JUDGMENT OF THE COURT
26 JUNE 1958[1]

Chambre Syndicale de la Sidérurgie Française v High Authority of the European Coal and Steel Community

Case 9/57

Summary

1. *Procedure — Application for annulment — General decision — Association of undertakings as applicant — Capacity to institute proceedings before the Court of Justice*
   [Cf. paragraph 1, summary in Case 8/57 of 21 June 1958]

2. *Procedure — Application for annulment — General decision — Association of undertakings as applicant — Misuse of powers — Admissibility*
   [Cf. paragraph 2, summary in Case 8/57 of 21 June 1958]

3. *Financial arrangements — Indirect means of action*
   [Cf. paragraph 3, summary in Case 8/57 of 21 June 1958]

4. *Fundamental objectives of the Community*
   (a) Duties of the High Authority — Implementation of Articles 2 to 5
   [Cf. paragraph 4(a), summary in Case 8/57 of 21 June 1958]
   (b) Reconciliation of the various objectives of Article 3
   [Cf. paragraph 4(b), summary in Case 8/57 of 21 June 1958]
   (c) Combination of various objectives — Common interest
   Protection of the common interest does not rule out, if the circumstances so require, the inclusion in a measure combining the pursuit of the various objectives laid down in Article 3 of the Treaty of all measures of a selective or gradual nature compatible with the principle of equality and necessary for carrying out the tasks laid down in the said article. Consequently an indirect means of action on production cannot be considered as incompatible with the protection of the common interest on the pretext that it involves different treatment
   (Treaty, first paragraph of Article 3).

5. *Financial arrangements — System of allocation — Direct action on production*
   [Cf. paragraph 6, summary in Case 8/57 of 21 June 1958]

6. *Influence on investments — Financial arrangements — Indirect action regarding investments*
   [Cf. paragraph 7, summary in Case 8/57 of 21 June 1958]

In Case 9/57

CHAMBRE SYNDICALE DE LA SIDÉRURGIE FRANÇAISE, a group of trade associations governed by French law, having its head office in Paris, represented by its Chair-

1 — Language of the Case: French.

man Jean Raty, assisted by Jean-Pierre Aron, Advocate at the Cour d'Appel, Paris, with an address for service in Luxembourg at its offices at 49 boulevard Joseph-II,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Gérard Olivier, acting as Agent, assisted by André de Laubadère, Professor in the Faculty of Law, Paris, with an address for service in Luxembourg at its office at 2 place de Metz,

defendant,

APPLICATION for the annulment of Articles 6 (3), 8 and 9 of Decision No 2/57 of the High Authority of 26 January 1957, published in the Journal Officiel No 4, of 28 January 1957, and consequently of Articles 3 (1) (b), 4 (3), 5, 6 (1) and (2) and 7 thereof

THE COURT

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

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact

1. Facts

In Decision No 2/57 which, *inter alia,* extends the application of Decision No 26/55 and No 3/56, the same arrangement provides for the equalization of the prices of imported scrap and domestic scrap and the effecting of economies in scrap. It requires, in addition to contributions at the basic rate, contributions at a supplementary rate imposed in terms of the proportion of scrap consumed in existing plant in excess of the amount of scrap consumed during a reference period in the past. In order to take account of all individual situations each undertaking is permitted to choose its reference period (six months from seven consecutive months between 1 January 1953 and 31 January 1957).

Article 8 of the decision provides a guarantee for undertakings that the increase in the contribution shall be slowly progressive whilst Article 9 permits undertakings which have reduced the specific input of their plant or their production processes, to reduce or even completely to eliminate their contributions at the supplementary rate.

The *applicant* states that, when it learned of the defendant's drafts which were to be-

come Decision No 2/57, it was unable to agree with any of them.
It holds that intervention of the nature of Decision No 2/57 was unnecessary. The deficit in ferrous scrap in the Community will not increase indefinitely and has already showed signs of decreasing although the production of steel is extremely high. The equalization of imported ferrous scrap has complied with the rules of a market economy and has not prevented a massive increase in the cost of scrap for steel undertakings; those undertakings are sufficiently aware of the prospects of supplies of raw materials themselves to have taken action, dating from 1956 and indeed from the end of 1955, to increase production of pig-iron.
The applicant finally maintains that Decision No 2/57 did not constitute the sole solution to the problem as conceived by the High Authority. This solution was the most onerous and the most expensive for certain steel undertakings.
The *defendant* replies that it had to cope with the structural failings in the market in ferrous scrap in the Community; it had to rectify defects in the system existing before Decision No 2/57, that is to say to counter the incentive provided by the functioning of the equalization scheme to increase consumption of ferrous scrap; it had to face both a problem relating to prices and a problem relating to quantity. It was thus necessary to adopt measures intended essentially to discourage any increases in the total consumption of ferrous scrap and to encourage scrap to be used with a maximum of economy.

2. Conclusions of the parties

The applicant claims that the Court should:

'Annul Articles 6 (3), 8 and 9 of Decision No 2/57 of 26 January 1957 and, consequently, Articles 3 (1) (b), 4 (3), 5, 6 (1) and (2) and 7 thereof, and order the High Authority to bear the costs.'

The defendant contends that the Court should:

'Dismiss the application submitted against Decision No 2/57 in that it is not vitiated by misuse of powers affecting the applicant, with all the legal consequences thereof, in particular with regard to settlement of the fees, costs and any other expenses.'

