7. Financial arrangements — Indirect means of action
(Cf. paragraph 3, summary in Case 8/57 of 21 June 1958)

8. 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)

9. Financial arrangements — System of allocation — Direct action on production
(Cf. paragraph 6, summary in Case 8/57 of 21 June 1958)

10. Influence on investments — Financial arrangements — Indirect action regarding investments
(Cf. paragraph 7, summary in Case 8/57 of 21 June 1958)

11. Financial charge imposed upon undertakings — Financial arrangement — Such arrangements not to be restrictive
(Cf. paragraph 8, summary in Case 12/57 of 26 June 1958)

In Case 13/57

1. WIRTSCHAFTSVEREINIGUNG EISEN- UND STAHLINDUSTRIE, a trade association governed by German law, having its head office in Düsseldorf, represented by its President, Hans-Günther Sohl;

2. GUSSTAHLWERK CARL BÖNNHOFF, a partnership with limited liability governed by German law with its head office in Wetter (Ruhr), represented by Waldemar Bönnhoff and Horst Pegau;

3. GUSSTAHLWERK WITTEN, a limited company governed by German law, having its registered office in Witten, represented by Rudolf Kögl, Chairman, and Adolf Richter, Director;

4. RUHRSTAHL, a limited company governed by German law, having its registered office in Hattingen and its administrative offices in Witten, represented by its Chairman, Kurt Schmitz, and a member of its Board of Management, Rudolf Spolders;

5. EISENWERK ANNAHÜTTE ALFRED ZELLER, Hammerau, Upper Bavaria, represented by Mr Kurt Zeller, assisted by Heinrich Lietzmann of the Essen Bar, with an address for service in Luxembourg at the offices of André Robert, 31 boulevard Joseph–II,

applicants,

V

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Frans Van Houten, acting as Agent, assisted by Adolf Schüle, Professor at the University of Tübingen, with an address for service in Luxembourg at its office at 2 Place de Metz,

defendant,

Application for the annulment of Articles 3(1) (b), 4, 5, 6, 7, 8, 9, 11 (1) (f) and (g), 16 (1) and 17 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 all other provisions in so far as they relate to the supplementary contributions imposed upon the excess consumption of ferrous scrap,

THE COURT

composed of: M. Pilotti, President, A. van Kleffens and L. Delvaux, Presidents of Chambers, P. J. S. Serrarens, O. Riese, J. Rueff and 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 Decisions No 26/55 and No 3/56, the same arrangement provides for the equalization of the prices of imported ferrrous 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 processess, to reduce or even completely to eliminate their contributions at the supplementary rate.

The *applicants* state that all the major steel-producing countries must import ferrrous scrap and that this situation will continue in the future. There is no threat of a real shortage of ferrous scrap. Furthermore the current situation is satisfactory. Through the development of the market, dispite a temporary and unusual upturn, the undertakings were able to obtain all their requirements of ferrous scrap under the former

system and even to increase their stocks so that the uneven trends on the market have now altered to provide a continuous increase. There is no reason to intervene in order to ensure regular supplies of ferrous scrap, as is provided in Decision No 2/57. Even if it were conceded, which it is not, that economies in ferrrous scrap were necessary, the methods adopted by the defendant are not suitable for affecting them: they are technically impossible, uneconomic and unfair. Technical and local conditions militate against the reduction in consumption of ferrous scrap except on unacceptable conditions; the relevant scheme cannot operate. It is unfair; it favours one group of undertakings at the expense of another. The system of references crystallizes a state of affairs already in the past; the scheme does not permit adjustment to future market trends; it promotes an uneconomical use of ferrous scrap. It is unfair to provide benefits for existing plant at the expense of new plant. There is no place for such protection in a free market economy; it is not justified by the Treaty. This scheme is incomprehensible in economic terms; the defendant is failing to observe its general objectives; to meet steel requirements in 1965 and above all in 1975 it is necessary considerably to expand productive capacity. The defendant's measures render such future planning futile: the defendant contradicts its own objectives. From this point of view it is clear that the contested decision constitutes an allocation and the influencing of investments and production.
The applicants then summarized their individual positions.

(1) Membership of the Wirtschaftsvereinigung Eisen- und Stahlindustrie is open to all iron and steel undertakings in the Federal Republic. Its objective is to defend the collective interests of its members.

