JUDGMENT OF THE COURT
8 FEBRUARY 1966[1]

Acciaierie e Ferriere Pugliesi SpA v High Authority of the European Coal and Steel Community

Case 8/65

Summary

Basis of assessment — Estimated assessment — Statement of reasons

When an estimated assessment is made, which, by briefly setting forth the essential factor on which it is based, is sufficient in law, the administration is not bound to explain such assessment in detail or reproduce the accounting documents and technical analyses on which it is based.

When an undertaking supplies explanations which are not irrelevant, the High Authority, as defendant, may not restrict itself to a mere assertion that these explanations are not entirely conclusive and abstain from stating the reasons for its decision.

In Case 8/65

ACCIAIERIE E FERRIERE PUGLIESI SPA, a limited liability company, with its registered office at Giovinazzo, represented and assisted by Carlo Selvaggi, Advocate of the Rome Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Advocate, 6 rue Willy-Goergen,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by Italo Telchini, acting as Agent, assisted by Professor Rolando Quadri, Advocate of the Naples Bar, with an address for service in Luxembourg at its offices at 2 place de Metz,

defendant,

Application for the annulment of the decision of the High Authority of the European Coal and Steel Community of 13 November 1964, relating to the applicant's financial obligations under the scheme for the equalization of imported ferrous scrap and scrap treated as such,

1 — Language of the Case: Italian.

THE COURT

composed of: Ch. L. Hammes, President, L. Delvaux, President of Chamber, A. M. Donner (Rapporteur), R. Lecourt and R. Monaco, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The company Acciaierie e Ferriere Pugliesi, which has two steelworks, one at Bari and the other at Giovinazzo, contests the individual Decision of 13 November 1964, whereby the High Authority ordered it to pay 39 329 539 lire by way of contributions due under the imported ferrous scrap equalization scheme.

During the period when the compulsory scheme for the equalization of ferrous scrap was in operation, that is to say from April 1954 to November 1958, the applicant company declared purchases of ferrous scrap totalling 129 614 metric tons. After two checks made on the spot by the agents of the Société Fiduciaire Suisse (in April 1957 for the period from 1 April 1954 to 13 January 1957, and in April 1960 for the period from 1 February 1957 to 30 November 1958) the High Authority indicated, by letter of 29 March 1961, that the assessed total of purchases of scrap appeared higher than the declared amount of 25 372 metric tons.

The applicant supplied fresh documents and after a third check had been carried out on the spot, the High Authority on 19 December 1961 notified the applicant of a more favourable assessment fixing the difference between the quantity declared and the quantity as checked at 10 520 metric tons. In accordance with Article 6 of Decision No 7/63, a statement of account was sent to the applicant by registered letter of 8 April 1963, showing a balance of 39 329 539 lire due to the equalization scheme.

After the applicant company had raised objections, the High Authority adopted the Decision of 13 November 1964 the substance of which was identical with the letter of 8 April 1963.

In it, the corrections to the declarations of purchases of ferrous scrap were stated as follows:

'Whereas the undertaking has, by registered letter of 18 June 1963, raised objections with regard to the basis of assessment to contribution, claiming that the High Authority has wrongly included certain quantities of ferrous scrap, namely, 3 655 metric tons, in the tonnage liable to the contribution;

Whereas with regard to the 3 655 metric tons in dispute the following should be borne in mind:

By letter of 19 December 1961, the departments of the High Authority communicated to the undertaking a table summarizing the basic tonnages subject to contribution broken down into the different accounting periods;

Whereas the 10 520 metric tons of ferrous scrap shown in column (b) were noted in the accounts presented during the checks carried out at the undertaking's premises in April 1957, April 1960 and July 1961;

Whereas these checks confirmed that the undertaking had not correctly drawn up its