3. Submissions and arguments of the parties

A — *Admissibility*

1. Whether it is possible for a misuse of powers to have been committed affecting the applicant association itself

The *defendant* maintains that it is clear from the judgments of the Court of Justice in Cases 3 and 4/54 that for an application by an association of undertakings to be admissible it is sufficient that certain undertakings are affected by the relevant decision although other undertakings are not. Furthermore in the judgments in Cases 8 and 9/55 the Court noted that the second paragraph of Article 33 constitutes an exception which is to be explained by the fact that the individual factor prevails in this instance. Since the present case concerns an application by an association of undertakings reference must thus be made to the collective factor. Can this collective interest prevail against the individual interests of the undertakings which are members of the association if those interests are divergent?
The *applicant* replies that the contested provisions of Decision No 2/57 affect both the general interest and the individual interests of certain undertakings which are members of the Chambre Syndicale. This constitutes a double ground for the admissibility of the application.

2. Whether the submissions constitute complaints of misuse of powers

(a) The *defendant* has stated in the preamble to Decision No 2/57 that its essential objective was to ensure a regular supply of ferrous scrap to the Common Market. The applicant does not even allege that the provisions of this decision are not capable of attaining this objective. From the point when it is clear that the essential objective of the decision was in accordance with the Treaty, it becomes difficult to envisage misuse of powers.

The *applicant* replies that Decision No 2/57 maintains a system previously in force and lays down new requirements. In that the previous equalization scheme is maintained the objective is indeed to ensure a regular supply at a reasonable price. The application is not directed against the equalization scheme but merely against the provisions of the decision which establish a new system.

(b) The *defendant* sets out the eight complaints in the application in four groups relating to Articles 3, 54, 59 and 65 of the Treaty respectively. The complaint with regard to Article 65 is based upon a manifestly mistaken interpretation of the wording of Article 53 which the applicant does not dispute.
If the classic distinction between the concept of motive and that of object is applied to the remaining three groups in the application, they may be classified as follows.

(1) Three complaints of misuse of powers or of procedure:

in relation to Article 59,
in relation to Article 54, and
in relation to Article 3 (d) and (g);

(2) Two complaints of infringement of the Treaty:

infringement of Articles 53 and 54 (the scope of the powers conferred by Article 53 with reference to Article 54) and
infringement of Article 3 (b).

B — *Substance*

The *applicant* defines the scope of Article 53 with regard to the principles of the market economy. Under the terms of Article 5 of the Treaty the Community shall carry out its task with a limited measure of intervention. The financial arrangements under Article 53 constitute indirect means of action which do not permit substantial departure from the rules of the market economy as they have been defined in Articles 2, 3 and 4 of the Treaty. The lawfulness of an imposition with regard to the Treaty may be appraised in terms of physical or technical factors peculiar to the undertakings, such as variation in output, but not in relation to criteria foreign to the market economy, such as the date when the plant was put into operation. Any exceptions to this must be in accordance with express provisions of the Treaty, which, in fact, is careful to authorize expressly (Article 58; Articles 24 and 29 (a) of the Convention on the Transitional Provisions) specific financial arrangements each time the problems in view cannot be resolved merely by recourse to the procedures which maintain normal competition. It follows that the provisions of Article 53 alone do not permit financial arrangements to be made which affect the market economy. If this were not the case, Article 53 would constitute a *carte blanche* for the High Authority and it could thus transgress fundamental provisions of the Treaty.
The *defendant* answers that the reply contains entirely new considerations concerning the scope of Article 53 in connexion with the market economy. It doubts whether this procedure is proper: the submissions must be set out in the application. The application fails to show in what way the contested provisions of Decision No 2/57 are contrary to the market economy. The applicant has maintained that only indirect means of action must respect the principles of the market economy as they have been defined in Articles 2, 3 and 4 of the Treaty. This is not the case: the High Authority must in fact in all circumstances endeavour to act in accordance with the principles defined in those articles. Furthermore, Articles 2 and 3 of the Treaty in no way prohibit the High Authority from affecting supply and demand.
It is not true that the contested provisions impose a charge prohibited by the Treaty. The payment of a supplementary contribution is merely one of the factors in a system as a whole intended to ensure for all the undertakings in the Community a regular supply at a reasonable price. Accordingly, it is necessary to view the advantages and disadvantages of the scheme as a whole. It cannot be said that a special charge obtains when an entirely general system, all the conditions of which apply to all undertakings, is concerned.
The financial arrangements under Article

53 cannot be compared to the financial arrangements for which provision is made in Article 58 of the Treaty and in Articles 24 and 29 (a) of the Convention as there is no analogy. It is thus impossible to define the scope of Article 53 by comparison with other financial arrangements provided for in the Treaty.

The objective of Article 53 is to apply the necessary corrective and supplementary factors to the interaction of supply and demand in order to attain the objectives laid down in Article 3, whenever the natural operation of the market is insufficient to act as a regulator as it normally does.

First complaint: Misuse of powers in that the contested provisions pursue objectives contrary to the objectives in Articles 3 and 53.

The *applicant* relies on the argument that the financial arrangement provided for in Article 53 must, as that article is worded, be necessary for the performance of the tasks set out in Article 3. The arrangement which was made has objectives contrary to the objectives of this article. The High Authority has thus used the powers which it possesses under Article 53 for objectives other than those for which the powers were conferred upon it.

(a) There is a contradiction between the objective stated by the High Authority and the actual objective of the provisions complained of.
The objective set out in the decision is twofold:

to encourage undertakings to effect economies in ferrous scrap;
to take all appropriate steps not to exacerbate difficulties in creating new production capacities for steel.