(2) The Gußstahlwerk Carl Bönnhoff undertaking is a steelworks which does not produce its own pig-iron. Since integrated works retain their pig-iron as a substitute for scrap the applicant must of necessity increase its input of scrap. Furthermore it has plans to start operating an electric furnace in 1958: without a reference consumption the supplementary rate will be imposed in full and the increased consumption will not be profitable because of the excessive cost price. In fact, taking the supplementary rate at US $10 and, since a charge of 1 033 kg of ferrous scrap is needed to produce a metric ton of pig-iron, the supplementary charge amount to DM 43.40 per metric ton of pig-iron produced.

(3) Gußstahlwerk Witten is not an integrated undertaking and manufactures special steel in Martin furnaces and electric furnaces. Accordingly it is entirely dependent on the market for its supplies of pig-iron and scrap. The scarcity of scrap on the market has also led it to increase its input of ferrous scrap. Furthermore there are urgent technical reasons for not reducing the specific input reference of the electric furnaces.

(4) The Ruhrstahl undertaking is in the process of installing an electric furnace with a capacity of 80 metric tons which can only begin operations after 31 January 1958 and will therefore have no reference consumption. Because of the supplementary rates and the inclusion of increases in stocks in the consumption subject to tax, each metric ton produced in the new furnace between the date when it is put into operation and the date when the decision expires will be subject to a supplementary contribution of approximately US $13.85.

(5) The undertaking Eisenwerk Annahütte Alfred Zeller, a steelworks which does not produce its own pig-iron, employs two Martin furnaces which must be used at full capacity in order to feed two recently-installed sets of rollers. Because the steelworks has an insignificant reference consumption it is subject to a very high supplementary rate. The taxable consumption of ferrous scrap is 842 kg per metric ton produced. Taking the supplementary rate at US $10 the additional charge amount to DM 35.40, that is, 9.8% of the selling price. Taking as a notional basis for the levy US $10 per metric ton of ferrous scrap, the supplementary rate at the time when a new electric furnace is put into operation after 31 January 1958 amounts to DM 48 per metric ton of laminated steel, that is, 6% of the cost

price of DM 800. So penalized, the product cannot compete with producers who are not subject to this charge.

The *defendant* sets out the various measures which it has adopted in the course of the last five years in order to remedy the inherent lack of ferrous scrap. In Decision No 2/57 the High Authority, observing the provisions of Articles 5, 57 and 59 of the Treaty, employed indirect means, avoiding allocation and promoting amongst undertakings behaviour which would ultimately limit the consumption of scrap, whilst allowing the undertakings to retain a certain freedom of action. Undertakings which, in the present state of the market in ferrous scrap, increase their consumption increase the pressure on the market and must be made to pay, in the common interest and by means of the supplementary rate, a higher price based on the increase in their consumption. The High Authority could not make exceptions to this system. It was impossible to take into consideration the large number of individual interests. Such exceptions would have reduced the implementation of the decision to a cipher. With regard to producers of special steel, who experience the greatest difficulty in reducing their consumption of ferrous scrap, the High Authority took into consideration the fact that the selling prices of their products are distinctly higher than those of ordinary steel and that the supplementary contribution is relatively lighter for them. In short, the High Authority attempts to counter all increase in the pressure caused by undertakings on the supply of ferrous scrap by collecting a contribution based on the increase in consumption. This brings about an increase in prices. This means is fair and effective; it is in accordance with the task set out in Article 3: the endeavour to obtain, in the common interest, an orderly supply of ferrous scrap to the Common Market.

Non-integrated steelworks can conclude long-term contracts for the supply of pig-iron. They can even effect economies in ferrous scrap through processes already in operation in Salzgitter.

With regard to the reduction of the specific input reference in ferrous scrap in electrometallurgy, it is also possible to effect economies in ferrous scrap through the process used by the Deutsche Edelstahlwerke. The defendant denies that if a new electric furnace is put into operation after 31 January 1958 this entails a supplementary charge amounting to 6% of the selling price of the steel produced. The applicants adopt as their basis an increased levy (US $10 per metric ton), whilst the basic rate of the contribution can be estimated at US $6 throughout 1958. They then disregard the consumption of scrap from alloy steel, which is exempt from the contribution, and the fact that it is possible to reduce the input of scrap.

The High Authority also disputes the figures put forward by the second applicant. It is necessary to take into account:

that the supplementary rate only amounts to US $6;

that approximately one-quarter of the applicant's consumption is alloy steel scrap which thus reduces the contribution;

that an electric furnace is already in operation in the undertaking which entitles the new furnace to the reference rate of the existing furnace (first subparagraph of Article 6 (2));

that the extremely high input of ferrous scrap (1 033 kg) could be reduced (Article 9 of the decision).

This also applies to the figures submitted by the fifth applicant with regard to the effect of the supplementary contribution on the price per metric ton of ingots of Martin steel. With a supplementary contribution of US $6 (DM 25.80) the increase in the charge would amount to 6% in relation to the present price of DM 363 per metric ton of ingots. Further, it is possible to obtain an appreciable reduction in the supplementary charge by increasing the input of pig-iron so that the increase in the charge does not exceed 4%.

2. Conclusions of the parties

The *applicants* claim that the Court should: annul Articles 3 (1) (b), 4, 5, 6, 7, 8, 9, 11 (1) (f) and (g), 16 (1) and 17 of Decision No 2/57 of the High Authority of 26 January 1957 together with all other provisions in so far as they relate to the supplementary contribu-

tion imposed upon excess-consumption; order the High Authority to bear the costs.
The *defendant* contends that the Court of Justice should: dismiss the application submitted on 12 March 1957 by the applicants in that part thereof is inadmissible and the remainder is unfounded; order the applicants to bear the costs.

3. Submissions and arguments of the parties

A — *Admissibility*

1. *Whether the contested decision constitutes a series of decisions which are individual in character within the meaning of the second paragraph of Article 33 of the Treaty and which concern each of the applicants in particular*

The *defendant* states that a decision as an entity cannot be broken down in terms of the various ways in which it is implemented to maintain that it is individual or general. The Court has delivered a judgment to this effect in Case 8/55 (Rec. 1955–1956, p. 224). It may not be inferred that the decision is individual in character because, as it is alleged, Article 8 is in the nature of a penalty. Such an inference would disregard the meaning and the objective of the supplementary rate. The collection procedure laid down in Article 12 of the decision is in accordance with current practice in all public charges, and with the general levies of the High Authority (Article 50 of the Treaty). Decision No 2/57 establishes a general legislative principle: it imposes abstract conditions and sets out the legal consequences thereof. The decision is general in character and it follows that the applicants' complaints are inadmissible in so far as they are based on an alleged infringement of the Treaty.
The *applicants* reply that proof of the individual character of the contested provisions is provided by three points:

(a) that each of the various provisions of the decision affects a clearly-specified group of undertakings, which cannot be increased, for example, the undertakings referred to by Article 6 (2) and (3) which put new plant, within the meaning of the said Article 6, into operation between 1 February 1957 and 31 January 1958;

(b) that the supplementary rate is in the nature of a penalty;

(c) that Article 13 of the decision requires undertakings which are members of the Office commun des consommateurs de ferraille (the Joint Bureau of Ferrous Scrap Consumers, hereinafter referred to as 'the OCCF') and of the Caisse de péréquation des ferrailles importées (the Imported Ferrous Scrap Equalization Fund, hereinafter referred to as 'the CPFI') to amend the statutes of those institutions.

In each of these three cases the group of persons concerned is clearly specified. Consequently Decision No 2/57 must be considered as a series of individual decisions thereby permitting the undertakings to make submissions concerning infringement of the Treaty and not only concerning misuse of powers.

2. *Whether claims based upon different and quite distinct interests may be submitted in the same application*

The *defendant* states that, although the joint application concerns the same subject-matter, different grounds are relied upon by each applicant to show how it has been harmed by the contested decision. The various difficulties upon which each one relies prove that the undertakings cannot have been harmed by all the provisions which form the subject-matter of a joint application. The High Authority relies upon the Court to settle whether this accumulation of individual applications is admissible.
The *applicants* reply that the High Authority is trying to introduce into Community law a prohibition on joint applications. In French law such applications are prohibited on tax grounds, since each application is subject to stamp duty. This rule is unknown to German procedure. Furthermore, the joinder of a number of applications cannot bring about their dismissal, only their dis-

joinder. The objection that each applicant relies upon different grounds is irrelevant since, in an application on the ground of misuse of powers which challenges the validity of the motives for an administrative measure, only the facts and arguments are relevant, not the person of the applicant.

3. *Whether an application by an association of undertakings is admissible if the individual interests of the undertakings which are members of the association differ*

The *defendant* states that the application submitted by an association must be based upon a misuse of powers affecting the collective interest of the undertakings which it represents. Of the undertakings, those which are threatened by the supplementary rate consider that they are discriminated against in relation to the other undertakings which are members of the associations. This conflict of interests by definition excludes the existence of a joint interest.
The *applicants* reply that the High Authority is endeavouring to limit the right of application of associations by maintaining that this right does not exist where there are differences in the interests within the association. There is no basis for this limitation either in the case-law of the Court of Justice or in legal writing. Even if the existence of a joint interest were to be required, the application of the first applicant would be admissible because the association and its members have a joint interest that Article 53 of the Treaty should not be interpreted as a provision permitting, without checks, intervention by the authorities, which would render the guarantees which the Treaty, in particular Articles 54, 58 and 59, furnishes to all undertakings illusory.

4. *Whether the submissions put forward by the applicants constitute complaints of misuse of powers*

The *defendant* states that the objective of a general decision can only be mistaken if, viewed as a whole, that decision pursues an objective which is not in accordance with the provision of the Treaty upon which it is based. The financial arrangement made in accordance with Article 53 is intended principally to ensure orderly supplies of ferrous scrap at reasonable prices. In order to attain this objective Article 1 of the decision entrusts two duties to the CPFI:

to equalize imported ferrous scrap in so far as it is dearer than Community scrap;
to encourage economies in ferrous scrap.

The applicants do not seek the annulment of the abovementioned Article 1. Thus they do not in any way challenge the lawfulness of the task entrusted to the CPFI. Since the applicants have failed to contest the basic objectives of Decision No 2/57 their complaints regarding misuse of powers are invalid. In view of the position of ferrous scrap when the decision was adopted, orderly supplies of scrap to the Common Market, the objective prescribed by Article 3 (a) of the Treaty, could only have been attained by requiring undertakings to choose between a quantitative restriction (a reduction in consumption of ferrous scrap) or a financial charge (an increase in contributions to the CPFI).
The High Authority accordingly maintains that the applicants' complaints provide no basis for concluding that it pursued, by means of the contested provisions in Decision No 2/57, an objective other than that which it was permitted to pursue by means of the financial arrangement in Article 53.
The *applicants* reply that misuse of powers obtains since the real objectives of the contested provisions, as is clear from a purely objective analysis, are contrary to the objectives prescribed for the High Authority by Article 53. In fact the contested decisions have really three objectives:

the allocation of ferrous scrap through the expedient of a system of priorities on the basis of references and double prices;
the influencing of investments through the refusal of reference consumptions in the cases provided for in Article 6 (3) of the decision and by the institution of a graduated rate;
the influencing of production by fixing a reference consumption which renders the production of certain kinds of steel unprofitable.

On the other hand, the decision disregarded the essentail objectives which are prescribed for it in Articles 2, 3, 4 and 5 of the Treaty.
The undertakings cannot choose between a quantitative limitation of the consumption of ferrous scrap and a special contribution to the CPFI. Their actions are circumscribed by economic necessities and they have thus no freedom of choice.
It is pointless for the defendant to represent the allocation and the influencing of investments and production merely as a necessary and indirect effect of measures intended to ensure orderly supplies of ferrous scrap. The High Authority foresaw the inevitable consequences of the decision and the objective which it pursued accordingly also embraces the inevitable consequences which must be regarded as amounting to a deliberate intention. The only important point is whether the consequences come within the framework of an objective which is itself lawful. If the defendant were not to be held responsible for the fact that the normal consequences of a decision are included within the aim pursued, review of the objectives of the High Authority, as laid down in the Treaty, would amount to a mere cipher and the persons concerned would be deprived of the protection which the Treaty affords them against misuse of powers.

B — *Substance*

First complaint: Misuse of powers with regard to Articles 57 and 59 and Annex II to the Treaty.

The *applicants* state that the system of priorities and of double prices constitutes a scheme of allocations. No allocation may be effected by a procedure other than that described in Article 59 under the guarantees laid down in Annex II even in the context of the indirect means of action referred to in Article 57.
The *defendant* replies that, in order to establish a misuse of procedure, the applicants must allege and prove that the High Authority intended to bring about, through the application of Article 53 (b), the same effects and results in the sphere of allocation as the effects and results for which provision is made in this sphere by the various special provisions in the Treaty. Nevertheless, the applicants consider that the contested provisions are not so radical as the direct measures of allocation described in Article 59 and Annex II. The applicants themselves maintain that the contested decisions merely influence the undertakings' purchases of scrap, which constitutes the essential nature of indirect action. The fact that the applicants describe such effects as allocation does not permit them to dispense either with proving the objective existence of an actual allocation or with explaining the reasons why the High Authority wished to effect an allocation. The complaint is thus unfounded.

Second complaint: Misuse of powers with regard to Article 54 and 57 of the Treaty.

The *applicants* state that influencing investments, far from constituting the inevitable consequence of a measure intended to ensure orderly supplies of ferrous scrap, was clearly the principal objective of the measures particularly contested. Article 54, read together with the provisions of Article 46, constitutes a *lex specialis* with regard to investments and no action may be taken in this sphere by a procedure other than that which is prescribed.
The *defendant* replies that the applicants have completely disregarded the relation between the provisions of economic law in Title III and the general objectives laid down by Articles 2 and 3 of the Treaty. It is correct that the objectives of Article 3 can only be pursued by means of the powers conferred upon the High Authority. But it is incorrect to infer from this that Article 54 is the only rule which permits the High Authority to adopt measures which affect the operations of undertakings with regard to investments. Article 53 permits the High Authority, in pursuing one or more of the objectives in Article 3, to adopt measures having such affects.
It may not be maintained that the effects of a financial arrangement on investments are unlawful because Article 53 does not expressly mention investments. The exercise of many other special powers described by

the Treaty, especially in Articles 55 (2) and 61, of necessity affects investments although those articles likewise do not mention this. The measures which Article 53 does not govern are those for which express provision is made in Article 54: the contested decisions did not adopt any of those measures, either as to form or as to substance.
It is not prohibited to affect investments through indirect measures. If a financial arrangement provided for in Article 53 is in specific circumstances the appropriate means for attaining specific objectives laid down in Article 3 there is no wrongful act if the effects resulting therefrom also influence the investment plans of undertakings. The complaint of misuse of powers is thus unjustified.

Third complaint: Misuse of powers with regard to Articles 58 and 59 of the Treaty.

The *applicants* state that Article 58 is the only provision in the Treaty which prescribes a financial arrangement for the purpose of limiting production. This means that such an arrangement may not lawfully be made within the framework of Article 53. Likewise Article 59 permits production to be affected through allocation and to resort for this purpose to the procedure under Article 53 also constitutes misuse of powers with regard to Article 59.
The *defendant* replies that this complaint is based upon the same misconception which the applicants entertain regarding the nature of indirect measures and in particular regarding the meaning of Article 53 in relation to methods of direct action prescribed by the Treaty.
Articles 58 and 59 govern grounds for intervention in respect of diametrically-opposed market situations, the first case being a crisis on the market, the other being a case of serious shortage. The High Authority thus may not simultaneously pursue by means of the same measure the objectives of Article 58 and Article 59.
'Influence on production' obtains where the authorities draw up production programmes (Article 59 (2), Article 66 (7)) or production quotas (Article 58). Such measures are legally enforceable and infringements will be punished. The contested provisions do not contain anything comparable. Although they influence certain undertakings consuming ferrous scrap with regard to their production plans this is a typical effect of an indirect measure.
The system established by the High Authority under Article 53, which provides an incentive to effect economies in the consumption of ferrous scrap, differs fundamentally from the equalization scheme under Article 58 (2), which taxes undertakings' surpluses when there is a crisis in sales.
In brief the High Authority disputes both that there was an influence on production and that it intended to exercise such influence when it adopted Decision No 2/57.

Fourth compaint: Misuse of powers with regard to Articles 3 and 53 (1) (b) of the Treaty.

The *applicants* state that Article 53, read in conjunction with Article 3 of the Treaty, only permits measures which do not restrict competition. Measures incompatible with competition are treated as special cases with regard to which a special procedure and submissions are necessary. Since the contested articles of a decision disregard the general principles of competition Article 53 has been diverted from its objective.
The *defendant* replies that a financial arrangement properly intended to attain the objectives in Article 3, and in particular to ensure orderly supplies of ferrous scrap to the Common Market, normally has indirect effects upon the conditions of the supply of raw materials, upon the conditions of production and upon the direction of investments. If this were not the case it would be impossible to make an arrangement under Article 53 to carry out the tasks laid down in Article 3. It is incomprehensible that the applicants should think that Article 53 read in conjunction with Article 3 only authorizes measures which do not restrict competition.

Fifth complaint: Misuse of powers with regard to Articles 2, 3, 4 and 5 of the Treaty.

The *applicants* state that the High Authority must pursue simultaneously and equally all the objectives in Article 3. If certain contradictions arise between those objectives a compromise may be necessary; nevertheless such a compromise must be 'reasonable' and must not involve a sacrifice, even a comparative sacrifice, of any of the legal objectives. If such a sacrifice was necessary, that is to say, if pursuit of one objective had been incompatible with pursuit of another the High Authority should then have refrained from using the powers in Article 53 and could only have had recourse to the special power which it possesses under other provisions of the Treaty. The High Authority has failed to effect a reasonable reconciliation of the objectives in Article 3, which is required of it under Article 53. Thus, in particular in Article 6 (3) of the decision, it consciously failed to promote the attainment of the objectives of Article 3 (d) and (g) (the expansion of production potential and the orderly expansion and modernization of production). In the present case there were no urgent circumstances requiring a compromise between the objectives of Article 3 and justifying such failure. On the contrary, the real aims pursued by the High Authority were contrary to the objectives of Article 3 (d) and (g) in that they excluded the installation of new plant with a large consumption of ferrous scrap and, through the supplementary charge on excess consumption, prevented production from increasing beyond a reference tonnage.

At the same time the real objectives of the contested measures are contrary to the objectives of Articles 3 (b), 4 (b) and 59 (4), as those measures place a group of undertakings at a general disadvantage in relation to others (Article 3 (1) (b) and 6 (3) of the decision). In fact there has been violation of the principle of equal access to the sources of production, discrimination between consumers and an unfair allocation of the means of production.

The *defendant* replies that the objective of Article 3 (a), ensuring an orderly supply to the Common Market, in this case takes a certain precedence over the objectives of subparagraphs (d) and (g). It is a condition for the expansion of production potential and the expansion and modernization of production that undertakings obtain regular supplies of raw materials. Nevertheless, although the High Authority from the outset gave priority to the attainment of the objective set out in subparagraph (a), at the same time it ensured the maintenance of conditions providing an incentive to the undertakings to expand and improve their production potential.

The allegation that refusal of a reference consumption prevented the installation of new plant with a large consumption of ferrous scrap may be justified in the case of certain undertakings but it does not hold good for undertakings consuming ferrous scrap as a whole. Disregard for the objectives of Article 3 can only be considered with regard to the interest of the market as a whole. This argument may hold good with regard to certain undertakings, which the High Authority disputes, but it would remain insufficient to establish misuse of powers.

It is impossible to uphold the argument that the objectives of Article 3 (d) and (g) can only be sacrificed within the framework of the exercise of the special powers provided in Articles 54, 58 and 59. The High Authority does not understand why in a period of crisis it is possible to suspend certain objectives which, moreover, must be accorded express priority when the conditions of the market do not yet amount to a real crisis but which nevertheless require indirect measures in order in the long term to avoid serious difficulties in undertakings' production conditions.

Concerning the complaint of misuse of powers with regard to Articles 3 (b), 4 (b), and 59 (4) the defendant observes that this constitutes a complaint of infringement of the Treaty. If the High Authority in one of its decisions has established an objective in equality of treatment between undertakings which is not justified by the law of a Treaty, this constitutes violation of the principle of equality propounded in Article 4 (b) and is thus an infringement of the Treaty. It must be held that the High Authority was in principle entitled to impose a surcharge on excess consumption of scrap if it is conceded that the financial arrangement made is intended to encourage undertakings to adopt certain measures. Furthermore, the

criteria laid down for finding the surplus consumption were fixed objectively; they were sufficient and justified in terms of the situation to be controlled and of the objective to be pursued.

Sixth complaint: Misuse of powers with regard to Article 65 of the Treaty.

The *applicants* state that it follows from the reference made in Article 53 (b) to Article 53 (a), and in Article 53 (a) to Article 65, that the High Authority was bound to observe the provisions of Article 65 (2) (b) under which the agreement authorized must not be 'more restrictive than is necessary for that purpose'. The refusal to grant a reference consumption for plant to which Article 6 (3) of the contested decision applies and the supplementary charge on excess consumption are more restrictive than is necessary for the equalization of imported ferrous scrap.
The *defendant* replies that this constitutes a complaint of infringement of the Treaty. Moreover it is unfounded. The provisions of Article 65 on cartels can only be observed with regard to financial arrangements stemming from private measures of undertakings. This arises first and foremost from the very nature of things and further from the fact that there is a reference in Article 53 (a) to Article 65, which is lacking in Article 53 (b).

Seventh complaint: The High Authority has infringed Articles 2, 3, 4, 5, 53, 54, 58, 59 and 65 of the Treaty together with Annex II thereto.

As has been stated above in connexion with the admissibility of the application the *applicants* maintain that the contested provisions are individual in character and that they are accordingly entitled to rely upon the complaint of infringement of the Treaty. The applicants refer to their statements relating to misuse of powers to show extent to which the High Authority has infringed the Treaty in fact and in law. Furthermore, they consider that the contested provisions violate the general principles of law because they are illogical, contradictory and consequently cannot be implemented in practice and are unacceptable to the persons concerned.
The *defendant* replies that Decision No 2/57 is general in character and that accordingly the complaints based upon infringement of the Treaty are inadmissible (cf. above: Admissibility).
With regard to the allegation that the contested provisions violate the general principles of law the High Authority replies that it discussed the interpretation of the decision with the Board of Directors of the OCCF. The fact that the High Authority did not concur in the OCCF's draft amendments in no way establishes that Decision No 2/57 is incomprehensible, contradictory and impracticable.

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 duly served. However, an additional statement was lodged by the applicants on 11 October 1957 after the expiry of the period prescribed for lodging the reply.
The fourth applicant, Ruhrstahl Hattingen, withdrew from the proceedings at the hearing in open court on 20 February 1958. By a letter dated 19 February 1958 which was submitted at the hearing, its agent explained that the electric furnace with a capacity of 80 metric tons which had been under construction was put into operation on 24 January 1958 and that the Board of Administration of the OCCF had decided on 18 March 1957 that the increased stocks of ferrous scrap were not to be considered as a supplementary consumption of bought scrap. Those two facts mean that the applicant does not suffer any more harm from Decision No 2/57 than other German undertakings operating a mixed works and accordingly it has no further interest in a specific application. This is a simple withdrawal. The concurrence of the defendant is scarcely necessary since the proceedings are for annulment (Rules of the Court, Article 81 (2)).

Law

A — Admissibility

According to the statutes of the first applicant (Wirtschaftsvereinigung Eisen- und Stahlindustrie) it is a private association governed by German law having as its object the furtherance and defence of the general interests of its members who are producers of iron and steel. It is common ground that the contested provisions of general Decision No 2/57 are capable of affecting certain, even though perhaps divergent, interests, entrusted to the applicant. The applicant thus has capacity to institute proceedings in accordance with the provisions of Articles 33, 48 and 80 of the Treaty.

According to the statutes of the second, third, fourth and fifth applicants they are private undertakings governed by German law; they have as their object the production of steel within the territories referred to in the first paragraph of Article 79 of the Treaty. Pursuant to the provisions of Articles 33 and 80 of the Treaty they accordingly have capacity to institute proceedings against decisions and recommendations of the High Authority before the Court of Justice.

Pursuant to the provisions of the second paragraph of Article 33 of the Treaty the undertakings referred to in Article 80 may institute proceedings for the annulment of general decisions of the High Authority which they consider to involve a misuse of powers affecting them.

The second, third, fourth and fifth applicants maintain that they are adversely affected by the contested provisions because they have great difficulty in effecting economies in ferrous scrap and consequently they must pay the supplementary charge if they increase their consumption of purchased scrap.

Decision No 2/57 refers to the undertakings listed in Article 80 of the Treaty as a whole in so far as they use ferrous scrap, both undertakings presently in existence and those which were established during the period when the decision was in force. It is a general decision; it establishes a legislative principle, imposes abstract conditions for its implementation and sets out the legal consequences entailed thereby. It is impossible to uphold the allegation of the second, third, fourth and fifth applicants that such a general decision also constitutes an individual decision or a group of individual decisions affecting them.

The first applicant formally alleges that on one or more occasions a misuse of powers affecting its members has been committed. The second, third, fourth and fifth applicants formally allege that on one or more occasions a misuse of powers affecting them has been committed and all the applicants produce a relevant statement of reasons leading them to believe that there has been a misuse of powers on one or more occasions. The purpose of the arguments upon which they rely is to obtain a declaration that, when the High Authority adopted the contested provisions, it exercised the powers conferred upon it by the Treaty for purposes other than those for which they ware conferred, 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.
Pursuant to the second paragraph of Article 33 of the Treaty undertakings or the associations referred to in Article 48 may only institute proceedings against general decisions which they consider to involve a misuse of powers affecting them. Accordingly in the present case the complaints of an infringement of the Treaty cannot be entertained.
Apart from the fact that certain of the applicants allege that the adopted decision affects them individually, they all contest this decision on the same points and rely on the same submissions: accordingly a joint application may properly be submitted.
The applicants' applications are admissible but only in so far as they rely upon the complaints of misuse of powers affecting either them or their members.