Periods	Declared tonnages (a)	Difference established (b)	Basic tonnage subject to equalization (c)
1/ 4/54—31/ 3/55	26 791	3 050	29 841
1/ 4/55—31/ 1/57	64 000	5 653	69 653
1/ 2/57—30/ 4/57	6 534	—	6 534
1/ 5/57—31/ 7/57	6 095	437	6 532
1/ 8/57—31/10/57	7 453	336	7 789
1/11/57—31/ 1/58	5 103	291	5 394
1/ 2/58—30/ 4/58	3 659	483	4 142
1/ 5/58—31/ 7/58	6 614	232	6 846
1/ 8/58—30/11/58	3 365	38	3 403
	129 614	10 520	140 134

declarations which consequently required to be corrected; and whereas the corrections made to the undertaking's declarations, with regard to the basic tonnages subject to equalization, entail the following:

Increases:

106 metric tons of ferrous scrap purchased and not declared owing to an error, as the undertaking itself admitted in the course of the check;

1 055 metric tons of ferrous scrap purchased which the undertaking states were intended for its integrated foundry (an activity not subject to the Treaty), without however supplying any definite proof of this;

9 200 metric tons of ferrous scrap, which the undertaking considered as return scrap without however showing that it had used these quantities for this purpose; on the other hand, that quantity must be considered as equivalent to an increase in the stocks of ferrous scrap, as is clear from the general statement of movements of ferrous scrap;

364 metric tons of ferrous scrap sold, originating from the integrated foundry's stocks of ferrous scrap (not subject to contribution) which the undertaking wrongly deducted;

1 347 metric tons of ferrous scrap transferred from the steelworks to the foundry, for which operation no evidence has as yet been supplied;

12 072 metric tons in all.

Decrease:

1 552 metric tons of ferrous scrap transferred from the steelworks to the foundry and not previously deducted —a transaction which has been proved.

Whereas these corrections show an increase in the basic tonnage subject to contribution namely 10 520 metric tons (12 072 metric tons minus 1 552 metric tons) of ferrous scrap which the undertaking failed to declare;

Whereas, by letter of 12 February 1962, a table summarizing the tonnages on which the assessment to contribution was based, after deduction of the exemption for steel castings was notified to the undertaking, broken down into the various accounting periods as follows:

Periods	Basic tonnages	Tonnage for the production steel for castings	Assessable tonnages
1/ 4/54—31/ 3/55	29 841	1 583	28 258
1/ 4/55—21/ 1/57	69 653	2 862	66 791
1/ 2/57—30/ 4/57	6 534	344	6 190
1/ 5/57—31/ 7/57	6 532	320	6 212
1/ 8/57—31/10/57	7 789	364	7 425
1/11/57—31/ 1/58	5 394	280	5 114
1/ 2/58—30/ 4/58	4 142	380	3 762
1/ 5/58—31/ 7/58	6 846	441	6 405
1/ 8/58—30/11/58	3 403	291	3 112
	140 134	6 865	133 269

Whereas the 3 655 metric tons of ferrous scrap in dispute were calculated by the undertaking by subtracting from the 133 269 metric tons (the tonnage on which the assessment was based, after deduction of the exemption for steel castings) the 129 614 metric tons declared without taking account of the fact that as a result of the abovementioned checks the basic

tonnage subject to contribution had increased to 140 134 metric tons;
Whereas the undertaking has not supplied any information to show the inaccuracy of the figures (10 520 metric tons) stated at the time of the said checks and consequently the basic tonnage subject to contribution fixed at 140 134 metric tons must be upheld;
Whereas the tonnage on which the assessment to contribution was based and which was fixed, after deducting the exemption for steel castings, at 133 269 metric tons, was taken as the basis for the statement of account of 31 May 1963 communicated to the undertaking Acciaierie e Ferriere Pugliesi, SpA, Bari, on 8 April 1963; and whereas the undertaking did not dispute the material accuracy of the statement;'.

The present application, lodged on 29 January 1965, is against this decision, which reached the applicant company on 20 December 1964.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'After declaring the application formally admissible and dismissing any further or contrary conclusions and any objections:

1. on the grounds relied on, annul the contested decision of the High Authority of the ECSC of 13 November 1964;
2. consequently declare that the High Authority must take the necessary steps to comply with the Judgment, including the amendment of Decision No 7/63, in accordance with the instructions laid down in the judgment of the Court;
3. order the High Authority to pay the costs;

and the applicant reserves all rights including, if necessary, the right to put forward fresh submissions'.