The true objectives of the contested decisions are as follows:

to prohibit the creation of new plants to be put into operation after 31 January 1958; to prevent the existing plant from being used to its full extent and to make it impossible for undertakings to substitute certain methods of production for others;

thereby to prevent all development and improvement of the means of manufacture.

(b) According to Article 3 the High Authority must act in the common interest. The contested provisions pursue an objective which is contrary to the common interest in that

it adversely affects whole categories of undertakings deliberately selected as victims;
it prevents existing plant from being used to its full extent and violates the principle that undertakings must be free to choose their own methods of production;
for the benefit of already established undertakings, it penalizes undertakings putting new plant into operation after 31 January 1958;
in terms of the reduction in the specific input of ferrous scrap, it benefits undertakings which limit themselves to correcting previous operational deficiencies and, in order to re-establish balance, penalizes undertakings whose operations, past and present, are above criticism.

(c) The contested provisions pursue objectives contrary to those set out in Article 3 (d) and (g) in that they paralyse the expansion and improvement of the production potential of undertakings and thereby prevent the orderly expansion and modernization of production.

(d) The contested provisions pursue an objective contrary to that laid down in Article 3 (b) (equal access to the sources of production) in that

it subjects undertakings to a system of supply which varies depending on whether they put new plant into operation before or after 31 January 1958;
it establishes generally a system for the reduction of the supplementary contribution in terms of the reduction of the specific input of ferrous scrap whilst for whole categories of undertakings it is completely impossible to reduce the unitary consumption of ferrous scrap.

The *defendant* denies that it sacrificed the common interest by deliberately choosing

its victims and enacting measures to further the interests of already established undertakings. The legislation to discourage any increase in the total consumption of ferrous scrap in relation to a reference period follows very closely the tendency of the general objectives implemented pursuant to Article 46 of the Treaty. Those general objectives may properly guide the action of the High Authority in having recourse to indirect means of action on production and, more particularly, to the financial arrangements in Article 53 (b). The High Authority has in no way disregarded the objectives laid down in Article 3 (d) and (g) but has reconciled them, as was necessary in the circumstances, with the objective in subparagraph (a) (regular supply to the Common Market).

With regard to infringement of the Treaty the defendant denies that it infringed Article 3 (b) of the Treaty (equal access to the sources of production).

(a) With regard to the complaint that by Article 6 (3) of the decision it subjected undertakings in comparable conditions to a different system, the defendant replies that the provision in Article 6 (3) is not in the nature of a penalty but reflects the principle of imposing a supplementary charge on any increase in consumption of ferrous scrap during a reference period. On the contrary, the provisions conferring a notional reference consumption in respect of plant put into service before the date complained of constitute a transitional benefit for the undertakings.

(b) With regard to the complaint that, by Article 9 of the decision, it has placed at a disadvantage undertakings which for technical reasons are incapable of reducing their specific input, the defendant replies that only solid-charged electric furnaces have a specific input which it is technically possible to reduce. It is true that there appear to be technical limitations to the possibility of a reduction with regard to such plant. Nevertheless the insignificant part of the item 'ferrous scrap' in the cost price of special steel largely compensates for the disadvantage following from taxation at the supplementary rate.

Second complaint: Misuse of powers in that the objective of the contested provisions was to prohibit certain investments.

The *applicant* relies upon the argument that the objective of the contested provisions was to prohibit certain investments, a measure which may be enacted only in accordance with the procedure under Article 54.

In particular, the provisions in Article 6 (3) of the contested decision abolish any reference period for plant put into operation after 31 January 1958. Undertakings which invest in new plant after this date are thus automatically penalized unless they can benefit from the provisions of Article 9 regarding reductions in the specific reference. Thus, regardless of the objectives which the High Authority claims it pursued in adopting Decision No 2/57, its objective in enacting the provisions of Article 6 (3) was indisputably to raise obstacles to new plant being brought into service after 31 January 1958.

The powers of the High Authority with regard to investments are detailed in a strictly exhaustive list in Article 54. The High Authority may only deliver an opinion and has power to prevent investments only when they involve the grant of subsidies and aids contrary to the Treaty. When the High Authority took action concerning investments outside the limits laid down by those provisions and used for this purpose the powers which it holds under Article 53, it misapplied this article.

The applicant further considers that when the High Authority employed Article 53 instead of Article 54 it did so in the belief that the wording of the former was more favourable to it than that of the latter. Article 54 requires the High Authority to act in accordance with finely-distinguished appraisals, taking into account, in particular, the general objectives of Article 46. The High Authority could not claim to include amongst those general objectives the automatic prohibition of new investments or the repression of the full use of existing investments.

The *defendant* replies that the particular objective of the contested provisions is by no means to influence investments, but rather a desire to ensure a regular supply of scrap. Although those provisions logically involve

an influence on investments, this can only be regarded as the natural result of a price mechanism intended as an indirect action on production. This procedure is strictly in accordance with Article 53. The system complained of has neither the objective nor the result of prohibiting new investments.
The complaint of misuse of procedure cannot be accepted if it is conceded that Article 54 is by no means exhaustive with regard to investment and a financial arrangement in accordance with Article 53 may properly involve indirect effects on investments.
With regard to infringement of the Treaty the defendant considers the applicant's allegation that Article 54 is exhaustive with regard to investments, which would infer a limitation on the powers recognized by Article 53. No evidence has been produced in support of this line of argument and it appears as a mere hypothesis. To dispute that the High Authority might take measures to encourage economies in ferrous scrap, on the ground that they might have an effect on investments, would in fact prevent the High Authority from adopting anything other than short-term measures in order to attain the objectives of Article 3.

