continued in the following terms:

'91 The Court also finds that, contrary to the applicants' assertions, the antecedents to the contested decision and the statement of the reasons on which it is based reveal a thorough analysis of the present crisis in the European steel industry and of the most appropriate means for dealing with it....

92 Moreover, it is apparent from the Commission's communications to the Council in the course of the procedure leading to the adoption of the

contested decision that the Commission analysed in detail the conditions under which the undertaking receiving the aid in question would be viable....

93 As regards the applicants' arguments concerning the impact of the contested decision on competition, they too are without any foundation. The applicants fail to take into account the precautions taken by the Commission in the contested decisions with a view to ensuring Ilva's viability, in particular by resolving the problem of its debts (see point II of the grounds of the contested decision), whilst at the same time limiting the financial restructuring measures to the amounts strictly necessary, so as not to "affect the conditions of trade in the Community steel industry to an extent which is incompatible with the common interest" having regard in particular to the present difficulties in the steel market (point VI of the grounds of the contested decision). In that respect, the Court finds that the Commission, in order not to provide the beneficiary undertaking with an undue advantage over other undertakings in the sector, took care in the contested decision in particular to ensure that that undertaking did not at the outset have its net financial charges reduced below 3.5% of annual turnover... which, according to the Commission, which has not been contradicted on that point by the applicants, represents the present average for Community steel undertakings. More generally, Article 2 of the contested decision imposes certain conditions intended to ensure that the financing aid is limited to what is strictly necessary....

94 In those circumstances, the applicants have adduced no evidence to show that the Commission committed a manifest error of assessment by considering that the aid in question, on the terms laid down in the contested decision, was necessary in order to attain certain objectives of the Treaty.'

29 The Court of First Instance concluded, in paragraph 95 of the contested judgment, that the contested decision was not rendered unlawful by any breach of the conditions for the application of the first and second paragraphs of Article 95 of the Treaty.

The appeal

30 In support of their appeal the appellants rely on four grounds alleging respectively breach of the Fifth Aid Code, breach of the principle of necessity (the 'once and once only' principle), unlawful promotion of a local national policy and infringement of Article 4(c) of the Treaty.

The first and fourth grounds of appeal

31 In their first and fourth grounds of appeal, which it is appropriate to consider together, the appellants argue that, by taking the view that

— the Fifth Aid Code constitutes a binding legal framework only for the types of aid enumerated by it which are compatible with the Treaty and that that code is intended to prohibit all aid not expressly enumerated in it,

— and that therefore there is no hierarchy between the Fifth Aid Code as a general decision and the contested decision as an individual decision,

the Court of First Instance erred in law in construing the scope of the Fifth Aid Code and of Article 4(c) of the Treaty.

32 The appellants consider that the Fifth Aid Code constitutes a general and abstract set of rules for authorising aid applying to all aid projects for the steel industry. On the other hand, the contested decision is a specific individual measure whose provisions are not in conformity with that code. Those two measures are admittedly decisions within the meaning of Article 14(2) of the Treaty but they nevertheless occupy different positions in the hierarchy of Treaty norms. According to the case-law of the Court, an individual measure which is contrary to a general measure of higher rank in the hierarchy of norms is inevitably unlawful. The appellants also contend that, in so far as the contested decision falls outside the scope of aid which may be authorised under the Fifth Aid Code, it is also in breach of Article 4(c) of that Treaty.

33 The appellants rely in particular on the fourth paragraph of point I of the Fifth Aid Code, which refers to the prohibition of 'any other operating or investment aid to steel firms in the Community...'. In their view, the words 'any other' imply that aid not mentioned in that code is prohibited.

34 The appellants also refer to the third paragraph of point I, according to which 'the rules cover aid, whether specific or non-specific, financed by Member States in any form whatsoever'. They interpret the words 'the rules' as referring both to Article 4(c) of the Treaty and to the Fifth Aid Code.

35 The appellants base similar arguments on the wording of the third paragraph of point I of Commission Decision No 2320/81/ECSC of 7 August 1981 establishing Community rules for aids to the steel industry (OJ 1981 L 228, p. 14), known as the 'Second Aid Code', of the third, fifth and sixth paragraphs of point I of Commission Decision No 3484/85 of 27 November 1985 establishing Community rules for aid to the steel industry (OJ 1985 L 340, p. 1), known as the 'Third Aid Code', and of point III of Commission Decision 96/678/ECSC of 30 July 1996 concerning certain aid proposed by Italy as part of a programme for the restructuring of its private steel industry (OJ 1996 L 316, p. 24).

36 Moreover, the exhaustive nature of the Fifth Aid Code is also demonstrated by the fact that, in contrast to certain earlier aid codes, it contains no legal basis for the adoption of derogating individual decisions, such as Article 12 of Decision No 2320/81.