The *defendant* contends that the Court should:

'notwithstanding all other conclusions and objections to the contrary, dismiss as unfounded the application made on 25 January 1965 by the company Acciaierie e Ferriere Pugliesi against the individual Decision of 13 November 1964, and order the applicant to pay the costs of the proceedings'.

III — Submissions and arguments of the parties

In its application, the *applicant* contests the decision in dispute, putting forward the following submissions:

1. Infringement of the rules of evidence; infringement of an essential procedural requirement on the ground of failure to give a statement of reasons for the decision (infringement of Articles 5 and 15 of the Treaty establishing the ECSC);
2. Failure to observe that the Community provisions concerning equalization do not apply to the quantities of ferrous scrap used in the foundry (infringement of Decision No 2/57);
3. Alternatively, failure to observe that the Community rules concerning equalization do not apply to quantities of ferrous scrap re-used or for forging (infringement of Decision No 2/57).

The applicant points out that its undertaking comprises, besides the steelworks to which the equalization scheme applied, other activities to which it did not apply, in particular a foundry, and pleads in its first submission that the High Authority endeavours to justify its estimate of the assessable scrap by the sole fact of the undertaking's failure to prove that it had used the ferrous scrap for purposes other than the requirements of its steelworks.
According to the applicant, the various recitals of the disputed decision—especially that which states that 'the undertaking has not supplied any information to show the inaccuracy of the figures (10 520 metric tons) stated at the time of the said checks and consequently the basic tonnage subject to contribution fixed at 140 134 metric tons must be upheld' constitute a reversal of the burden of proof. Since the applicant had supplied all the necessary documents, it was for the High Authority to prove that the quantities of purchased scrap used in the steelworks were higher than those declared.
In its second submission the applicant seeks to prove that the quantities of ferrous

scrap used in the foundry were higher than those acknowledged by the defendant. It has produced extracts from its books of invoices in order to establish the total of the iron products sold and properly invoiced during the period in question. A quantity of 3 444 metric tons was concerned, increased by 200 metric tons of iron products for internal use. By increasing this production by 10% to take account of technical losses, it is possible to fix the minimum quantity of ferrous scrap used in the foundry. The quantities thus corrected are still higher than the 3 954 metric tons of ferrous scrap which the applicant declared as used in its foundries. Consequently the defendant wrongly included only 1 552 metric tons, subtracting 1 055 metric tons (regarded in the decision as scrap purchased) and 1 347 metric tons (regarded in the decision as used in the steelworks in the absence of any definite proof to the contrary).

In its third submission the applicant seeks to prove that the quantities of ferrous scrap re-used or for forging and therefore not liable to contribution, were higher than those acknowledged by the defendant. The applicant states that it declared a total of 20 227 metric tons of ferrous scrap intended for re-sale or for use for forgings. The defendant only agreed a quantity of 11 027 metric tons. It is apparent from the invoices produced by the applicant that the forging sold and the return scrap sold during the period in question amounted to a total of 14 652 metric tons. On the basis of this figure and taking account, on the one hand, of the losses caused by deoxidization and those occurring during processing and, on the other hand, of internal consumption, the quantity of 20 227 metric tons declared by its appears justified.

In its observations on the 'general statement of movements of ferrous scrap' produced by the defendant at the request of the Court, the applicant relies on a report by Campsider which assesses the average percentage of retrievals effected by the Italian iron and steel industries at 28%. The retrievals declared by the applicant constitute only 9.1% of its total production. It follows that the increase in stocks was not caused by purchases of ferrous scrap but is to be explained by the retrieval of ferrous scrap returned to stock without being checked or declared.