Third complaint: Misuse of powers in that the contested provisions result in an allocation.

The *applicant* maintains that the contested provisions effect an allocation, which can only be brought about under the procedure in Article 59 and in Annex II.
The system established by the impugned provisions is similar to that for which provision is made in Article 58. In both cases a penalty is imposed in respect of certain tonnages exceeding a reference level. Just as the system under Article 58 is concerned with allocating production, the arrangement in Decision No 2/57 is concerned with allocating consumption. Whilst the High Authority refrained from having recourse to the means provided for in Article 59 and Annex II in order to establish a system of allocation, it nevertheless has the same end in view in establishing through Article 53 a system of double prices which prohibits all consumption of scrap in excess of a reference level. This level may only be exceeded, if the specific input reference can be reduced and in proportion to such reduction.
Furthermore if the High Authority did not have recourse to Article 59 this was in order to avoid the conditions for the implementation of this article which require fine distinctions to be drawn in taking account of various individual situations.
The *defendant* replies that whilst the contested provisions indeed relate to quantities they cannot be considered as identical to a system of allocation. The reverse could only be true if, objectively, the system resulted in a prohibition on any increase in consumption in relation to a reference consumption. The confusion deliberately made by the applicant disregards the scope of indirect means of action on production.
The complaint of misuse of procedure cannot be accepted. This allegation supposes that it is more difficult for the High Authority to apply the procedure under Article 59 and Annex II than the procedure under Article 53. In fact the opposite is true: under Article 53 the High Authority must obtain the unanimous assent of the Council of Ministers, whilst in order to enact the measures relating to allocation provided for in Article 59 and Annex II it does not require such unanimous assent; it can only be prevented from taking such steps if the Council, acting unanimously, decides otherwise.
It is true that Article 59 states that the allocation must be carried out on an equitable basis and that the High Authority must allocate to each undertaking a specific quota of available resources. Nevertheless, this relates to a factor which already appears amongst the general principles of Articles 3 and 4 which govern the entire implementation of the Treaty, in particular the implementation of Article 53; moreover the distribution of all the resources amongst the various persons entitled thereto is the specific consequence of the fact that this constitutes an allocation.

4. Procedure

The application is in the appropriate form and was submitted within the prescribed period.

The instruments appointing the agents and lawyers of the parties are in order.
The written procedure followed the normal course. The statements of the parties, with their related annexes, were lodged within the prescribed periods and were duly served.

Law

A — Admissibility

According to the applicant's statutes it constitutes a private association governed by French law having as its objective the furtherance of the general interests of its members, who are iron and steel producers; it is common ground that the contested provisions of General Decision No 2/57 are capable of affecting certain interests, even though perhaps divergent, entrusted to the applicant. The applicant accordingly has capacity to institute proceedings before the Court of Justice in accordance with the provisions of Articles 33, 48 and 80 of the Treaty.
The applicant formally alleges that its members have been affected by misuse of powers on one or more occasions; it produces a relevant statement of the reasons leading it to believe that there has been a misuse of powers on one or more occasions. The purpose of the arguments upon which it relies is in fact to obtain a declaration that, when the High Authority adopted the contested provisions, it exercised the powers conferred upon it under Article 53 (b) of the Treaty for purposes other than those for which they were conferred upon it, both through serious disregard for certain of the objectives referred to in Article 3, and through the clear intention of attaining objectives specifically governed by Articles 54 and 59 whilst avoiding the special procedures prescribed in the said articles.
Consequently the application is admissible.

B — Substance

The High Authority has selected Article 53 as the legal basis of the scheme for the equalization of ferrous scrap which it has established. That article permits it to intervene in connexion with the tasks assigned to it under the Treaty, in particular under Article 3 thereof.
Article 53 appears in Chapter II, entitled 'Financial Provisions', the other articles of which relate to the use of funds which the High Authority obtains through levies on production or by loans and it may accordingly be considered that the financial arrangements referred to in Article 53 are arrangements based on the transfer of resources, in particular arrangements in the nature of equalization or compensation. This interpretation is confirmed by the last paragraph of Article 62 which provides that certain equalization payments 'may ... be instituted as provided in Article 53'.

The equalization arrangements do not directly affect prices but rather the factors contributing to the formation of prices. In this way those factors, without preventing prices from being freely fixed, modify the level at which they are fixed. The financial arrangements provided for in Article 53 affect by such alterations in the level of prices the other characteristic features of the state of the market and in particular the supply of and demand for the relevant products. These arrangements thus constitute powerful and effective intervention procedures at the disposal of the High Authority, but are nevertheless 'indirect' within the meaning of Article 57 of the Treaty as distinct from the direct means of action through establishment of production quotas (Article 58) or the allocation of resources (Article 59).