37 In the light of those considerations the appellants conclude that, under Article 1(1) of the Fifth Aid Code, the code applies to '[a]id to the steel industry, whether specific or non-specific, financed by Member States or their regional or local authorities or through State resources in any form whatsoever...'.

38 As far as that argument is concerned, it must be made clear that, although the fourth paragraph of point I of the preamble to the Fifth Aid Code indicates that the rules contained in the earlier aid codes prohibit 'any other operating or investment aid to steel firms', those words in the preamble are not endorsed by any provision of the code. It follows that those words in the preamble cannot by themselves change the scope of the Fifth Aid Code.

39 Article 1(1) of that code contains no general prohibition of aid but simply defines in general terms the scope of the derogation provided for in Article 4(c) of the Treaty. Accordingly, that provision of the Fifth Aid Code is not intended to exclude the adoption of other measures derogating from the prohibition laid down in Article 4(c) of the Treaty.

40 That interpretation clearly follows from the statement of 17 December 1993, according to which the strict application of the Fifth Aid Code was to be '[w]ithout prejudice to the right of any Member State to request a decision under Article 95 of the ECSC Treaty'.

41 Moreover, it is borne out, first, by the first paragraph of point I of the said preamble, which clearly indicates that it is by virtue of Article 4(c) of the Treaty and not by virtue of the Fifth Aid Code itself, that '[a]ny aid in any form whatsoever... which Member States might grant... is prohibited' and, second, by the second paragraph of point I, which does not say that the earlier aid codes prohibited aid in general but makes it clear, on the contrary, that they introduced rules 'authorising the grant of aid... in certain cases expressly provided for'.

42 Consequently, Article 1(1) of the Fifth Aid Code, which contains no general prohibition of State aid, must be interpreted as meaning that the Commission is not competent, under that code, to approve, in accordance with the simplified procedures introduced by the latter, aid not covered by Articles 2 to 5 of that code, and that, on the contrary, it is competent to adopt, pursuant to Article 95 of the Treaty, supplementary measures, whether general or individual, approving aid not covered by the Fifth Aid Code.

43 It follows that the Court of First Instance was correct to hold, first, in paragraph 42 of the contested judgment, that the Fifth Aid Code represented a binding legal framework only for aid compatible with the Treaty and enumerated by it and, second, in paragraph 43, that the Commission is empowered to have recourse to Article 95 of the Treaty in order to adopt individual decisions.

44 In those circumstances, the first and fourth grounds of appeal must be rejected as unfounded.

The second ground of appeal

45 In their second ground of appeal, the appellants contend that the Court of First Instance should have inferred from the principles of Community law applicable to State aid that aid for a restructuring project must, in principle, be paid only once. Where the grant of aid is compulsorily linked to a restructuring commitment, any further assistance should be excluded because it would not fulfil the criterion of necessity laid down in the first paragraph of Article 95 of Treaty.

46 In the present case, the Ilva steel group had already received, before payment of the aid authorised by the contested decision, assistance amounting to ECU 15.8 billion. In the course of the preceding period, that group had undergone three complete reorganisations with the aid of the Italian Republic.

47 The Court of First Instance therefore disregarded the fact that the fourth complete reorganisation of the group could not be essential for the attainment of Treaty objectives in the context of development of the European steel industry.

48 The appellants also observe that the Commission itself also took the view that the term 'restructuring aid' means that the undertaking to be reorganised is to benefit from State aid only once. They refer in that connection to the Commission's 'Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty' (OJ 1994 C 368, p. 12), in which the following is stated in Chapter 3, point 3.2.2, (i), second paragraph: 'Like rescue aid, aid for restructuring should therefore normally only need to be granted once.'

49 The Commission considers that this ground of appeal does not allege that the Court of First Instance erred in law in the contested judgment and must therefore be rejected as inadmissible. It alleges failure to take into account, or misapprehension of, the fact that the Ilva steel group had already received aid before the adoption of the contested decision.

50 It need merely be observed that, whilst it is true that the appellants deny that the aid at issue is necessary, the fact remains that this ground of appeal is based primarily on the argument that the Court of First Instance disregarded a principle of law which derives, in their view, from Article 95 of Treaty, according to which restructuring aid can be regarded as necessary within the meaning of the latter provision only if it is granted on one occasion only. It follows that the second ground of appeal relates to contravention of a rule of law and must therefore be declared admissible.

51 As regards the substance, it must be borne in mind, first, that in the terms of the first paragraph of Article 95 of the Treaty, in all cases not provided for in it, where it becomes apparent that a decision or recommendation of the Commission is necessary in order to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.

52 It must also be noted that, according to the settled case-law of the Court of Justice, the only object of the first paragraph of Article 95 of the Treaty is to institute special rules for departing from the Treaty with the object of

empowering the Commission to meet an unforeseen situation (Case 9/61 *Netherlands* v *High Authority* [1962] ECR 213, at 233).