The *defendant* replies that no documentary evidence on the foundry pig-iron had ever been produced so that it was impossible to check the allocations of ferrous scrap purchased and consumed among the sections of the undertaking liable to the levy and those not so liable. According to the general statement of movements of ferrous scrap drawn up in part on the basis of declarations by the applicant itself and on documents which it submitted in connexion with the input of ferrous scrap for each melt, the figures did not agree. From this it must be concluded that the undertaking used in its steelworks material which it did not declare. The deductions which the applicant claims to be able to make from the calculation of quantities of ferrous scrap sold or re-used are valueless, in view of the fact that the question does not concern the operation of works which might have been able to obtain ferrous scrap by any means but concerns the surplus stocks in the steelworks.

The defendant denies that it is reversing the burden of proof, arguing that it is for the applicant to give reasons for having in stock a larger quantity than that appearing from its declarations, and to explain why the general statement of movements of ferrous scrap contradicted its declarations. The defendant's duty is to give technically plausible reasons for its assessments and not to supply a 'direct' proof of the consumption of ferrous scrap attributed to the undertaking.

In its reply, the *applicant* alleges that the statement of defence constitutes an alteration to the subject matter and the facts of the dispute and that in the disputed decision the only question was that there was no evidence of use in the foundry or re-use, and in absence of that evidence the defendant assumed that the ferrous scrap was used by the steelworks or to increase stocks. However the argument in the statement of defence differs from and contradicts the decision, since the defendant claims that the evidence for re-use or use in the foundry was of no avail because the basic factor was the increase in stocks, so

that the major part of the work of the foundry and of the forge in re-use or in later re-sale was carried out with ferrous scrap obtained by another method.
According to the applicant, the application would have been differently directed if the defendant had adopted that notion as the basis for the decision.

IV — Procedure

The procedure followed the normal course. By letter of 4 October 1965, the Court requested the defendant to produce the documents to which it had referred in its pleadings and especially the 'general statement of movements of ferrous scrap'. These documents were registered at the Registry on 15 October 1965. By letter of 11 November 1965, the applicant submitted its observations on the documents lodged by the defendant. The parties were heard at the hearing of 18 November 1965. At the hearing of 9 December 1965 the Advocate-General expressed his opinion that the present application was admissible and well founded.

Grounds of judgment

A — Admissibility

The admissibility of the application made against the High Authority's decision of 13 November 1964, fixing the applicant's financial obligations with regard to the equalization scheme, is not disputed and no grounds exist for the Court to raise the matter of its own motion. The application is therefore admissible.

B — Substance of the case

The first submission

The applicant maintains that the contested decision infringes an essential procedural requirement consisting in a failure to state adequately the reasons for the decision. According to the applicant the decision only justifies the corrections made to the declarations supplied by the applicant to fix the assessment of its contributions by the mere assertion that the evidence for the use of the ferrous scrap in dispute elsewhere than in its steelworks was not supplied, although that evidence would have been capable of exempting the ferrous scrap from the equalization charges. In so reversing the burden of proof, the defendant failed to give reasons sufficient in law for the corrections to the declarations, which were properly made by the applicant, of the quantities of ferrous scrap subject to contribution.

In the sixth and seventh recitals in the preamble to the contested decision the differences found, when the checks were carried out, between the tonnages declared and the tonnages in fact subject to equalization contributions, are declared to amount to 10 520 metric tons. In the eighth recital the said decision shows the corrections to be made as follows:

'1 055 metric tons of ferrous scrap purchased which the undertaking states were

intended for its integrated foundry (an activity not subject to the Treaty), without however supplying any definite proof of this;

9 200 metric tons of ferrous scrap, which the undertaking considered as return scrap without however showing that it had used these quantities for this purpose; on the other hand that quantity must be considered as equivalent to an increase in the stocks of ferrous scrap, as is clear from the general statement of movements of ferrous scrap;

364 metric tons of ferrous scrap sold, originating from the integrated foundry's stocks of ferrous scrap (not subject to contribution) which the undertaking wrongly deducted;

1 347 metric tons of ferrous scrap transferred from the steelworks to the foundry, for which operation no evidence has as yet been supplied.'