The High Authority, by using the financial arrangements provided for in Article 53, is in a position to exercise a broad influence on the market in coal and steel whilst it must be borne in mind that Article 53 restricts the application of such arrangements to the procedures 'necessary for the performance of the tasks set out in Article 3 and compatible with this Treaty, and in particular with Article 65'. The express reference made to Article 3 does not release the High Authority from its duty to observe the other articles of the Treaty and in particular Articles 2, 4 and 5 which, together with Article 3, must always be observed because they establish the fundamental objectives of the Community. Those provisions are binding and must be read together if they are to be properly applied. Those provisions can stand by themselves and accordingly, in so far as they have not been adopted in any other provision of the Treaty, they are directly applicable. If they have been adopted or are governed by other provisions of the Treaty words relating to the same provision must be considered as a whole and applied together. In practice it will always be necessary to reconcile to a certain degree the various objectives of Article 3 since it is clearly impossible to attain them all fully and simultaneously as those objectives constitute general principles which must be observed and harmonized as far as possible; on the other hand such financial arrangements must be instituted without infringing the provisions of Article 58 and of Chapter 5 of Title III of the Treaty.

Decisions prior to Decision No 2/57 were concerned to equalize the prices of imported ferrous scrap and domestic scrap. Decision No 2/57 continues this system but adjusts it and supplements it with new provisions intended to affect at the same time the price of ferrous scrap and the total volume of purchases in order to encourage undertakings to effect economies in ferrous scrap in the interests of a regular supply to the market.

If demand had over an extended period exceeded the supply of scrap it could have led to a 'serious shortage' for which the procedures laid down in Article 59 are appropriate. If the High Authority wished to avoid following those procedures—and the provisions of Article 57 require it to endeavour as far as possible to refrain from doing so—it could not avoid the need and the duty to apply the procedure prescribed in Article 53 (b), subject to observance of the conditions for its application.

1. *The complaint of misuse of powers with regard to Articles 3 and 53 of the Treaty, that is to say that the objectives pursued by the High Authority are contrary to the objectives defined by Articles 3 and 53 of the Treaty*

(a) Pursuant to Article 53 (b) of the Treaty the High Authority may, with the unanimous assent of the Council, itself make any financial arrangements which it recognizes to be necessary for the performance of the tasks set out in Article 3. The exercise of the powers thus conferred upon the High Authority is subject to the conditions set out in Articles 2 and 5 concerning the establishment, administration and guidance of the Common Market.

Pursuant to Article 2 of the Treaty the Community has as its task to contribute to economic expansion, growth of employment and a rising standard of living in the Member States. The means prescribed for the attainment of those objectives consists in the establishment of a Common Market on the conditions laid down in Article 4 concerning the abolition of obstacles to trade. Pursuant to Article 2 the Community is obliged progressively to bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States.

To those ends the Community must ensure on the market the establishment, maintenance and observance of normal conditions of competition and, subject to observance of the priorities laid down by Article 57 of the Treaty in relation to its means of action, it must, in accordance with the provisions of Article 5, 'exert direct influence upon production or upon the market only when circumstances so require'.

In pursuing the objectives laid down in Article 3 of the Treaty the High Authority must permanently reconcile any conflicts between those objectives considered individually and, when such reconciliation proves unattainable, must grant such temporary priority to one or other of them as appears necessary having regard to the economic facts or circumstances in the light of which, in carrying out the tasks entrusted to it under Article 8 of the Treaty, it adopts its decisions.

Pursuant to the provisions of Article 57 of the Treaty in the sphere of production, the High Authority is required to give preference to the indirect means of action at its disposal, in particular to intervention in regard to prices. As has previously been stated, such means of action must be regarded as including the financial arrangements provided for in Article 53 since they influence prices in particular through compensation for and correction of factors which contribute to their formation. Since those arrangements contribute to the formation of prices they alter the price-level on the market and thereby influence the effects which the price-level produces on the direction of production, and thus on the structure of the means of production. Such arrangements thus provide the High Authority with the means to modify the effects of 'normal competitive conditions' whilst ensuring, in accordance with the requirements of Article 5 of the Treaty, the mainte-

nance and observance of these conditions. By making appropriate use of this powerful means of intervention the High Authority is largely capable, provided that the circumstances require it, of bringing about the required reconciliation between the objectives listed in Article 3 of the Treaty in carrying out the task with which it is entrusted under the Treaty.

The powers which have thus been conferred on the High Authority are however limited by the specific provisions set out in Title III of the Treaty. In particular these powers would be used for an objective other than their legal purpose if it appeared that the High Authority had applied them with the exclusive, or at any rate the decisive, purpose of evading a procedure especially prescribed by the Treaty in order to deal with the circumstances with which it is required to cope.

At the time when the contested decisions were adopted the market in ferrous scrap was widely recognized as being characterized by a severe shortage of Community supplies, by mounting difficulties in imports and by large-scale and rapid increases in the price of foreign scrap. This situation arising from those economic facts and circumstances cannot in any event be regarded as *prima facie* excluding intervention by the High Authority to counter the consequences at variance with the requirements of Article 3 of the Treaty which this situation might have involved. Furthermore the High Authority's appraisal of the situation in the light of which the contested provisions were adopted does not by itself show that the authors of the said measures were inspired by an unlawful motive.

Accordingly the Court does not consider that the circumstances were such as to rule out, at that time, action by the High Authority on the market in ferrous scrap with a view to affecting indirectly means of production using scrap.

(b) The purpose of the provisions contested in the present application was to make the contribution for the equalization of the prices of imported ferrous scrap progressively selective by increasing the rate applicable to the consumption of bought scrap above a given reference level and by graduating the charges thereby imposed in terms of a specific input coefficient for ferrous scrap in the installations and the manufacturing processes requiring scrap.

