ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
19 June 1996 *

In Case T-134/94,

NMH Stahlwerke GmbH, whose registered office is in Sulzbach-Rosenberg (Germany), represented by Paul B. Schäuble, Siegfried Jackermeier and Reinhard E. Ingerl, Rechtsanwälte, Munich, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall and Norbert Lorenz, of its Legal Service, and by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Julian Currall, assisted by Heinz-Joachim Freund, Rechtsanwalt, Frankfurt-am-Main, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-136/94,

Eurofer ASBL, whose seat is in Brussels, represented by Norbert Koch, Rechtsanwalt, Brussels, with an address for service in Luxembourg at the offices of Eurofer ASBL, GISL, 17 to 25 Avenue de la Liberté,

applicant,

* Languages of the cases: T-134/94 German, T-136/94 German, T-137/94 French, T-138/94 French, T-141/94 German, T-145/94 French, T-147/94 German, T-148/94 German, T-151/94 English, T-156/94 Spanish and T-157/94 Spanish.

v

Commission of the European Communities, represented initially by Julian Currall and Norbert Lorenz, of its Legal Service, and by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Julian Currall, assisted by Heinz-Joachim Freund, Rechtsanwalt, Frankfurt-am-Main, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-137/94,

ARBED SA, whose registered office is in Luxembourg, represented by Alexandre Vandencasteele, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Paul Ehmann, 19 Avenue de la Liberté,

applicant,

v

Commission of the European Communities, represented by Julian Currall, of its Legal Service, and initially by Gérard de Bergues and subsequently by Guy Charrier, national civil servants on secondment to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-138/94,

Cockerill-Sambre SA, whose registered office is in Brussels, represented by Alexandre Vandencasteele, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias-Hardt,

applicant,

v

Commission of the European Communities, represented by Julian Currall, of its Legal Service, and initially by Gérard de Bergues and subsequently by Guy Charrier, national civil servants on secondment to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-141/94,

Thyssen Stahl AG, whose registered office is in Duisburg (Germany), represented by Joachim Sedemund and Frank Montag, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall and Norbert Lorenz, of its Legal Service, and by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Julian Currall, assisted by Heinz-Joachim Freund, Rechtsanwalt, Frankfurt-am-Main, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-145/94,

Unimétal — Société française des aciers longs SA, whose registered office is in Rombas (France), represented by Antoine Winckler, of the Paris Bar, and Caroline Levi, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Messrs Elvinger & Hoss, 15 Côte d'Eich,

applicant,

v

Commission of the European Communities, represented by Julian Currall, of its Legal Service, and initially by Gérard de Bergues and subsequently by Guy Charrier, national civil servants on secondment to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-147/94,

Krupp Hoesch Stahl AG, whose registered office is in Dortmund (Germany), represented by Otfried Lieberknecht, Karlheinz Moosecker, Gerhard Wiedemann and Martin Klusmann, Rechtsanwälte, Düsseldorf, with an address for service in Luxembourg at the Chambers of Axel Bonn, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall and Norbert Lorenz, of its Legal Service, and by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Julian Currall, assisted by Heinz-Joachim Freund, Rechtsanwalt, Frankfurt-am-Main, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-148/94,

Preussag Stahl AG, whose registered office is in Salzgitter (Germany), represented by Horst Satzky, Bernhard M. Maassen and Martin Heidenhain, Rechtsanwälte, Brussels, and Constantin Frick, Rechtsanwalt, Bremen, with an address for service in Luxembourg at the Chambers of René Faltz, 6 Rue Heine,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall and Norbert Lorenz, of its Legal Service, and by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Julian Currall, assisted by Heinz-Joachim Freund, Rechtsanwalt, Frankfurt-am-Main, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-151/94,

British Steel plc, whose registered office is in London, represented by Philip G. H. Collins and John E. Pheasant, Solicitors, Brussels, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicant,

v

Commission of the European Communities, represented by Julian Currall, of its Legal Service, and initially by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-156/94,

Siderurgica Aristrain Madrid, SL, whose registered office is in Madrid, represented by Antonio Creus and Xavier Ruiz Calzado, of the Barcelona Bar,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall and Francisco Enrique González Díaz, of its Legal Service, and by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Julian Currall and Francisco Enrique González Díaz, assisted by Ricardo Garcia Vicente, of the Madrid Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

and T-157/94,

Empresa Nacional Siderurgica, SA (Ensidesa), whose registered office is in Avilés (Spain), represented by Santiago Martinez Lage and Jaime Perez-Bustamente Köster, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicant,

Commission of the European Communities, represented initially by Julian Currall and Francisco Enrique González Díaz, of its Legal Service, and by Gérard de Bergues, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Julian Currall and Francisco Enrique González Díaz, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding under Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams (OJ 1994 L 116, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of: H. Kirschner, President, B. Vesterdorf, C. W. Bellamy, A. Kalogeropoulos and A. Potocki, Judges,

Registrar: H. Jung,

makes the following

Order

1 By Decision 94/215/ECSC of 16 February 1994 relating to a proceeding under Article 65 of the ECSC Treaty concerning agreements and concerted practices

engaged in by European producers of beams (OJ 1994 L 116, p. 1, hereinafter 'the Decision'), the Commission found several infringements of Article 65 of the ECSC Treaty, in particular price fixing, market sharing and exchange of confidential information, and imposed fines on 14 steel undertakings operating in the relevant sector.

2 Between 31 March and 18 April 1994, the 11 applicant undertakings in Cases T-134/94 ('NMH'), T-136/94 ('Eurofer'), T-137/94 ('ARBED'), T-138/94 ('Cockerill-Sambre'), T-141/94 ('Thyssen'), T-145/94 ('Unimétal'), T-147/94 ('Krupp Hoesch'), T-148/94 ('Preussag'), T-151/94 ('British Steel'), T-156/94 ('Aristrain') and T-157/94 ('Ensidesa') has brought, each as far as it is concerned, applications seeking principally annulment of the Decision.

3 Further to requests made in particular by letters dated 7 September and 18 October 1994 from Aristrain, the applicant in Case T-156/94, the Court asked the defendant by letter from the Registrar dated 25 October 1994 to comply with its obligations under Article 23 of the Protocol on the Statute of the Court of Justice of the ECSC (hereinafter 'Article 23 of the ECSC Statute'). The defendant lodged with the Registry, under cover of a letter dated 24 November 1994, a file consisting of 65 document files, comprising 10 563 numbered documents, together with the text of the Decision and of the statement of objections in the various authentic language versions (hereinafter 'the file forwarded to the Court').

4 In its letter forwarding the documents to the Court on 24 November 1994, the defendant asserted that:

' Some of these documents may contain business secrets. Others are "internal documents" within the meaning of case-law of the Court of First Instance. Moreover, the documents which the Commission obtained from the undertakings concerned are documents to which the obligation of confidentiality in Article 47 ECSC applies: it follows that not all of them are accessible in their entirety to all the parties to the proceedings. For the purposes of the administrative proceedings, the Commission drew up a so-called "access list" covering the period up to the admin-

istrative hearing on 11 January 1993, showing which documents were accessible during the administrative proceedings, in whole or in part and to whom. A copy of the list is attached.'

5 By way of measures of organization of procedure pursuant to Article 64(2) of its Rules of Procedure, the Court (Third Chamber, Extended Composition) held an informal meeting with the parties on 14 March 1995 at which they raised in particular the problems caused in this case by the fact that most of the applicants were seeking access to the file forwarded to the Court, having regard to the possible confidential nature of certain documents contained therein.

6 Following that informal meeting on 14 March 1995, the Court (Third Chamber, Extended Composition), by letter from the Registrar dated 30 March 1995, informed the parties as follows:

'1. As regards the problems arising in relation to the potentially confidential nature of certain documents, access to the administrative file produced by the Commission pursuant to Article 23 of the Protocol on the Statute of the Court of Justice of the ECSC, and the use of that file by the Court with a view to observing in full the principles of *audi alteram partem*, procedural economy and the proper administration of justice, the parties are requested to state in writing, by no later than *31 May 1995*, time on account of distance included, their positions on the following points:

(a) As regards those documents in the administrative file which the Commission has classified as confidential in the interests of one of the applicants, the applicants are requested to state whether they agree, in relation to all or part of the documents, to the mutual lifting of confidentiality, so that those documents can be disclosed to all the applicants.

Should one of the applicants wish to maintain confidentiality of certain documents in relation to the other applicants, it is requested to specify the document in question or the information which is to remain confidential, and to state the reasons why such confidentiality is necessary.

In the event that the Commission considers that, with regard to certain of those documents, it must oppose mutual lifting of confidentiality by the applicants, it is requested to specify the documents or information contained therein to which its opposition relates.

(b) As regards those documents in the administrative file which the Commission has classified as confidential in the interests of any third person or persons not party to the proceedings before the Court, the Commission is requested to reconsider whether such classification is justified and, if necessary, to contact the third person(s) with a view to the possible lifting of confidentiality in relation to the applicants.

The Commission is requested to inform the applicants which of those documents may, in its view, be disclosed to them and which should continue, where necessary, to be classified as confidential, stating the reasons for such confidentiality and providing a description of the nature and contents of each of the documents concerned.

In the light of the foregoing, the applicants are requested to state whether they wish to maintain their applications for access to certain of those documents which, according to the Commission, continue to be classified as confidential.

The Commission and the applicants are requested to indicate to the Court within the abovementioned period, either their agreement as to the degree of access which the applicants are to be given to documents classified as confidential in the interests of third persons, or any specific points of residual disagreement so as to enable the Court to give a ruling on the relevance and confidentiality of each of the documents concerned.

(c) As regards documents classified by the Commission as confidential on the ground that they are internal documents, the Commission is requested to provide to the Court, within the abovementioned period, a list of the internal documents, indicating the nature of each document, and giving a brief description of its contents in sufficient detail to enable the applicants to assess whether it may be appropriate to apply for access to those documents in furtherance of their case. The Commission is also requested to indicate whether it is able to lift confidentiality in respect of certain of its internal documents.

Within the abovementioned period, the applicants and the Commission may, if they wish, lodge written legal submissions on the principles governing confidentiality of internal documents, in the context of the application of Article 23 of the Protocol on the Statute of the Court of Justice of the ECSC and of access to the Community court's case-files.

The list of internal documents supplied by the Commission in accordance with the foregoing shall thereafter be notified to the applicants in order to enable them to indicate, with reasons, and within a time-limit to be fixed, the internal documents to which they still seek access.

The positions taken by the parties on these matters should enable the Court to decide how all the documents in the administrative file whose confidentiality or relevance to the applicants' case remains in dispute are to be treated. Those documents determined to be confidential by the Court shall be withdrawn from the Court file.

Depending on the results of the various procedural steps indicated above, the Commission will be requested to reorganize its administrative file so as to enable the Court to give the applicants access to the file to be used by the Court.'

7 In their replies to the Court's letter of 30 March 1995, the applicants and the defendant agreed mutually to lift confidentiality of the documents originating from the applicants themselves, subject to a few objections raised by the Commission or some of the applicants, which will be considered below. Likewise, as regards the documents originating from third undertakings, the Commission and the third undertakings which it approached generally agreed to lift confidentiality *vis-à-vis* the applicants, again subject to some objections to be considered below. The defendant also provided a more detailed list of its internal documents, which was forwarded to the applicants by the Registry, although the Commission repeated that it was opposed in principle to those documents being disclosed to the applicants. Lastly, the applicants presented detailed legal submissions on the scope of Article 23 of the ECSC Statute and on their right of access to the file forwarded to the Court, in particular as regards the Commission's internal Commission documents.

8 In view of all those answers, the Court, in a further letter from the Registrar of 21 July 1995 (25 July 1995 in Case T-151/94), asked the parties more specifically to state, giving reasons, whether they adhered to their request for access, on the one hand, to the documents in the file in respect of which a request for confidential treatment had been made by one of the applicants themselves, by the Commission or by a third person and, on the other, to the documents in the Commission's internal file, in which case they should specify the documents covered by the request and give brief reasons for it. The applicants replied to this request by letters of 6 September 1995 (Case T-157/94), 11 September 1995 (Case T-156/94), 13 September 1995 (Cases T-137/94, T-138/94 and T-151/94), 14 September 1995 (Case T-147/94) and 15 September 1995 (Cases T-134/94, T-141/94, T-145/94 and T-148/94).

9 In the meantime, in a letter to the Registry dated 14 July 1995, the applicant British Steel complained that the Commission had failed to contact all the third persons named in the list of documents in the file, contrary to the undertaking which it gave at the end of the informal meeting of the parties held on 14 March 1995. The third persons which were not contacted were, on the one hand, private undertakings or bodies, namely Centre Professionnel des Statistiques de l'Acier ('CPS'), Darlington & Simpson, DSRM, Inter Trade, LME, Steelinter, UES and Valor and, on the other, certain administrative agencies or authorities in Member States or third countries responsible for competition matters, more specifically the Bundeskartellamt, the Office of Fair Trading, the Prisdirektoratet, the US Department of Commerce, the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, together with the Permanent Representation of the Grand Duchy of Luxembourg to the European Communities.

10 After asking the defendant for its comments on the letter from British Steel of 14 July 1995, which it gave by letter dated 7 September 1995, the Court asked the Commission, by letter from the Registrar dated 1 April 1996, to contact the third persons CPS, Darlington & Simson, DSRM, Inter Trade, LME, Steelinter, UES and Valor in order to ascertain whether those parties agreed to lift confidentiality of the documents of concern to them. By letter dated 15 May 1996, the defendant intimated that the third persons in question did not adhere to their request for confidential treatment *vis-à-vis* the applicants, and enclosed a copy of their respective answers.

The applicants' right of access under Article 23 of the Statute on the Court of Justice of the ECSC to the file forwarded to the Court

11 According to the actual wording of Article 23 of the Statute of the Court of Justice of the ECSC, which is applicable to proceedings before the Court of First Instance by virtue of Article 5 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21) and by Council Decision 94/149/ECSC/EC of 7 March 1994 (OJ 1994 L 66, p. 29), where proceedings are instituted against a decision of one of the institutions of the Community, that institution is under a duty to transmit to the Court all the documents relating to the case before the Court.

12 However, the argument put forward by some of the applicants to the effect that Article 23 of the ECSC Statute, together with the principle *audi alteram partem*, mean that all parties should have unconditional, unlimited access to the file forwarded in this way by the institution concerned to the Community court, must be rejected forthwith.

13 The ECSC Treaty is at pains to ensure, through Article 47, that the confidential nature of information which, by its nature, is covered by professional secrecy, in particular business secrecy, is secured, thereby ensuring protection for the legitimate interests of undertakings and providing a *quid pro quo* for the obligation to supply information to the Commission (Case 27/84 *Wirtschaftsvereinigung Eisen- und Stahlindustrie* v *Commission* [1985] ECR 2385, paragraph 15).

14 As a result, in order to resolve the issue raised in these actions, it is necessary to balance the requirements of Article 23 of the ECSC Statute and the adversary nature of judicial proceedings against the protection of the business secrets of individual undertakings. The only way of striking such a balance is to examine the specific situation of the undertakings concerned (see the judgment in *Wirtschaftsvereinigung Eisen-und Stahlindustrie* v *Commission*, cited above, paragraph 16, and, in the context of the EC Treaty, the order in Joined Cases T-1/89, T-2/89, T-3/89,

T-4/89 and T-6/89 to T-15/89 *Rhône-Poulenc and Others* v *Commission* [1990] ECR II-637).

15 It should also be observed already at this stage that, when a request for the production of documents was made to it pursuant to Article 23 of the ECSC Statute, the Court of Justice held that the institution in question was, itself, entitled, albeit exceptionally, to ask that the confidential nature of certain information concerning it be respected (see the judgment in Case 2/54 *Italy* v *High Authority* [1954 to 1956] ECR 37, at 54 and 55).

16 In view of the foregoing, the Court considers that the applicants' request for access to the file forwarded to the Court should be decided on by drawing a distinction between the three categories of documents mentioned in the Registrar's letters of 30 March 1995 and 21/25 July 1995, namely: (i) documents which the Commission has classified as confidential in the interests of one of the applicants; (ii) documents which the Commission has classified as confidential in the interests of third persons who are not party to these proceedings, and (iii) documents classified by the Commission as confidential on the ground that they are internal documents. Each of those three categories raises specific issues of confidentiality which are susceptible, in an appropriate case, to warrant certain restrictions on the applicants' right of access to the file forwarded to the Court.

The applicants' right of access to documents in the file originating from the applicants themselves and classified as confidential in their own interests

Position adopted by the parties

17 The applicants and the defendant agree on the principle that the applicants should have free access to the documents in the file forwarded to the Court which originate from any one of them, subject to some objections raised either by the Commission or by particular applicants.

18 The defendant opposes disclosure to the applicants of the documents numbered 5775, 6717 and 6718 (Case T-148/94), 6789, 6854 and 6855 (Case T-141/94), 6923 (Case T-147/94), 6947 and 7022 (Case T-134/94), 7307 to 7309, 7322, 7323 and 7337 to 7339 (Case T-138/94), 8204, 8345, 8347, 8348 and 8349 (Case T-137/94), 8777, 8778, 8787 and 8796 (Case T-151/94), 8860, 9019, 9020, 9021 and 9022 (Case T-156/94), 9150, 9277 and 9278 (Case T-157/94) on the ground that they contain business secrets, namely certain turnover figures for the applicants for 1986 to 1990 and 1993. It argues that, unlike the other documents in the file dating from the period during which the infringements were committed, those documents were produced at an advanced stage in the administrative procedures and relate to the applicants' turnover in the product at issue. What is more, the turnover relating to the product at issue over one or more preceding years, particularly where a number of years are mentioned, would enable an idea to be formed of the relevant present turnover, which would not necessarily be the case with other types of historical data.

19 Unimétal, the applicant in Case T-145/94, opposes disclosure to the other applicants of the documents numbered 2519 to 2522 and 2656 to 2670 in the Commission's administrative file on the ground that those documents are purely internal to the undertaking (memoranda relating to internal operation or internal market analysis).

20 British Steel, the applicant in Case T-151/94, opposes disclosure to the other applicants of certain particulars contained in the documents numbered 1894 to 1900, 1922 to 1936, 1940 to 1960, 1990 to 1992, 2179, 2180 and 8787 of the Commission's administrative file on the ground that they relate to business secrets (names of actual or potential customers for whose custom there is active competition between it and other applicants; contemplated commercial strategies; figures on ex-mill turnover in beams between April 1986 and December 1993 in the United Kingdom, the other Member States and the European Union as a whole). British Steel appended to its letters to the Court of 31 May and 15 September 1995 both complete copies of the documents in question and copies from which those passages constituting, as far as it is concerned, business secrets have been excised and which are therefore in the form in which it would wish them to the disclosed to the other parties.

21 Aristrain, the applicant in Case T-156/94, opposes disclosure to the other applicants of the document numbered 8871 on the ground that it contains very specific particulars of its business secrets from which it can be told that it has penetrated certain Community markets and its share of those markets determined.

22 The defendant has raised no objection to the requests made by the applicants Unimétal and Aristrain. In contrast, it opposed the requests for confidential treatment made by the applicant British Steel, except as regards the documents numbered 1922 to 1936 in the file forwarded to the Court.

Findings of the Court

23 First, as regards the documents for which confidential treatment is sought by the defendant (see paragraph 18 above), it should be observed that, with the sole exception of the document numbered 8787 (see paragraph 20 above), the parties from which they originate do not oppose their disclosure to the applicants, thereby suggesting that they now no longer regard them as containing business secrets.

24 Consequently, the Court takes the view that, as some of the applicants have argued correctly in law, the Commission is not entitled to oppose disclosure of those documents to the applicants except where disclosure would in itself constitute an infringement of the competition rules laid down by the ECSC Treaty. Yet the Commission has not established, or even submitted, this is so in this case. In any event, such a possibility may reasonably be dismissed in view of the age of the information in question (see the order in *Rhône-Poulenc and Others* v *Commission*, cited above, paragraph 23) and their aggregate nature. Indeed, the information consists, for the most part, of data relating to the applicants' turnover in 'beams' (all categories together) and 'ECSC products' in the whole of the Community from

1986 to 1990. As for the data relating to the same aggregated turnover for 1993, albeit more recent, they are forecasts only, and not definitive results. In those circumstances, the Court considers that it should not grant the defendant's request, subject to its findings in paragraphs 30 and 31 below on the document numbered 8787.

25 Secondly, as regards the documents bearing the numbers 2519 to 2522 and 2656 to 2670, to which the request made by Unimétal, the applicant in Case T-145/94, relates (see paragraph 19 above), the Court finds that they originate from persons not party to these proceedings, namely Usinor Sacilor/Valor and CPS, which have not requested confidential treatment, even though they were duly contacted to that end by the Commission (see paragraph 10 above). In so far as they concern Unimétal, those documents do not appear to obtain information which cannot be obtained from trade and customs statistics. In regard, more specifically, to the documents numbered 2656 to 2668, Unimétal's deliveries in the French market in 1989 and 1990, to which it refers, have now become historical and, as a result, can no longer be regarded as constituting business secrets. In those circumstances, the Court considers that it should not grant Unimétal's request.

26 Thirdly, as far as the request made by British Steel, the applicant in Case T-151/94, is concerned (see paragraph 20 above), it seeks, in the first place, confidential treatment of two sentences of a letter to Ferdofin dated 4 January 1991 (numbers 1894 and 1895 in the file forwarded to the Court) describing relations between those two undertakings in 1990 to 1991. The defendant argues that the letter in question is mentioned in point 176 of the contested Decision as evidencing a market-sharing agreement between British Steel and Ferdofin, and says that it is unable to see why that evidence, which, in its view, constitutes the context for a finding of an infringement, should be concealed from the other applicants, thereby complicating the remainder of the proceedings.

27 It must be held that the first of the two sentences to which British Steel's request relates, namely the sentence appearing on the first page of its letter to Ferdofin of 4 January 1991, to which reference has already been made, has already been deleted

from the version of that document which appears in the file forwarded to the Court as document number 1894. In that regard, British Steel's request is therefore to no purpose. As for the second sentence on page 2 of the aforementioned letter (document 1895 in the Commission's file), the Court observes that it relates to facts dating from more than five years ago which may possibly be relevant for the purpose of assessing the infringement referred to in point 176 of the Decision. In addition, the sentence in question is repeated verbatim in the document numbered 1899 in the file forwarded to the Court, for which British Steel has not requested confidential treatment. In those circumstances, the Court considers that it should not grant British Steel's request.

28 As for the documents in the file numbered 1940 to 1960, British Steel claims that it mentions the names of certain alleged customers of another producer. It cannot be ruled out that those names may still have commercial importance, despite the fact that the information in question goes back to 1987 and 1988. The same is true of the documents numbered 1990 to 1992 and 2179 and 2180, dated 5 December 1988 and 8 September 1989, respectively. British Steel's request with regard to those documents should therefore be granted.

29 Likewise, the Court considers that, although the document numbered 1922 to 1936, which, for the most part, is concerned with British Steel's business relations and analysing its commercial strategy on the German market, also goes back several years, it refers to certain data which could still be regarded as covered by professional secrecy within the meaning of the second paragraph of Article 47 of the ECSC Treaty. Since the defendant essentially agrees to the request for confidential treatment of certain of the data contained in this document, the Court considers that the request should be granted.

30 The position is the same as regards the document numbered 8787, for which British Steel approves confidential treatment as requested by the Commission (see its letter of 15 September 1995, at p. 8), in so far as in contains, *inter alia*, information on its ex-mill turnover from beams between 1990 and 1993 in the United Kingdom, in the other Member States and in the European Union as a whole.

31 Since British Steel has sent the Registry a set of the documents numbered 1922 to 1936, 1940 to 1960, 1990 to 1992, 2179, 2180 and 8787, from which the few data constituting, in its opinion, business secrets of no relevance to this case have been excised, the Court considers that those documents should be made accessible in that form to the other applicants, it being understood that, as the defendant itself has observed, it obviously remains entitled to rely on the whole text of each of the documents in its file as against British Steel in Case T-151/94.

32 Fourthly, as regards the document numbered 8871, which is the subject of the request made by Aristrain, the applicant in Case T-156/94 (see paragraph 21 above), the Court observes that this document is a table showing the prices expected or obtained by it during the first two quarters of 1989 for various categories of steel products on the German and French markets. In view of the age of the data in question, the Court considers that it should not prohibit its consultation by the other applicants.

The applicants' right of access to the documents in the file originating from persons not party to the present proceedings and classified as confidential in the interests of those third persons

The parties' position

33 At the Court's invitation, the defendant and third persons which it approached have agreed to the principle that all the applicants should have free access to the documents in the file forwarded to the Court originating from one or other of those third persons, subject to a few objections raised either by the Commission or by some third persons.

34 The Commission opposes disclosure to the applicants of the documents numbered 6883 and 6917 (Saarstahl), 7777, 7778 and 7782 (Usinor-Sacilor), 7864 to 7873 and

8001 (Ferdofin), 8013, 8017 and 8028 (Stefana), 9313 (Norsk Jernwerk), 9387 and 9388 (Okavo Profiler AB) and 9461 (Fundia), which mention certain turnover figures for 'beams' for 1986 to 1990 and 1993, for reasons identical to those set out in paragraph 18 above. With the exception of the document numbered 8028 (see paragraph 37 above), however, the third persons in question do not oppose such disclosure.

35 The undertaking Allied Steel and Wire Ltd opposes disclosure to the applicants of the document numbered 5261 on the ground that it contains business secrets relating to its activities.

36 The undertaking SSAB Svenskt Stål AB opposes disclosure to the applicants of the documents numbered 9435, 9440 to 9455, 9456, 9608 to 9610 and 9612 to 9621 on the ground that the documents consist of an exchange of correspondence between its lawyers and the Commission revealing its procedural strategy and/or containing detailed information about the principles and methods of its commercial strategy on the market.

37 The undertaking Stefana opposes disclosure to the applicants of the documents numbered 8027 and 8028 on the ground that they contain business secrets (detailed turnover figures for certain products).

38 The defendant raises no objection to those three requests. As far as the applicants are concerned, some adhere to their requests for access to the documents in question, whilst others have withdrawn their requests.

Findings of the Court

39 For reasons essentially identical to those set out in paragraphs 23 and 24 above, the Court considers first that the Commission is unjustified in opposing disclosure to the applicants of those documents which the third persons, which have been duly contacted by it to that end, no longer claim to be of a confidential nature.

40 As regards, secondly, the document numbered 5261 from the undertaking Allied Steel and Wire Ltd, the Court finds that it merely gives an account of the participation of representatives of that undertaking, who are not otherwise identified, in certain meetings of the Poutrelles Committee, set up at the applicant Eurofer, and of the Eurofer/Scandinavia Group held between 1987 and 1989. In view of most of the applicants' habitual participation in those meetings, their relatively public nature, at least within the sector concerned, the fact that at the material time Allied Steel and Wire Ltd formed an single economic entity with British Steel and the fact that the data in question are old, the Court considers that that document may be communicated to the applicants without infringing professional secrecy.

41 Thirdly, as regards the documents numbered 9435, 9440 to 9455, 9456, 9608 to 9610 and 9612 to 9621 covered by the request of SSAB Svenskt Stål AB, the Court finds that they are concerned, first, with the request for a separate hearing sought by that undertaking's lawyer on behalf of his principal and, secondly, with the minutes of that hearing conducted by the Hearing Officer, together with the documents produced on that occasion.

42 The Court finds, in the first place, that those documents do not contain any data capable of being regarded as business secrets. In contrast, at the end of point 296 of the contested Decision, the defendant relied in particular on the statements made at that hearing by the representative of the companies SSAB Svenskt Stål AB and Ovako Profiler AB in order to find proven, against all the applicants and not only those two undertakings, the price-fixing infringement in the context of the Eurofer/Scandinavia agreements.

43 The Court further finds that, at the hearing in question, the representative of the companies SSAB Svenskt Stål AB and Ovako Profiler AB made certain statements and produced a document which do not seem manifestly irrelevant for the purposes of determining the justification of certain pleas for annulment raised by particular applicants, in particular in so far as they have submitted that those companies were encouraged by their government, following contacts which it had with Commission Directorates-General I and III, to participate in agreements or practices which took place in the context of the meetings of the Eurofer/Scandinavia Group.

44 Lastly, the Court finds that, essentially, the information communicated at that hearing simply reiterates the information already contained in the letter of the lawyer of SSAB Svenskt Stål AB to the Commission of 28 July 1992 in response to the statement of objections, which is not covered by the present request for confidential treatment made by that company.

45 In view of the foregoing, the Court considers that, in the specific circumstances of the case, the applicants should be given leave to take cognizance of the documents referred to in the request made by the undertaking SSAB Svenskt Stål AB for confidential treatment.

46 Fourthly, as regards the documents numbered 8027 and 8028 referred to in the request made by the undertaking Stefana, the Court finds that the document numbered 8027 is a standard Commission questionnaire containing no figures relating to the undertaking to which it is addressed. In contrast, the document numbered 8028, albeit less detailed than the document numbered 8787 originating from the applicant British Steel (referred to in paragraphs 20 and 30 above), also contains certain particulars relating to the turnover of the undertaking concerned in 1993. Since this is also a recent document, originating from an undertaking not party to these proceedings which has expressly claimed that it is confidential, the Court considers that it is not appropriate to authorize its communication to the applicants, especially since it does not seem relevant, *prima facie*, for the purpose of considering whether their applications are well founded.

The applicants' right of access to documents in the file which the Commission has classified as internal documents

Position of the parties

47 In its letter to the Court of 27/29 June 1995, replying to the letter from the Registrar dated 30 March 1995, the defendant reiterated its opposition in principle to the communication of its internal documents to the applicants. The Commission considers, on the basis of the existing case-law and its administrative practice, that it should continue to be able to rely on the confidentiality of those documents.

48 The defendant also opposed communication to the applicants of documents classified as confidential in the administrative file which originated from or are addressed to certain administrative or other national authorities responsible for competition matters, more specifically the Bundeskartellamt, the Office of Fair Trading, the Prisdirektoratet, the US Department of Commerce, the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes and the Permanent Representation of the Grand Duchy of Luxembourg to the European Communities. Unlike the undertakings not party to these proceedings, those authorities have not been contacted by the Commission, which takes the view that the correspondence exchanged with them must be regarded as confidential for reasons similar to those which, in its view, justify confidential treatment of internal documents of the institutions.

49 Most of the applicants criticize the manner in which the Commission has described the content of the various documents in its internal file as being too succinct or inadequate. They consider that that description does not comply with the request made by the Court in the letter from the Registry of 30 March 1995 or with the requirements of precision laid down by the Court in Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775, paragraph 94, and Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847, and does not enable them to assess the relevance, on a case-by-case basis, of any request for access to those documents in order to conduct their case.

50 Most of the applicants therefore adhere to their main claim that they should have access to the whole of the Commission's internal file, which they argue is justified on the basis of the requirements of Article 23 of the ECSC Statute, combined with the principle *audi alteram partem*. The applicants, or some of them, put forward six main arguments in this connection.

51 First, the applicants rely on the actual wording of Article 23 of the ECSC Statute, pointing out that there is no equivalent in the Protocol on the Statute of the Court of Justice of the EEC or in the Protocol on the Statute of the Court of Justice of the EAEC. Its wording is unambiguous and lays down no exception for internal documents of the institution concerned, unlike Article 47 of the ECSC Treaty, which provides for an exception for documents containing information covered by professional secrecy. The applicants maintain, moreover, that their argument is endorsed by the judgment of the Court of Justice in *Italy* v *High Authority*, cited above.

52 Secondly, the applicants rely on a principle of 'administrative transparency' which, in their view, imbues the whole of the ECSC Treaty and, more specifically, the judicial review mechanisms set up thereby. The applicant Unimétal cites to this effect the opinion of Professor Paul Reuter in *La Communauté européenne du charbon et de l'acier* (Paris, LGDJ, 1953, pp. 76 and 77). Unlike other parties or Member States, the Community institutions cannot take refuge behind a principle based on administrative secrecy which does not exist in this field. The ECSC Treaty was particularly innovative in this respect and is among the most advanced laws of the Member States.

53 Thirdly, some of the applicants justify their right of access to the internal file of the institution concerned under Article 23 of the ECSC Statute by the fact that that provision is concerned with proceedings before the Court of Justice and not with the administrative procedure before the Commission. Whereas, in their view, there might be a fairly obvious public interest in securing protection for the confidential character of documents and the process leading to the adoption of a decision, in particular on grounds of administrative effectiveness (see Lenz and Grill: 'Zum Recht auf Akteninsicht im EG-Kartellverfahrensrecht', *Festschrift für Arved*

Deringer, 1993, p. 310 et seq., at 318), the position is different, once the decision has been adopted, at the stage of the judicial review of its legality by the Court of Justice. At that stage, the rule of the confidentiality of internal documents of the Commission no longer corresponds to any legitimate interest in relation to the undertakings involved in the proceedings. On the contrary, the sound operation of the judicial system and protection of the parties' fundamental rights require the Court of Justice to be completely informed of all the facts and documents relating to the case which are in the institution's possession and to be in a position to examine all the issues raised by the parties as regards the adoption of the decision or its statement of reasons. Article 23 of the ECSC Statute is designed to achieve that objective.

54 In this context, it is argued that the case-law developed by the Court of Justice and the Court of First Instance in the field of the EC Treaty with regard to restrictions on access to the Commission's internal file is concerned essentially with the stage prior to the adoption of a decision pursuant to Article 3 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the EEC Treaty (OJ, English Special Edition 1959-1962, p. 87) and is based mainly on the description of the Commission's administrative practice set out in paragraph 35 of the Twelfth Report on Competition Policy (see Case T-7/89 *Hercules* v *Commission* [1991] ECR II-1711). In contrast, at the stage of the judicial proceedings, the general rule is that all documents, whether internal or from external sources, must be communicated to the Court of Justice and to the applicants if they are relevant for determining the issues in dispute.

55 Fourthly, some of the applicants supplement that argument by maintaining that where an action is brought before the Court of Justice pursuant to its unlimited jurisdiction under the second paragraph of Article 36 of the ECSC Treaty, as is the case here, the Court must review all aspects relating to the exercise by the institution concerned of its discretion, in particular whether the decision taken was useful and fair (Groeben, Thiesing, Ehlermann: *Kommentar zum EWG-Vertrag*, fourth edition, 1991, Article 172, note 10). But the evidence needed for such review is contained chiefly in the institution's internal documents and it is not appropriate in this regard to protect their allegedly confidential character. As long as the administration applies solely the procedures applicable in a State governed by the rule of

law and objective considerations, it has nothing to fear in the parties concerned having cognizance of them. If it should stray from those principles, it would be in the general interest for those practices to be unveiled and the administration would not deserve any protection in such an event.

56 In this connection, it is alleged that the case-law laid down in the sphere of the EC Treaty by the order of the Court of Justice in Joined Cases 142/84 and 156/84 *BAT and Reynolds* v *Commission* [1986] ECR 1899, paragraph 11, to the effect that examination by the Court of the Commission's internal file constitutes an exceptional measure of inquiry, is inapplicable in a case such as this, since, in the *BAT and Reynolds* case, the Court was not seised of an application pursuant to its unlimited jurisdiction and, as the Court itself observed, neither of the applicants had raised a plea alleging misuse of powers.

57 Fifthly, some of the applicants justify the rule set out in Article 23 in terms of the actual structure and operation of the ECSC Treaty. Under that Treaty, the Commission plays the role of a policy manager with extensive powers of economic intervention, which is very different from the role which it plays in the context of the EC Treaty. Those functions and powers with regard to the management of the coal and steel sectors, which result, *inter alia*, in the implementation of Articles 5, 46, 47, 48, 57, 60 and 65 of the ECSC Treaty, necessitate setting in place an extensive system of judicial review of the Commission's activities.

58 Sixthly and lastly, the applicants rely, in conjunction with the foregoing arguments, on the rights of the defence and the principles of equality of arms and *audi alteram partem*, according to which all the parties must have equal access to the file of the Community court in order to substantiate their arguments and refute those of the other side on the basis of same information and the same documents to which the defendant institution and the Court itself has access. The applicants rely in particular on the judgments of the Court of Justice in *Italy* v *High Authority*, cited above, Joined Cases 42/59 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53, at 84, Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 9, and *Solvay* v *Commission* and *ICI* v *Commission*, cited above.

59 In the alternative, in the event that the Court should consider, despite the wording of Article 23 of the ECSC Statute, that communication of the Commission's internal documents may in principle be made subject to certain restrictions by reason of their confidential nature, most of the applicants argue that, in that event, it would be incumbent on the Commission to justify, case by case, why the public interest in keeping the documents in question confidential should override the interest of the applicants and the Court in the sound administration of justice. In this regard, certain of the applicants envisage, in the alternative, three chief mitigations of the rule laid down in Article 23 of the ECSC Statute.

60 First, protection of the confidentiality of certain documents could be intended to secure the proper conduct and legality of the administrative procedure. Since that aim could be affected only to a small extent once the administrative procedure has closed, priority should nevertheless be given to the fundamental rights of the defence when balancing the interests involved. In this context some of the applicants concede that the names of the persons who drew up the internal opinions or memoranda may be excised, together with the names of persons mentioned therein. The Court of Justice did this, exceptionally, in *Italy* v *High Authority*, cited above. Such a formula would avoid personalizing the argument, without actually detracting from the parties' rights, since the argument would not be concerned with the conduct of a particular individual or individuals, but with that of the institution. It should only be used, however, in genuinely exceptional circumstances, as the Court of Justice held in *Italy* v *High Authority*.

61 A second mitigation of the rule set out in Article 23 of the ECSC Statute might ensue from an indirect application of Article 47 of the ECSC Treaty. Some of the applicants accordingly argue that, if information provided by a third person had to be regarded as being covered by the rule of confidentiality set out in Article 47, it would be illogical to allow it to be communicated to the applicants simply because it had been incorporated in an internal Commission document.

62 A third mitigation might consist, according to some of the applicants, in not communicating internal documents which are manifestly irrelevant. The Court of Justice used this approach in its order in Case 28/65 *Fonzi* v *Commission of the EAEC* [1966] ECR 506, which admittedly had nothing to do with the ECSC Treaty, when it decided to have a document removed from the proceedings on the ground that to retain it in the file might amount to a violation of the secrecy of the deliberations of the Commission of the EAEC when it appeared that the document related to a 'matter unconnected' with the dispute before the Court (see also the order of the Court of Justice of 6 July 1989 in Case 352/88 *Commission* v *Ireland*, not published in the European Court Reports). The applicants, allowing that such a mitigation might exist, stress, however, that the Court should exclude from the file only documents of which it is clear, *prima facie* that they have no bearing on the decision in the case before it.

63 Also in the alternative, nine of the eleven applicants have produced, in response to questions put by the Court, a list of the Commission's internal documents which, to their minds, are particularly important and of which they seek communication on the basis, not only of Article 23 of the ECSC Statute, but also of the case-law of the Court of First Instance concerning the EC Treaty, in particular *Solvay* v *Commission* and *ICI* v *Commission*, cited above. Most of the applicants have given express grounds for their request for those documents to be communicated by referring either to the various pleas for annulment raised in support of their applications or to certain inferences which they draw from their reading of the list of the documents in the Commission's internal file. This request relates essentially to the documents concerning:

— relations between the Commission and the national authorities or the Scandinavian beam producers, which, they maintain, may cast light on the reasons for which the latter largely escaped the heavy sanctions imposed on the applicants, even though the Decision acknowledges that they participated in at least one of the alleged infringements; in this connection, some of the applicants referred to the statements allegedly made to the Hearing Officer by certain Scandinavian undertakings to the effect that they were encouraged by their government and by Commission Directorate-General I to take part in the meetings of the Eurofer/Scandinavia Group;

— the possible participation of certain officials from Directorate-General III, and even from other Directorates-General of the Commission, in establishing and administering certain mechanisms identified in the Decision as agreements or practices restricting competition, and the inquiry carried out into this by the Hearing Officer following the administrative hearing held on 11, 12, 13 and 14 January 1993;

— the circumstances surrounding the determination of the amount of the fines imposed on the applicants and the methods by which the fines were calculated in relation, in particular, to the pleas for annulment alleging infringement of the principles of equal treatment and proportionality;

— the phase of the final adoption by the defendant of the Decision in its various language versions and the possible infringement on that occasion of essential procedural requirements, of which the applicants maintain that they have found some evidence from their reading of the list of documents in the defendant's internal file.

64 In addition to those principal and alternative claims, several applicants complain that the defendant did not forward to the Court all the documents relating to the cases before it, contrary to the obligation incumbent upon it under Article 23 of the ECSC Statute. They ask the Court to order the missing documents to be produced and to give leave for them to be communicated to the parties.

65 Some of the applicants accordingly maintain that the file forwarded to the Court does not contain certain internal notes or memoranda exchanged between Directorate-General III and Directorate-General IV, although they were annexed to the statements in defence lodged by the Commission in these proceedings. More generally, the applicants consider that the defendant should have forwarded to the Court, not only the administrative file of Directorate-General IV, but also that of Directorate-General III on these cases, in particular the reports and internal mem-

oranda prepared by officials of Directorate-General III on their contacts with beam producers and the Commission's policy in this sector during the period covered by the Decision.

66 Other applicants assert that the file forwarded to the Court apparently does not contain the minutes of the meeting of the College of Commissioners held on 16 February 1994 on the adoption of the contested Decision or the final version, duly dated and authenticated, of the Decision in all the authentic language versions.

Findings of the Court

67 Article 23 of the Statute on the Court of Justice of the ECSC provides that, where proceedings are instituted against a decision of one of the institutions of the Community, that institution shall transmit to the Court all the documents relating to the case before the Court.

68 It should first be observed that that provision, which has no equivalent either in the Protocol on the Statute of the Court of Justice of the EEC or in the Protocol on the Statute of the Court of Justice of the EAEC is a rule of the law relating to judicial procedure specifically applicable to proceedings pending before the Community court where it is seised of an action brought against a decision taken by one of the institutions of the ECSC.

69 As appears from the judgment in *Italy* v *High Authority* (cited above, at 54 and 55), the performance by the institution concerned of its obligations under Article 23 of the ECSC Statute does not depend on the Court's adopting any measure of inquiry to that effect and, as a general rule, extends to all the documents relating to the case, without its being necessary at this stage to provide for an exception in principle for internal documents. The very principle of judicial supervision of acts

of the administration in a Community based on the rule of law precludes the application of a general rule of administrative confidentiality *vis-à-vis* the Court of Justice.

70 It is important to stress, moreover, that the documents forwarded to the Court of Justice and the Court of First Instance pursuant to Article 23 of the ECSC Statute must, in principle, be made accessible to all the parties to the procedure. It would infringe a basic rule of law to base a judicial decision on facts and documents of which the parties themselves, or one of them, have not been able to take cognizance and in relation to which they have not therefore been able to formulate an opinion (*SNUPAT* v *High Authority*, cited above, at 84).

71 The Court therefore considers that the defendant is not entitled to rely solely on its administrative practice or on the case-law of the Court of Justice with regard to the Court's examination of the Commission's internal file in the context of reviewing the legality of a procedure applying the competition rules laid down in the EC Treaty (see *BAT and Reynolds* v *Commission*, cited above, paragraph 11) in order to oppose, without any other justification at this stage, disclosure of its internal documents to the applicants.

72 As the Court of Justice held, however, in its order of 6 November 1954 in Case 2/54 *Italy* v *High Authority* (not published in the European Court Reports), 'the provisions of the Treaty may be interpreted only in the manner most favourable to the sound functioning of the Community institutions'. That consideration, which, according to the Court of Justice, also applies to Article 23 of the ECSC Statute, justifies, in particular, not granting a request for the production of internal documents relating to the case in question where the documents already produced are sufficient to elucidate the Court (see, in addition to the judgment in *Italy* v *High Authority*, cited above, the judgments in Case 3/54 *ASSIDER* v *High Authority* [1954 to 1956] ECR 63 and Case 4/54 *ISA* v *High Authority* [1954 to 1956] ECR 91).

73 Likewise, the Court considers that the possibility of an impairment of the sound functioning of the institutions, detrimental to the attainment of the objectives of the ECSC Treaty, cannot be ruled out *a priori* in the event of the unconsidered disclosure of certain documents which, by reason of their nature or their content, warrant special protection. Thus, for example, in the judgment in *Italy* v *High Authority* the Court of Justice was anxious to protect the secrecy of the deliberations of the High Authority and the Consultative Committee and, in the judgment in Case 145/83 *Adams* v *Commission* [1985] ECR 3539 concerning the EC Treaty, it held that the institution concerned was under a duty to keep secret the identity of an informer who had demanded that he should remain anonymous.

74 In assessing such a possibility, the Court has to resolve a conflict between, on the one hand, the principle of the effectiveness of administrative action and, on the other, the principle of judicial supervision of administrative acts, while respecting the rights of the defence and the principle *audi alteram partem*.

75 As the present proceedings stand, the Court does not consider itself to have been sufficiently elucidated to resolve this conflict. Whilst the applicants have clearly explained, having regard in particular to their substantive pleas, the reasons why they consider their requests for access to the Commission's internal file, and more specifically to the documents referred to in their alternative claims (see paragraphs 51 to 63 above), to be relevant, it must be held that the defendant has not been equally clear about the reasons why, in its view, it should, exceptionally, be released from its obligations under Article 23 of the ECSC Statute.

76 Consequently, the defendant should be asked to identify, within the period to be accorded to it to that end, the documents classified by it as internal in the file forwarded to the Court which, by reason of their specific nature or content, it considers may not be communicated to the applicants, while explaining in detail and specifically as regards each document the reasons which it considers to warrant such exceptional treatment and lodging, where appropriate, a non-confidential version of those documents. Since the defendant has claimed that the correspondence exchanged with the national authorities should be treated in the same way as its

internal documents (see paragraph 48 above), it must justify in the same manner the specific reasons for which it opposes the communication of that correspondence to the applicants in this case.

77 In the meantime, it is appropriate to reserve the decision on the applicants' request for access to the documents in the file forwarded to the Court which the Commission classifies as internal documents and on their requests for the production of documents not appearing in that file. Likewise, the Court will rule as appropriate at a later date on whether measures of inquiry or of organization of procedure should be ordered under Articles 64 and 65 of the Rules of Procedure.

78 Since the Commission cannot reorganize the file forwarded to the Court with a view to its consultation by the parties in accordance with the end of point 1 of the Registry's letter to the parties of 30 March 1995 until such time as a decision has been taken on all the outstanding questions, it should also be decided, in the interests of the sound organization of the proceedings, that the rules governing the applicants' access to that file will be notified to them by the Registrar at a later date.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby orders:

1. **The documents bearing the numbers 1922 to 1936, 1940 to 1960, 1990 to 1992, 2179, 2180 and 8787 in the file forwarded to the Court under cover of the defendant's letter of 24 November 1994 shall be accessible, in their unabridged version, only to the applicant in Case T-151/94 and the**

Commission. As far as the other applicants in these proceedings are concerned, they shall be replaced by their non-confidential versions, as sent to the Court under cover of letters from the applicant in Case T-151/94, dated 31 May and 15 September 1995, respectively.

2. The document originating from the undertaking Stefana, numbered 8028 in the file forwarded to the Court, is withdrawn from the file.

3. The defendant shall explain in detail and specifically, within six weeks of notification of this order, the reasons why it considers that certain documents classified by it as 'internal' among the documents which it has forwarded to the Court cannot, in its view, be communicated to the applicants. Where appropriate, it shall forward to the Court within that same period a non-confidential version of those documents.

4. The decision is reserved on the applicants' request for access to the documents forwarded to the Court which the defendant classifies as internal documents and on their request for the production of documents not contained in that file.

5. The rules on how the parties will be authorized to consult the file forwarded to the Court at the offices of the Registry shall be notified to them by the Registrar at a later date.

6. The costs are reserved.

Luxembourg, 19 June 1996.

H. Jung — Registrar

H. Kirschner — President