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. 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 produres at the diposal of the High Authority but are nevertheless 'indirect' within the meaning of Article 57 of the Treaty. In this respect they are 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. These 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 the texts 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. 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 Decison 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 the 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 submission of misuse of powers with regard to Article 53 (b) and Articles 2, 3, 4 and 5 of the Treaty, that is to say, that the objectives pursued by the High Authority by means of financial arrangements under Article 53 are contrary to the objectives defined by Articles 3 and 4 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 to 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 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 maintenance 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 volved. Furthermore the High Authority 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) 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 re-

quired, 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.

(d) 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 applicants complain 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 provisons 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.

(e) Furthermore, the objectives laid down in Article 3 of the Treaty must be appraised as a whole and pursued exclusively in the common interest. The concept of the common interest referred to in Article 3, far from being restricted to the sum of the individual interests of coal and steel 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. Consequently 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 distinctions 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 by their nature transitional and 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.

(f) 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 Authority 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. However, 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 promted 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 with regard to Articles 53 (b), 57, 58 and 59 and Annex II to the Treaty, namely that, since the defendant has effected the allocation of ferrous scrap in the guise of a financial arrangement whilst refraining from observing the provisions of Articles 58 and 59 under the guarantees fixed in Annex II, it has committed a misuse of powers*

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 Ar-

ticle 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 price 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 which 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. 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. This has not been sufficiently proved in law.

3. *The complaint of misuse of powers with regard to Articles 53 (b), 54 and 57 of the Treaty, namely that the High Authority cannot have recourse to financial arrangements under Articles 53, whilst disregarding the provisions of Article 54*

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 above mentioned 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 applicants have 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 of the Treaty must be dismissed.

4. *The complaint of misuse of powers with regard to Article 65 of the Treaty, namely that by refusing to grant a reference consumption for plant and manufacturing processes put into operation after 31 January 1958 and imposing a supplementary charge on excess consumption, the High Authority adopted measures which were more restrictive than was necessary for that purpose*

It has been previously established that the economic circumstances observed at the time of the intervention of the High Authority on the market in ferrous scrap justified the adoption of the contested measures concerning the financial burden of equalization and that, in particular, those circumstances might properly entail

the establishment of a graduated rate and the allocation of the financial charge in terms of tonnages consumed, of the periods of consumption and of the nature of the plant. Accordingly those measures are not more restrictive than is necessary for the purpose of the financial arrangement so that, even if Article 65 (2) (b) were applicable to them, the conditions which it requires would be fulfilled.
The complaint based on disregard for Article 65 is thus irrelevant.

5. *The complaint based on the infringement of Articles 2, 3, 4, 5, 53, 54, 58, 59 and 65 of the Treaty and Annex II thereto*

Since Decision No 2/57 is a general decision it may only be contested by submitting a complaint of misuse of powers.
The complaints based upon infringement of the Treaty must be dismissed.

The withdrawal of the applicant Ruhrstahl AG of Hattingen

The fourth applicant, Ruhrstahl AG of Hattingen, withdrew from the proceedings during the public hearing on 20 February 1958.
The present case concerns an application for annulment. Accordingly it is unnecessary to obtain the concurrence of the defendant.

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 partly unsuccessful as regards admissibility. Accordingly, pursuant to the second paragraph of the said article, the applicants must thus be ordered to bear nine-tenths of the costs of the proceedings and the defendant to bear one-tenth.
The fourth applicant, Ruhrstahl AG of Hattingen, which withdrew from the proceedings, must, together with the other undertakings, bear that part of the costs relating to its action. That part is fixed at one-half of the cost of one of the four other applicants.

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: consequently dismisses the application for the annulment for the provisions contained in Articles 3 (1) (b), 4, 5, 6, 7, 8, 9, 11 (1) (f) and (g), 16 (1) and 17 of Decision No 2/57 of the High Authority dated 26 January 1957;

Orders the applicants jointly and severally to bear nine-tenths of the costs of the proceedings and the defendant to bear one-tenth thereof;

Takes official note of the withdrawal of the applicant, Ruhrstahl AG of Hattingen, and orders it jointly and severally with the four other applicants to bear one-half of the costs borne by one of the latter.

Pilotti van Kleffens Delvaux

Serrarens Riese Rueff Hammes

Delivered in open court in Luxembourg on 21 June 1958.

M. Pilotti
President

L. Delvaux
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 18 MARCH 1958[1]

Contents

1 – Translated from the French.