Furthermore the said provisions contain a set of transitional measures intended to permit undertakings to adapt themselves progressively to the conditions thereby created for them, in particular the choice by each undertaking of its own reference period, the period of six months during which payment of the contribution at the supplementary rate is suspended, the graduated nature of the rate, the allocation of a reference consumption and a specific input reference for plant which began operations during the year following the entry into force of the decision together with the allocation of a specific input reference without a time-limit for all plant beginning operations after the expiry of this latter period. Through those measures the High Authority provided the scheme for the equalization of the prices of imported ferrous scrap, which it had previously established, with conditions intended to prevent a fall in the price of ferrous scrap resulting from equalization from encouraging producers in the Common Market to increase their consumption of scrap.

Thus defined the decisive aim of the contested provisions constitutes lawful indirect action, within the meaning of Article 57, applied to the market in ferrous scrap in order to ensure, bearing in mind the facts and circumstances then observed, regular supplies to the Common Market. The said aims are thus in accordance with the provisions of Article 3 (a) and the latter part of (d), the second paragraph of Article 2 and the third subparagraph of the second paragraph of Article 5 of the Treaty.

(c) Pursuant to the beginning of Article 3 of the Treaty, when the institutions of the Community carry out the tasks defined in the said article they must act in the common interest. The concept of the common interest referred to in Article 3, far from being restricted to the sum of individual interests of undertakings or of categories of undertakings subject to the jurisdiction of the Community, considerably exceeds the scope of such interests and is defined in relation to the general aims clearly laid down in Article 2.
Protection of the common interest does not rule out, if the circumstances so require, the inclusion in a measure combining the pursuit of the various objectives laid down in Article 3 of the Treaty of all measures of a selective and gradual nature compatible with the principle of equality and necessary for carrying out the tasks laid down in that article. Consequently, an indirect means of action on production cannot be considered as incompatible with the protection of the common interest on the pretext that it involves different treatment.

(d) Nevertheless consideration must be given to the question whether the measures taken are compatible with the rules in Article 3 (b), the beginning of subparagraph (d) and subparagraph (g) and the applicant alleges that the High Authority's adoption of the said measures constitutes serious disregard of these objectives.
Pursuant to Article 3 (b) of the Treaty the institutions of the Community are required, within the limits of their respective powers, to ensure in the common interest that all comparably-placed consumers in the Common Market have equal access to the sources of production; this provision constitutes a necessary objective for the action of the High Authority in the exercise of the powers conferred upon it by the Treaty. Failure to observe the principle of the equality of treatment of consumers in the matter of economic rules, as that principle has been described above, may constitute misuse of powers affecting the persons or classes of persons deliberately sacrificed.
Pursuant to a principle generally accepted in the legal systems of the Member States, equality of treatment in the matter of economic rules does not prevent different prices being fixed in accordance with the particular situation of consumers or of categories of consumers provided that the differences in treatment correspond to a difference in the situations of such persons. If there is no objectively-established basis distinctions in treatment are arbitrary, discriminatory and illegal. It cannot be alleged that economic rules are unfair, on the pretext that they involve

different consequences or disparate disadvantages for the persons concerned when this is clearly the result of their different operating conditions.
The supplementary rate established under Article 3 (1) (b) of the contested decision applies generally and entirely to any consumption of bought scrap in excess of that relating to a reference period. The discretion conferred upon the undertakings subject to the scheme themselves to select, within specially prescribed temporal limits, the period most favourable to them does not, however, mean that the criterion used for distinguishing between them thus loses its objective nature, without which it would appear arbitrary. Indeed the factual differences which this situation entails for undertakings stem from their dissimilar operating conditions and not from any legal inequality inherent in the decision.
The graduation of the contested supplementary rate laid down by the provisions of Article 8 is based exclusively on the successive periods for the application of Decision No 2/57. The graduation is thus general and absolute, objectively based upon the wish progressively to provide encouragement, by influencing prices, to steel undertakings consuming ferrous scrap to economize in using it so as to avoid its unconsidered exhaustion.
The refunds of the proportion of the equalization contribution calculated at the supplementary rate, which were established pursuant to Article 9 of the disputed decision, are granted on a purely objective basis, the reduction of the specific input coefficient of ferrous scrap for each type of plant and manufacturing process using that material. The varying effects which the application of that article produces on the persons concerned, by reason of varying operating conditions and technical problems which, for certain categories of plant, may reduce or even exclude entitlement to refunds cannot render the rule inequitable in law—which is excluded by the nature of the criterion adopted.

(e) Pursuant to Article 3 (d) and (g) of the Treaty the institutions of the Community, and particularly the High Authority in exercising the powers conferred upon it by Article 53 (b), are required to ensure the maintenance of conditions which will encourage undertakings to expand and improve their production potential and promote the orderly expansion and modernization of production and the improvement of quality. The High Authority refers to those legal objectives at the beginning of the disputed decision, the stated aim of which is to ensure regular supplies to the market in ferrous scrap and to encourage undertakings to save ferrous scrap without, however, making it more difficult to increase output capacity.
The applicant complains that the High Authority has seriously disregarded the objectives thus referred to by hampering, through the contested provisions, the development of certain methods of production. It must be considered whether the provisions indicate, in this respect, an unlawful motive or a serious lack of care amounting to failure to observe the purpose of the law and whether in this respect priority was perhaps accorded to certain lawful aims at the expense of certain others to an extent which is unjustified by the circumstances.
The attainment of the objectives referred to in Article 3 (d) and (g) of the Treaty

cannot be pursued in isolation from and without regard to the other objectives laid down in the said article. The attainment of orderly expansion and the modernization of production may lawfully be sought within the framework of a general action on the basis of reconciling the objectives of Article 3, if necessary granting such priority to one or other of them as appears necessary having regard to the situation arising from the economic facts or circumstances observed at the time of the intervention.