53 It is true that, on the basis of the first paragraph of Article 95 of the Treaty, the Commission could not in any circumstance authorise the grant of State aid which was not necessary to attain the objectives of the Treaty and would be likely to give rise to distortion of competition in the common market in steel (Case 214/83 *Germany* v *Commission* [1985] ECR 3053, paragraph 30).

54 However, it cannot be inferred from that provision or from the principle of necessity embodied in it that State aid is not necessary for a project for the restructuring of an undertaking unless it is granted once only.

55 Such an interpretation of the first paragraph of Article 95 of the Treaty would not be in conformity with the purpose of that provision, which is to grant the Commission power to meet unforeseen situations by taking account of the changing nature of market conditions. Indeed, application of the 'once and once only' principle would excessively restrict the category of aid capable of being regarded as necessary within the meaning of that provision and would not allow the Commission to examine, in each particular case, whether a project for restructuring aid was necessary in order to attain Treaty objectives.

56 Moreover, the 'once and once only' principle likewise cannot be inferred from the communication entitled 'Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty', as is clearly apparent from the use of the words

'should' and 'normally' in the passage from that communication relied on by the appellants in support of their arguments.

57 Consequently, in giving its decision as to the necessity of the aid authorised by the contested decision, the Court of First Instance did not err in law.

58 Accordingly, the second ground of appeal must be rejected as unfounded.

The third ground of appeal

59 By their third ground of appeal, the appellants contend that the judgment of the Court of First Instance took no account of the fact that the contested decision contains a serious error of appraisal on the part of the Commission in so far as it makes strengthening of the Italian steel industry the purpose of that decision. In their view, it is clear from point IV of the contested decision that, by authorising aid for the Ilva steel group, the Commission encouraged a local national policy. However, the promotion of a local national policy is clearly contrary to the objectives of Articles 2 to 4 of the Treaty.

60 The Italian Government maintains that that argument constitutes a new submission in so far as the application for annulment did not complain of the promotion, by the contested decision, of a local national policy and, therefore, the Court of First Instance was unable to give judgment on that point.

61 As is clear from paragraph 63 of the contested judgment, the appellants expressly maintained before the Court of First Instance that the objective pursued by the contested decision — which is that of 'providing the Italian steel industry with a sound and economically viable structure' — is not among the objectives defined by Articles 2, 3 and 4 of the Treaty, which concern the common market and the steel industry of the Community as a whole, and not the industry of only one Member State, or indeed the survival of a single undertaking. Moreover, in paragraphs 76 to 83 of the contested judgment, the Court of First Instance considered whether the aim of the contested decision fell within the objectives of the Treaty.

62 It follows that the appellants' third ground of appeal is admissible.

63 As regards the substance, it must be observed that, as is apparent from the abovementioned paragraphs 76 to 83, the Court of First Instance examined the objectives of the contested decision in detail and concluded that it was intended to safeguard the common interest, in accordance with the objectives of the Treaty.

64 In the present appeal, the appellants have confined themselves to contending that the judgment of the Court of First Instance did not take account of the fact that the aim of the contested decision was to strengthen the Italian steel sector and have not put forward any argument such as to call in question the reasoning of the Court of First Instance, as re-stated in paragraphs 24 and 25 of this judgment.

65 However, as the Court of First Instance held, in particular in paragraph 82 of the contested judgment, the contested decision, like the other five individual decisions

adopted on the same day authorising the State aid which the Federal Republic of Germany, the Portuguese Republic and the Kingdom of Spain envisaged granting to certain undertakings, forms part of a comprehensive programme for restructuring the steel industry on an enduring basis and reduction of production capacity in the Community, in particular through the definitive closure of obsolete or uncompetitive plant.

66 It follows that the Court of First Instance was right to hold, in paragraph 82, that the aim of the aid authorised by the contested decision was not purely and simply to ensure the survival of the beneficiary undertaking.

67 Accordingly, the third ground of appeal must be rejected as unfounded.

68 In those circumstances, the appeal must be dismissed in its entirety.

Costs

69 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs if they are applied for in the successful party's pleadings. Since the Commission has asked that Wirtschaftsvereinigung Stahl, Thyssen Stahl AG, Preussag Stahl AG and Hoogovens Staal BV be ordered to pay the costs and since they have been unsuccessful, they must be ordered to pay the costs. In accordance with the first subparagraph of Article 69(4) of those rules, the Italian Republic and the Council of the European Union shall bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders Wirtschaftsvereinigung Stahl, Thyssen Stahl AG, Preussag Stahl AG and Hoogovens Staal BV to pay the costs;

3. Orders the Italian Republic and the Council of the European Union to bear their own costs.

Gulmann Puissochet Macken

Delivered in open court in Luxembourg on 23 November 2000.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber