2. **Dismisses the remainder of the application;**

3. **Orders the applicant to pay the costs.**

Koopmans Bahlmann

Pescatore O'Keeffe Bosco

Delivered in open court in Luxembourg on 16 May 1984.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the Fourth Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 29 FEBRUARY 1984 [1]

Mr President,
Members of the Court,

1. Introduction

The application lodged by Eisen und Metall Aktiengesellschaft which I am to deal with today is directed against a Commission decision of 9 December 1982 imposing a fine. That decision is itself based on Article 15 of the general decision, No 1836/81/ECSC. The applicant claims that the Court should:

1. Annul the fine imposed amounting to DM 133 736, or, in the alternative, reduce the amount thereof;

2. Declare Articles 1 and 2 of the decision void.

In support of its application, the applicant relies on the following grounds:

I. Infringement of essential procedural requirements and, in particular, insufficient statement of the reasons on which the decision is based;

II. Infringement of the ECSC Treaty and of the rules of law relating to its application;

III. Misuse of powers.

Before I consider those submissions in detail, I have certain general remarks to make with regard to this case.

As is clear from Article 80 of the ECSC Treaty, the obligations arising from

1 — Translated from the Dutch.

that Treaty are applicable — without prejudice to the exceptions referred to therein which are not however relevant to the present case — only to coal and steel producers and therefore not to dealers. Thus, in order to apply to steel dealers rules on prices and conditions of sale which are comparable to those applicable to steel producers under Article 60 of the ECSC Treaty and its implementing provisions, the Commission was obliged to have recourse to the first and second paragraphs of Article 95 of the ECSC Treaty.

During the oral procedure the applicant explained why it did not intend to challenge that legal basis for Decision No 1836/81 as such.

The recitals in the preamble to that decision make it clear first of all that it is a transitional measure designed to cover the period required by certain Member States to implement Recommendation No 1835/81/ECSC, also of 3 July 1981.

The preamble to the decision also demonstrates unequivocally that the latter is an intervention measure relating to prices which it was considered necessary to adopt as a matter of urgency and is not — in contrast to the original purpose of Article 60 — a measure for the promotion of fair and effective competition. I would refer in that connection to the third, fourth, fifth and sixth recitals in the preamble to the decision. It is clear from those recitals that the measure was regarded from the outset as a kind of rule on minimum prices which was to enter into force at once (third recital), and that "it is indispensable to implement a very short-term action for rationalization of the steel market in such a way as to bring about the rise in prices necessary to prevent financial disaster" (fourth recital). The recitals in general contain no further reference to the objectives of Article 60, namely the prevention of the abuse of an oligopolistic position and of price discrimination to the detriment of buyers particularly on grounds of nationality.

I wish to state at once, in the light of those express objectives of the decision, that the transitional problems and the more fundamental problems resulting from the abrupt transformation of provisions designed to promote fair competition into a measure on prices which restricts competition do not arise in the present case. For a survey of those transitional problems in connection with the application of Article 60 I would refer to the opinion which I delviered on 18 January 1984 in Case 8/83 *Bertoli* [1984] ECR 1665.

Those differences between Decision No 30/53 (as amended on 22 December 1972) which was applicable in the *Bertoli* case and Decision No 1836/81 which is applicable in this case, are in my opinion sufficient to have serious consequences with regard to the assessment of certain basic problems in the present case.

In the first place, provisions on (minimum or maximum) prices and other measures for regulating the market (for instance in the agricultural sector) usually take account of existing long-term contracts to a lesser extent than is considered necessary, for example, in connection with the application of Article 85 of the EEC Treaty to existing contracts. The short-term objective pursued by conjunctural policy, namely, the adoption of a rule on minimum or maximum prices, would no doubt be jeopardized, if certain undertakings were able to carry out, in performance of long-term framework contracts concluded earlier, certain transactions which are incompatible with such rules on

prices. Moreover, it is also true that the application of those rules of competition — in spite of the special transitional system which they provide for "old agreements, decisions and restrictive practices" — does not depend on the conclusion under civil law of agreements restricting competition which are governed by such rules. Furthermore, that transitional system in no way prevents the actual application of the articles concerned also to "old agreements, decisions and concerted practices". That is the first consequence of the difference established between this case and the *Bertoli* case and, in my view, the entire discussion concerning the nature and scope under civil law of the framework contracts on which the applicant relies is therefore immaterial. I shall therefore pay only relatively little attention to it in dealing with the applicant's submissions.

The second consequence of the difference between this case and the *Bertoli* case is that, as regards Decision No 1836/81, the Commission at the outset apparently had no need for an internal criterion for the imposition of fines of the kind applied in relation to the consecutive periods in which Decision No 30/53 was infringed. It will no doubt be recalled that those internal directives on fines provided for a gradual increase in the level of fines which the Court in its judgment in Case 149/78 *Rumi* [1979] ECR 2523 considered appropriate for infringements of Article 60. In the opinion which I delivered in the *Bertoli* case, I stated that that gradual increase in the amount of the fine for infringements of Article 60 was a logical and — in the light of the general principles of proper administration — also a necessary consequence of the transition in policy referred to earlier, that is to say from a relatively marginal competition policy to a deliberate policy of intervention. Considerations of that kind have no role to play in the present case since the — exclusively interventionist — objectives of Decision No 1836/81 had to be clear to all from the outset. I shall return later on the question whether the nature of that decision supplementing Article 60 or transitional problems which are exclusively of a practical nature can justify the annulment of the fine imposed in the present case. For the time being, I shall confine myself to the observation that, in spite of the absence of a corresponding power in the decision, the Commission, according to the submissions put forward during the proceedings, in practice prescribed an additional period to enable the dealers concerned to comply with the express obligation henceforth to publish their price lists. In view of the complicated administrative problems which that obligation entailed for steel dealers, I consider that such a "period of grace" did not exceed the limits of proper administration. In the case of the applicant, that period of grace amounted to approximately three months. The applicant is not charged with committing any infringements during that period. Of course, it would have been more appropriate, from the point of view of legal certainty and of equality before the law, if Article 16 of the decision had also made provision for the extension of that further period for compliance with the decision to *all* steel dealers. In my view, however, no legally relevant criticism can be made of the Commission in the present case for taking account only in administrative practice of real and unmistakable transitional problems.

Before I consider in turn the various submissions relied upon by the applicant. I would merely observe that, apart from the report for the hearing, it is now of course necessary to take account also of:

(1) the documents submitted by the applicant in reply to a question put to it by the Court on 5 January 1984;

(2) the additional documents submitted by the applicant at the sitting with the Commission's consent; and

(3) the defence — which the applicant was naturally able to put forward only at the sitting — in response to the further details of the statement of reasons on which the Commission's decision was based which were provided by the Commission in its rejoinder.

For a survey of the legal context of these proceedings, the infringement with which the applicant is charged and the arguments already put forward by the parties during the written procedure, I would refer, for the time being, to the report for the hearing.

2. First submission (infringement of essential procedural requirements)

2.1. In its first submission the applicant contends, as stated earlier, that the statement of reasons on which the contested decision was based is insufficient. Secondly, however, it also contends that the Commission infringed its right to a fair hearing. The first contention in particular displays a formal in addition to a substantive aspect. The substantive aspect, however, partly coincides with the explanation regarding the second submission. In order to avoid repetition, therefore, I propose to consider the substantive aspect of this submission in connection with the second submission.

2.2. As far as the first contention is concerned, I should like to state at once that the statement of reasons on which the decision was based is indeed rather concise. That is particularly true as regards certain parts of the arguments relied upon by the applicant during the administrative procedure in relation to the infringements with which it was charged. Nevertheless the infringements established are in my view set out in the decision with sufficient clarity to enable the applicant to defend itself in the proceedings before the Court against the infringements with which it is charged. That is certainly true if the decision is read in conjunction with the letter which the Commission sent to the applicant on 16 February 1982 during the administrative procedure (see Annex 1 to the Commission's defence). Moreover, the fact that the arguments put forward by the applicant before the Court were in substance already set out in its reply to the Commission of 20 September 1982 (see Annex 2 to the Commission's defence) confirms that the decision did not in that respect infringe the rights of the defence as regards the applicant. In that connection it must, moreover, be borne in mind that — in contrast to the *Bertoli* case — the nature and the legal classification of the alleged infringements in this case are quite straightforward. Although this is not expressly stated in the decision, the applicant seems to have been left in no doubt that what was alleged against it was that by undercutting its own list prices in the instances specifically listed, it acted in a manner contrary to Article 8 of Decision No 1836/81, that is to say contrary to the prohibition of applying dissimilar conditions to comparable transactions. In formal terms, therefore, the Commission

did not, in my view, fail to discharge the obligation to provide a statement of reasons in this case. As I mentioned earlier, I shall return to the substance of the applicant's contentions when I consider its second submission.

2.3. The second infringement of essential procedural requirements which the applicant alleges against the Commission is the failure to discharge the obligation laid down in Article 36 of the ECSC Treaty namely that, "before imposing a pecuniary sanction or ordering a periodic penalty payment as provided for in this Treaty" it must "give the party concerned the opportunity to submit its comments." May I state at once, as regards that contention, that Article 36 does not provide that, after submitting their written comments concerning the infringements with which they are charged, the parties must also be given an opportunity to express their views orally. Still less does Article 36 require the Commission, in the administrative procedure preceding the adoption of its decision, to submit its counter-arguments in relation to the defence pleaded by the parties concerned. The applicant finally — and according to the file expressly — waived the opportunity which the Commission in fact gave it to enlarge on its defence orally (see Annex 3 to the Commission's defence). This contention of the applicant must therefore be rejected.

3. Second submission

3.1. In its second submission the applicant contends that the Commission infringed Articles 15, 47 and 36 of the ECSC Treaty and Articles 11, 14 and 15 of Decision No 1836/81.

I have already considered in connection with the first submission the formal aspects of the alleged infringements of Articles 15 and 36 of the ECSC Treaty. The applicant takes the view that the Commission infringed Article 47 of the ECSC Treaty and Article 14 of Decision No 1836/81 inasmuch as, in the course of its investigation, it examined those factors which were detrimetal to the applicant but not those which militated in its favour. It is apparent, however, from a comparison of the concise treatment of the applicant's defence in the decision imposing a fine and the grounds relied upon by the applicant in the proceedings before the Court, that this contention is devoid of any factual basis as regards the issues which may be considered crucial. The applicant also contends that the Commission wrongfully infringed Article 11 of Decision No 1836/81. I have already considered in connection with the first submission the contention that the Commission was in breach of Article 15 of that decision by failing to identify expressly the articles which the applicant is alleged to have infringed. I now propose to consider in detail the substantive aspects of the first and second submissions. The substantive criticisms which the applicant makes against the Commission by implication in its observations on the first and second submissions in its application and more expressly as well more extensively in its reply and during the oral procedure, are concerned with three issues which I now propose to discuss in order of importance.

3.2. *The framework contracts.* As regards all four groups of infringements, the applicant relies on the fact that the transactions at issue were carried out in performance of framework contracts which had already been entered into with the four parties concerned prior to 15 October 1981. As far as Markmann

and Claas are concerned, it appears from the documents submitted in reply to questions put by the Court that two contracts were concluded on 7 September 1981. A contract was concluded with Schlafhorst on 24 June 1981 and was renewed on 9 September 1981. The framework contract with Bergbau was concluded earlier, on 3 April 1981.

Although the Commission continues to disagree with the applicant as regards the legal nature and scope of those contracts, it has not contested their existence. In my introductory remarks I have already explained why the designation and classification of the contracts in question under civil law are in my view irrelevant from the point of view of the Court. At the same time I also explained why, in my view, an emergency measure governed by public law in the form of a measure on prices such as that at issue here, which applies to transactions carried out in performance of contracts of that kind takes precedence over any contractual obligations arising under such contracts. An emergency measure under public law may, in relation to such transactions, take precedence over those obligations, even if the contested framework contracts came into existence before 4 July 1981. Still less is it possible to regard the decision as lawfully having retroactive effect only in exceptional cases and for valid reasons in the public interest, since Article 8 of the decision, which the applicant is alleged to have infringed, applies to *all* transactions concluded after 4 July 1981 and thus unquestionably to those concluded after 15 October 1981 for which the applicant is held accountable in this case. Article 8 does not provide exemption for any transactions carried out in performance of framework contracts concluded earlier, nor can any other intention be inferred from the objectives of the decision referred to earlier. On the contrary, those objectives confirm that such an interpretation of Article 8 is correct. As regards the retroactive effect of the decision, of which the applicant complains, reference may be made, in support of the view expressed here and in my introductory remarks, to the situation which arose in the following cases and which in this respect is comparable: Case 1/73 *Westzucker* [1973] ECR 723, paragraph 5 of the decision, and Case 143/73 *Sopad* [1973] ECR 1433, paragraph 8 of the decision. The applicant's views in this regard must therefore be rejected. Since no other submissions have been put forward concerning the transactions concluded with Schlafhorst and Claas, the charges concering them must be regarded as proven.

3.3. *The alleged dissimilarity of the transactions concluded with Markmann.* As regards the contested transactions concerning Category I (a) material effected with Markmann, the applicant has however already contended in the administrative procedure that they were not comparable to its other transactions, since Markmann, in contrast to its other customers, purchased mainly Category II (a) material from the applicant. That argument must in my opinion be rejected since the obligation to publish prices and the other provisions of Decision No 1836/81 are concerned exclusively with transactions involving Category I (a) material. In any comparison of transactions, therefore, no account may be taken of undertakings given at the same time to deliver Category II (a)

material. Furthermore, the applicant would have been permitted under the decision, in the case of package deals of that kind, to grant rebates on sales of Category II (a) material to Markmann. In that respect there was no reason, even from a commercial point of view, for the price of the Category I (a) material delivered to Markmann to be at variance with the applicant's list price.

3.4. *The alleged special nature of the transactions with Bergbau.* As regards the transactions with Bergbau, the applicant has moreover contended that they were concerned exclusively with Category II (a) material, or at least with steel imported from the German Democratic Republic in respect of which the Commission grants a price rebate of 6% on importation. In my view, this contention gives rise to serious doubts, which the Commission has not been entirel able to dispel, as to whether the charges concerning the contested practices are justified. That view is supported in the first place by the fact that the material in question was to be used in mining, for which purpose its strength and the possibility of welding it but not its precise length and breadth or its freedom from rust are important. Furthermore, the plausibility of that view is confirmed by the fact — which has not been denied by the Commission — that the applicant is one of the largest customers in the Federal Republic of Germany for steel from the German Democratic Republic. The Federal Republic of Germany is, according to the file, required to purchase a fixed quantity of steel from the German Democratic Republic as partial compensation for the larger quantity of steel which the German Democratic Republic acquires from the Federal Republic. Whether the fact that the steel in question originates in the German Democratic Republic is a sufficient ground for clasifying it as Category II (a) material is a question which may in my opinion be disregarded. In my view this question remains open for a number of different reasons which have been referred to by the parties in the oral procedure. However, since that steel, as is recognized by the Commission, may be purchased at a lower price than other steel, transactions involving such steel, concluded on the basis of Article 9 (1) (b) of Decision No 1836/81 can, in my view, in no way be regarded as comparable transactions within the meaning of Article 8 of the decision. Moreover, it seems to me that, in view of the problem of classifying such steel, it has not been established that in the present case Article 7 of the decision has been infringed. It strikes me as unreasonable to regard steel from the German Democratic Replublic as Category II (a) material merely because of its origin and of its lower purchase price. Accordingly, I do not consider either Article 8 or Article 7 of the decision to have been infringed by the transactions with Bergbau. This will have to be taken into account when the amount of the fine is determined.

4. Third submission (alleged misuse of powers with regard to determination of the amount of the fine)

Article 15 of Decision No 1836/81 empowers the Commission to impose on steel dealers who have infringed the provisions of Articles 2 to 13 fines not exceeding twice the value of the sales effected in disregard of those provisions. In this case, according to the fourth recital in the preamble to its decision, the Commission imposed a fine equal to 110% of the total amount of the reductions granted on its list prices. In that regard, according to Annexes 3 and 4 to the Commission's reply of 7 October 1983 to questions put to it by the Court in Case 8/83 *Bertoli* [1984] ECR 1649, the Commission has since 9 December 1982 treated as equivalent the criteria for the imposition of fines for

infringements of Decision No 30/53 and of Decision No 1836/81.

The applicant now contends that the Commission misused its powers in that respect. In the first place the Commission, it claims, has failed to prove the alleged infringements. That contention must be rejected on the basis of my previous analyses, except in so far as it relates to the transactions with Bergbau. This also applies to the argument, which is repeated in the third submission, that the statement of reasons on which the decision was based is deficient. Finally, the applicant maintains that the amount of the fine was in fact determined by considerations relating to general deterrence and by the need to set an example to all steel dealers in order to ensure stricter compliance with Decision No 1836/81. Not only was the applicant's assertion denied by the Commission during the oral procedure, but also there is no evidence for it in the wording of the decision imposing a fine. On the contrary, it is stated after the second indent of the fourth recital in the preamble to that decision that the amount of the fine must be sufficiently high to deter the *undertaking* (emphasis added) from undercutting its list prices again. Moreover, a fine of that kind will undoubtedly, in itself, have a general deterrent effect *at the same time* and even if that was *inter alia* the Commission's intention (as the applicant maintains though only on the basis of vague and unsupported assertions concerning certain views expressed by the Commission), I should not regard it as in itself in any way contrary to the general principles of the law on the imposition of penalties.

In its application, the applicant seeks in the alternative a reduction of the fine imposed. Accordingly, in view of the unlimited jurisdiction conferred on the Court by the second paragraph of Article 36 of the ECSC Treaty, I propose to conclude this Opinion with my views concerning the amount of the fine.

As far as this point is concerned, it follows directly from the observations which I made earlier that, in my view, for the purposes of the imposition of the fine, no account must be taken of the transactions with Bergbau. The amount of the price reductions established is thus DM 5 436.68 (for the transactions with Markmann) plus DM 66 683.18 (for the transactions with Schlafhorst) plus DM 9 126.45 (for the transactions with Claas), totalling DM 81 246.31.

As regards the gravity of the infringements, a factor which unquestionably militates in favour of the application of the criterion in question by the Commission is that, in contrast to what steel producers might have expected having regard to the origin of Decision No 30/53 and the long-standing procedure and the case-law of the Court concerning that decision, Decision No 1836/81 was clearly intended from the outset as an important emergency measure relating to prices. According to the preamble thereto, that measure has little or nothing in common with the objectives of competition policy on which Article 60 of the ECSC Treaty was originally based. Even the internal criteria for the imposition of fines for infringements committed in the period in question, which were identified in the *Bertoli,* case, were inapplicable to infringements of Decision No 1836/81.

As I stated in my Opinion of 18 January 1984 in the *Bertoli* case, a gradual increase of the amount of the fines, from an original 7½% of the price reduction to 25% thereof in the case of infringements committed after 31 August 1981 (and not later than 9 December 1982, when the Commission fixed the rate of fines thenceforth at 100% or 110% of the price reductions established) was to be considered, regard being had to the previous history of the matter, as a reasonable and, in principle, even necessary general criterion in respect to manifest substantive infringements of Article 60 and of its implementing provisions. No such prior history of an entirely different objective of the provisions in question combined with an entirely different practice exists in this case. That might be regarded as providing ample justification for the application of the same criteria for the imposition of fines as those applied since 9 December 1982 also in respect of infringements of Decision No 30/53 and those established by the Commission since it adopted its enabling decision of 19 January 1983 (Annex 4 to the Commission's reply of 7 October 1983 to the questions put to it by the Court in the *Bertoli* case) also as general criteria in respect of infringements of Decision No 30/53 and of Decision No 1836/81.

However, I should like to propose a different conclusion for two reasons. In the first place, Decision No 1836/81, according to the recitals in the preamble thereto, is clearly intended to supplement Article 60 (according to the modified interpretation thereof). In my view it is unreasonable, on that ground alone, to impose on steel dealers a fine higher than that originally prescribed for steel producers in respect of infringements committed in the fourth quarter of 1981. According to the Commission's internal guidelines for the imposition of fines, which were in force at the time, the criterion applied led to the imposition of fines amounting in principle to 25% of the price reductions established, with the possibility of a 40% upward or downward adjustment of the amount thus calculated.

Secondly, in my opinion, considerations relating to transitional policy must also apply to steel dealers, albeit for reasons entirely different from those which might be advanced in the case of steel producers. To begin with, it has become abundantly clear in these proceedings that steel dealers experienced serious problems owing to the application of a system which was originally created for steel producers. Whereas steel producers as a rule supply different kinds of steel of uniform quality, steel dealers as a matter of course sell products of different origin and quality. Moreover, the commercial practices of steel dealers are different from those of steel producers, as became apparent at the sitting *inter alia* from the discussions and the information submitted concerning the question of the application of fixed prices and price clauses which make the price conditional on the date of delivery. I gained the impression from those discussions that when the Commission adopted Decision No 1836/81, it had an incomplete and moreover somewhat incorrect picture of those commercial practices. Furthermore, by adopting a flexible attitude in connection with the implementation of the new system, the Commission showed some understanding of certain of the difficulties referred to. On those grounds, therefore, I do not consider it

reasonable to penalize from the outset the deficiencies which have come to light in the application of the new system with the severity which seems justified only after a reasonable period of adaptation has elapsed. Finally, I take the view that the Commission is right in its contention that the decision must also be applied to transactions carried out in performance of framework contracts. However, that does not mean that dealers might not in good faith take a different view, as long as the Court has not upheld the Commission's contention.

In the light of all those considerations, I am of the opinion that it is appropriate in the present case to apply a rate of 25% of the amount of the price reductions established, increased by 10% of the sum thus calculated, for the infringement in the fourth quarter of 1981 which are to be considered proven. This means that the amount of the fine must in my view be reduced to (0.25 × DM 81 246.31 =) DM 20 211.58 + 10%, in round figures totalling DM 22 233.

5. Final remarks and conclusion

5.1. I should like to conclude my Opinion with a few general remarks.

In the light of the wording and the scope of Decision No 1836/81 and of certain general principles — which have also been recognized by the Court in its case-law — concerning the relationship between administrative law relating to the economy and contracts governed by private law, I have subscribed to the view expressed by the Commission that Decision No 1836/81 and the obligations arising thereunder for the applicant must take precedence over the framework contracts entered into or renewed by the applicant *after* the entry into force of the decison as regards the three groups of transactions which I consider relevant. Admittedly, from the point of view of civil law, that outcome is not entirely satisfactory, since the applicant had unilaterally to amend by means of its price lists the conditions of sale which it had stipulated by contract in September in relation to the transactions effected after the publications of its price list (unless, contrary to the express purpose of the decision, it fixed its published prices below the level of the market prices applicable at the time). The considerations, which are also in my view compelling ones, militating in favour of the argument that the decision takes precedence over the framework contracts referred to earlier, must however be considered decisive in this regard. Moreover, the applicant could probably have prevented such an outcome had it drafted the more favourable terms contained in the framework contracts in the form of fidelity rebates (a possibility suggested by the Commission in the case of Markmann) or in the form of periodic quantity discounts. It would then have been necessary for the applicant, according to Article 3 (f) of Decision No 1836/81, to refer to the possibility and the size of such rebates and discounts also in its price list.

My second general remark is that this case is unique, inasmuch as the interpretation of the decision to be given by the Court will set an important precedent not so much for any further cases which come before the Court as for the national administrative and legal authorities of the Member States. Since 1 January 1983 the Member States have

been entrusted with responsibility for the application of the essential rules of the system by means of national provisions for the implementation of Recommendation No 1835/81/ECSC (Official Journal L 184, p. 9). To a lesser extent, the effect of such a precedent extends to the conclusions to be drawn by the Court with regard to the criterion for the imposition of fines. It has become apparent from the file that the Council felt unable to agree with the Commission's original proposal to establish also the maximum amount of the fine in the recommendation, by analogy with Decision No 1836/81. That is understandable since the penalty, at least in a number of Member States, will have to be applied either in the context of criminal law or on the basis of other existing legislative provisions imposing penalties for comparable infringements of national provisions of administrative law affecting the economy. Moreover, in the light *inter alia* of the case-law of the Court concerning similar problems in connection with the implementation of the Common Agricultural Policy, this will no doubt inevitably lead to differences in national policy on penalties. None the less, the views of the Court regarding the importance which is to be attributed to the gravity of the infringements in question may also have the effect of harmonizing to a certain extent the policy on penalties pursued by the Member States. In that connection I would advise the Court expressly to state in its judgment that, in the case of infringements committed after 9 December 1982, it too regards the criteria for the imposition of fines applied by the Commission in the present case as appropriate in so far as there are no particular circumstances justifying a reduction in a specific case.

5.2. *In conclusion,* I consider, in the light of the views which I have expressed, that:

1. Article 1 of the Commission decision of 9 December 1982 imposing a fine on Eisen und Metall Aktiengesellschaft, Gelsenkirchen, under Article 15 of Decision No 1836/81/ECSC should be declared void in so far as that article applies to the reduction of DM 40 332.28 granted by the applicant as against its list price in the transactions effected with Bergbau AG;

2. The fine of DM 133 736 imposed by Article 2 of that decision should be reduced to DM 22 233;

3. The remainder of the application should be dismissed;

4. The parties should be ordered to bear their own costs pursuant to Article 69 (3) of the Rules of Procedure.