It is agreed that for the period taken into account by the contested decision, the applicant undertaking used certain quantities of ferrous scrap in its steelworks and certain others in its integrated iron foundry and that the latter were not liable to charges under the equalization scheme. In view of these circumstances, the High Authority may, under certain conditions, require that the tonnages of ferrous scrap not subject to the equalization contributions should be fixed on the basis of reliable data. The absence of such data may justify recourse to an estimated assessment.

In indicating, in the recital quoted above, that the applicant undertaking had not correctly drawn up its declarations with regard to the tonnages exempt from contributions, the contested decision sets forth, albeit briefly, the essential factor on which it is based. When it states the reasons for its decision, the defendant is not bound to explain its assessment in detail or to reproduce the accounting documents and technical analyses on which its assessment is based.

The applicant disputes the material accuracy both of the reasons for the contested decision and of the amount of the corrections made to its declarations. This criticism does not relate to the submission of an infringement of an essential procedural requirement.

The reasons for the contested decision are sufficient in law, and the first submission is therefore unfounded.

The second submission

In the first place the applicant complains that the contested decision increased the basis of its assessment to contribution by 1 055 and 1 347 metric tons of ferrous scrap which the High Authority wrongly refused to recognize as having been used in the iron foundry. In support of its argument, the applicant has produced extracts from its books of invoices to establish that, during the period in dispute, its sales of iron products increased to quantities incompatible with a consumption of ferrous

scrap of less than 4 000 metric tons, so that the defendant improperly and without sufficient justification limited the consumption of ferrous scrap in the iron foundry to 1 552 metric tons.

The defendant has not given any specific reply to the arguments thus put forward and has limited itself to relying on the absence of complete industrial accounts for the iron foundry. It has also failed to give any precise reasons for the figures adopted. The factors put forward by the applicant have thus not been sufficiently refuted. It is thus apparent that the contested decision contains no basis for applying the rules concerning the High Authority's estimated assessment of contributions to charges under the equalization scheme.

In the second place the applicant complains that the contested decision increased its basis of assessment to contribution by 9200 metric tons of ferrous scrap, which the High Authority considered as corresponding to an increase in stocks subject to equalization charges. It is said that this is in fact return scrap constituting own resources which are not assessable by virtue of Article 4 (2) of Decision No 2/57.

Whilst the defendant persists in its complaints with regard to the incomplete stat of the undertaking's industrial book-keeping, it has not concerned itself with the origin of the ferrous scrap to which the corrections related, on the ground that in any event the quantities in question are liable to equalization. At the request of the Court the defendant produced a document entitled 'General statement of movee ments of ferrous scrap' for the period from April 1954 to January 1957. In ite observations on the same document, the applicant observed in the course of thl oral procedure that the retrievals declared by it were much lower than the averag of internal retrievals for comparable undertakings, because of inadequate industria book-keeping with regard to its own arisings returned to stock.

The defendant's argument that the increases in the stocks in question were in any event liable to equalization contributions, fails to recognize that the differences found could be explained by the undertaking's internal retrievals in respect of which the book-keeping is defective, as the defendant itself says. In this connexion, the explanation supplied by the applicant had thus to be considered and could not be dismissed from the outset. The defendant has however limited itself to the mere assertion that it is for the applicant to convince it and that it has failed to do so. Although the document produced at the request of the Court shows contradictions in the undertaking's declarations, it by no means establishes the quantity of 9 200 metric tons stated in the contested decision. The defendant has supplied no other facts capable of justifying that assessment. The increase of 9 200 metric tons in the basis of assessment has thus not been sufficiently justified in law. The application is therefore well founded and the contested decision must be annulled.

C — Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Coal and Steel Community, especially Article 33;
Having regard to Decisions Nos 2/57 and 13/58 of the High Authority of the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69 (2);

THE COURT

hereby:

1. **Annuls the decision of the High Authority of the European Coal and Steel Community of 13 November 1964, concerning the financial obligations of the applicant company under the scheme of equalization of imported ferrous scrap and scrap treated as such;**

2. **Orders the defendant to pay the costs.**

Hammes Delvaux

Donner Lecourt Monaco

Delivered in open court in Luxembourg on 8 February 1966.

A. Van Houtte
Registrar

Ch. L. Hammes
President