Consequently, as has been stated, pursuit of the objectives prescribed in Article 3 does not rule out selective measures based in particular upon the nature of the means of production to be developed or created if it appears that economic circumstances and the reasonably foreseeable trend of market conditions call for such measures. This is certainly so when there are dangers of a serious shortage of one of the basic raw materials for the steel industry or if it appears necessary to adopt a policy of using resources rationally in order to avoid their unconsidered exhaustion. The distinction which may consequently prove necessary to maintain conditions which will encourage undertakings to expand and improve their production potential and to promote its regular development nevertheless must be based upon purely objective criteria in accordance with the principle of equality laid down in the Treaty.

The provisions of Article 6 of the contested decision are intended progressively to encourage steel undertakings to use scrap as rationally as possible. To attain this the provisions alter the cost of financing the equalization of the prices of imported ferrous scrap both in terms of the nature of the plant and manufacturing processes and the date when operations were commenced, through the combined action of reference consumption and refunds granted in respect of relative economies in scrap. The graduated increase in the cost of ferrous scrap and the selective influence thereof on the cost price of steel products vary in terms of objectively determined quantitative and qualitative criteria. Consequently the contested measures constitute with regard to the principle of non-discrimination, provisions encouraging undertakings to develop new capacities considered compatible with regular supplies of scrap for the steel industry and the orderly expansion of production. The provisions of Articles 6 and 8 of the contested decision thus constitute a body of progressive rules without which the financial arrangement established by the said decision would forfeit its character of an indirect means of action in relation to production thereby rendering it unlawful with respect to the provisions of Articles 5 and 57.

(g) The 'indirect means of action' in relation to production prescribed in Article 57 are to be distinguished from the 'direct influence' referred to in the third subparagraph of the second paragraph of Article 5 not by the aims pursued but by the methods appropriate to attain them. Indirect means of action, by affecting, especially as a result of the financial arrangements under Article 53, certain of the factors which play a part in forming prices, create conditions which encourage undertakings freely and willingly to choose the behaviour desired by the High Au-

thority for the accomplishment of the tasks with which it is charged under the Treaty. On the other hand direct influence, such as the allocation of resources for which provision is made in Article 59, is not concerned with how producers would behave if they acted freely but directly prescribes, on pain of fines, as is stated in Article 59 (7), the behaviour which the High Authority considers necessary with regard to the situation with which the Treaty requires it to cope.

The two procedures, indirect and direct, are intended to modify the structures to which, unless modified by intervention, individual behaviour would give rise. The procedures thus both constitute procedures for economic intervention but the former create the right conditions to encourage producers freely to adopt the behaviour which the common interest, referred to in Article 3, requires of them whilst the latter impose upon undertakings in the same common interest behaviour other than that which they would be prompted to adopt by the actual circumstances.

The indirect means of action are identical in their effects and in the power of intervention which they confer but make it possible for all those participating in the market to retain their freedom of decision whilst direct influence requires the limitation, if not the abolition, of such freedom.

All the provisions of Article 6 of Decision No 2/57 are intended to make it possible for established situations to continue and to avoid the immediate and harsh resort to measures for the allocation of resources provided for in Article 59, in preference to which Article 57 prescribes indirect means of action. The provisions in particular with regard to 'reference consumption of bought scrap', 'specific input references', the period of exemption from contributions at the supplementary rate and the graduated nature of that rate are steps in accordance with the wish to respect that preference.

With regard to 'new plant' it is true that, subject to the refunds for which it may qualify inasmuch as Article 6, at the end, grants a 'notional specific input reference', the price of ferrous scrap with which they are charged will in principle be higher. The same is true of 'solid-charged electric furnaces' in respect of which it can scarcely be anticipated that technical developments will bring about a notable reduction in their specific input of ferrous scrap.

Nevertheless those findings do not affect the lawfulness of the system. In fact the lack of supplies and the increase in the price of ferrous scrap required the High Authority at one and the same time to encourage undertakings to reduce their consumption of ferrous scrap and to prevent the price of Community scrap from being fixed at the level of that of imported scrap. It was thus necessary to provide the equalization scheme with a supplementary contribution to counter the incentive to increased consumption of ferrous scrap which might have resulted from the fall in the price brought about by equalization.

Although the High Authority wished at the same time to 'promote a policy of using natural resources rationally and of avoiding their unconsidered exhaustion', an objective laid down in Article 3 (d) of the Treaty, it also had to take into account the conditions appropriate to various categories of consumers and thus modify the

application of the supplementary contribution imposed on the latter in accordance with the variations in their consumption of ferrous scrap. This modification entailed the gradual elimination of the effects of equalization, or even in certain cases their abolition.
The contested scheme was thus intended above all to ensure a regular supply to the market and to promote a policy of using resources rationally. Nevertheless there are no grounds for asserting that, by according temporary priority to certain of the aims set out in Article 3, and consequently only partially reconciling all of the aims set out therein, the High Authority used the powers given it under the Treaty for purposes other than those for which they were conferred.
Since misuse of powers has not been established this complaint must be rejected.

2. *The complaint of misuse of powers in that the contested provisions are intended to effect an allocation*

The financial arrangement in the contested provisions does not constitute, with regard either to its form or to its effects, the system of allocation described in Article 59 and in Annex II. In certain economic circumstances and subject to certain procedures, those measures authorize the allocation in tonnages of raw material resources to the various categories of possible consumers. The procedures thus provided for consist exclusively in establishing consumption priorities and allocating resources. Such activities are directly and solely of a quantitative nature and are thereby distinct from all indirect action on production by means of prices without restriction of the volume of purchases. Article 58 itself, upon which the applicant relies, concerns the establishment of a system of production quotas or the regulation of the level of activity of undertakings by appropriate levies on tonnages exceeding a reference level set by a general decision. It is further necessary to note the difference between the measures prescribed in cases of manifest crisis (Article 58) where the dominant idea concerns direct levies on tonnages, and the measures prescribed in cases of serious shortage (Article 59), where the concept of direct allocation of available resources predominates.
Accordingly the financial arrangement contained in the contested provisions does not constitute a system of allocation which may be treated as equivalent in its essential characteristics to the arrangement under Article 59 and Annex II.
The establishment of the supplementary contribution and the refusal of a reference consumption for plant and manufacturing processes put into operation after 31 January 1958 do not have such compelling force that they amount in practice to a system of allocation. They rather constitute means of intervention inherent in the financial arrangement itself which necessarily, by its very nature; affects the field of competition and production. None of the arguments put forward constitutes sufficient proof in law that in this respect the system may be treated as equivalent to the allocation for wich provision is made in Article 59 and Annex II.
In the contested measures the High Authority was concerned to deal with a situation marked by extreme scarcity of ferrous scrap; in applying for this purpose

the powers conferred upon it under Article 53 (b) of the Treaty it was acting in accordance with the provisions of Article 59 which provide that recourse shall only be had to the special procedure of quantitative allocation, even if a case of serious shortage has been duly found, if the means of action provided for in Article 57, amongst which the financial arrangements referred to in Article 53 must be classified, do not permit sufficiently effective action.

Furthermore, whilst the contested provisions are intended progressively to increase the cost of ferrous scrap in proportion to the quantities consumed and to graduate that cost so that it varies in terms of the type of plant and manufacturing processes using scrap, the applicant has failed to establish that the financial burden which this entails for the relevant undertakings is determined in such a way that the arrangement complained of must be considered as equivalent to a direct and specific arrangement for quantitative allocation or for regulating the level of their activity.

Furthermore, although the system set up does not constitute a system of allocation, even on the view that such a system might display certain characteristics of indirect allocation it would be necessary to prove that the objective of the contested decisions was to attain this allocation by means of Article 53 (b), through the expedient of a financial arrangement and contrary to the stated objective of effecting economies in ferrous scrap and ensuring a regular supply of scrap to the market, or else, to prove that the High Authority had been motivated by a wish to evade Article 59 or that, through a serious misconception it had failed to recognize that the contested arrangement amounted to an arrangement under Article 59. Since this has not been sufficiently proved in law misuse of powers has not been established.

3. *The complaint of misuse of powers in that the objective of the contested provisions was to prohibit certain investments*

Article 54 of the Treaty confers upon the High Authority certain powers in coordinating investment programmes and in providing financial assistance in carrying out these programmes. Those powers must be exercised within the framework of the general objectives laid down in Article 46. Within such limits the powers are applied by the publication of programmes of general guidance in accordance with the common interest and by formulating individual opinions on the plans submitted to it by the undertakings.

The abovementioned provisions in no way impede the adoption of measures in accordance with the provisions of Articles 3, 5, 53 (b), 57 and 59 of the Treaty, taken together, the application of which may influence investments planned by undertakings. In particular the rules concerning prices laid down in Article 61 of the Treaty and, above all, the financial arrangements referred to in Article 53 (b), which the High Authority is entitled to use as an indirect means of action on production, entail by their nature results capable of affecting the plans of producers, and in particular their investment plans. It is consequently impossible to complain

that the contested provisions, which are in accordance with the provisions of Articles 3 and 53 (b) read together, are vitiated by misuse of powers with regard to Article 54. The applicant has completely failed to establish that the High Authority's sole, or at any rate principal, purpose in having recourse to the contested provisions was to evade the specific procedures prescribed in the said article. Consequently the complaint of misuse of powers with regard to Article 54 must be dismissed.

Costs

Under Article 60 of the Rules of Procedure of the Court the unsuccessful party shall be ordered to bear the costs. In the present case the applicant has been unsuccessful with regard to the substance of the case and the defendant has been unsuccessful as regards admissibility. In accordance with the second paragraph of the said article the applicant must thus be ordered to bear four-fifths of the costs of the proceedings and the defendant to bear one fifth.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 2, 3, 4, 5, 33, 46, 47, 48, 53, 54, 57, 58, 59, 65 and 80 of the Treaty and Annex II thereto;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice and the rules of the Court on costs,

THE COURT

hereby:

Declares that the application is admissible but unfounded and consequently dismisses the application for the annulment of the provisions contained in Articles 3 (1) (b), 4 (3), 5, 6, 7, 8 and 9 of Decision No 2/57 of the High Authority dated 26 January 1957;

Orders the applicant to bear four-fifths of the costs of the proceedings and the defendant to bear one fifth thereof.

Pilotti van Kleffens Delvaux

Serrarens Riese Rueff Hammes

Delivered in open court in Luxembourg on 26 June 1958.

M. Pilotti
President

L. Delvaux
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL LAGRANGE

(see p. 288)