JUDGMENT OF THE COURT
2 MARCH 1967[1]

Società Industriale Metallurgica di Napoli (Simet) and Acciaierie e Ferriere di Roma (Feram) v High Authority of the ECSC

Joined Cases 25 and 26/65

Summary

1. Procedure—Time-limit for instituting proceedings—Expiry—Unforeseeable circumstances

(Protocol on the Statute of the Court of Justice of the ECSC, third paragraph of Article 39)

2. Procedure—Application—Measures forming a single whole—Subject—matter of action

3. Procedure—Objection of illegality—General decision—Direct legal relationship—Measures forming a whole—Admissibility

(ECSC Treaty, Article 36)

4. Common financial arrangements—Equalization of ferrous scrap—Calculation of contributions—Estimated assessment—Conditions

(ECSC Treaty, Article 53)

1. An unforeseeable circumstance within the meaning of the third paragraph of Article 39 of the Protocol on the Statute of the Court of Justice of the ECSC may be constituted by the delay in the lodging of an application by reason of the fact that it is only received by the Court some time after its arrival at the place where the Court has its seat.

2. An application expressly directed against a measure which is one of a number of measures constituting a single whole must be regarded as directed also, so far as is necessary against the others.

3. Where an application is made against a measure which is one of a number of measures constituting a single whole, the applicant is entitled to plead the illegality of a general decision on which one of the said individual measures is based.

4. Cf. para. 2, summary, Joined Cases 9 and 58/65, [1967] E.C.R. 1.

In Joined Cases

25/65 — Società Industriale Metallurgica di Napoli (Simet), SpA, having its registered office in Naples-Barra,

and

1 — Language of the Case: Italian.

26/65 — ACCIAIERIE E FERRIERE DI ROMA (FERAM), SpA, having its registered office in Rome,

both represented by Arturo Cottrau, advocate of the Turin Bar and of the Corte di Cassazione, with an address for service in Luxembourg at the chambers of Georges Margue, avocat-avoué, 20 rue Philippe-II,

applicants,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its legal adviser, Italo Telchini, acting as Agent, assisted by Renato Alessi, advocate of the Voghera Bar, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application

(a) for the annulment of the individual decisions of the High Authority of 11 February 1965 charging the applicants Simet and Feram with the payment of the sums of 252 974 228 lire and 105 899 634 lire respectively by way of contributions to the imported ferrous scrap equalization scheme;

(b) for a declaration of the illegality of general Decision No 7/63 of the High Authority of 3 April 1963 concerning the drawing up of statements of account relating to the equalization of imported ferrous scrap and scrap treated as such;

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

1. *Case 25/65 (Simet)*

By a first individual decision of 11 February 1965 the High Authority made an estimated assessment of the tonnage of ferrous scrap consumed by Simet during the period from 1 June 1956 to 30 November 1958 and by a second individual decision of the same date, this time enforceable, ordered it to pay the sum of 252 974 228 lire in respect of arrears of contributions to the equalization scheme. The two decisions were notified to Simet on 20 March 1965.

2. *Case 26/65 (Feram)*

By an enforceable individual decision 11 February 1965 the High Authority ordered the undertaking Feram to pay to it the sum of 105 899 634 lire in respect of arrears of equalization contributions. This decision was notified to Feram on 19 March 1965.

II — Conclusions of the parties

1. The *applicant Simet* claims that the Court should, 'having dismissed any request, objection and allegation to the contrary':

(a) *As regards the principal conclusions*

'annul the individual decision of 11 February 1965 (notified to the applicant on 20 March 1965) on the grounds of infringement of an essential procedural requirement, infringement of the Treaty and misuse of powers;
declare that Decision No 7/63 of the High Authority is illegal on the grounds of infringement of an essential procedural requirement, infringement of the Treaty and misuse of powers;
order the defendant to bear the costs;'

(b) *As regards the preliminary conclusions*

Measures of inquiry

'order that all files and documents relating to the monthly declarations of ferrous scrap consumption, minutes drawn up by the inspectors of the ECSC and by the investigators of the Société Fiduciaire Suisse be produced to the Court and communicated to the applicant';

Proof by witnesses

'allow proof by witness and by an expert's report on the question whether it is true that Simet's electric furnace has a capacity of 5 metric tons and that it is an old model as is the transformer attached to it but subject always to the applicant's right to object to witnesses who have knowledge of the circumstances set out in the Chapter headed "Proof" hereinbefore contained';

Expert's report

'cause to be ascertained by an expert to be appointed by the Court of its own motion what were the usual average prices in the Community for internal scrap during the period from 1 April 1954 to 30 November 1958 and what were the usual prices on the international market for imported scrap (taking account of the average tonnages of No 2 American baled scrap and American engines the prices of which were respectively quoted at 10 dollars and 4 dollars per metric ton lower) for the same period';

2. The *applicant Feram* claims that the Court should, 'having dismissed any request, objection or allegation to the contrary':

(a) *As regards its principal conclusions*
'annul the decision of 11 February 1965 (notified to the applicant on 20 March 1965) on the grounds of infringement of an essential procedural requirement, lack of a statement of reasons and misuse of powers;
declare that Decision No 7/63 of the High Authority is illegal on the grounds of infringement of an essential procedural requirement, infringement of the Treaty and misuse of powers;
order the defendant to bear the costs';

(b) *As regards the preliminary conclusions*

Measures of inquiry

'order that all documents concerning the declarations, calculations and checks and the documents relating to purchases of scrap by the applicant (these documents being in the possession of the High Authority) be produced to the Court and communicated to the applicant';

Expert's report

'cause to be ascertained by an expert to be appointed by the Court of its own motion what were the usual average prices in the Community for internal scrap during the period from 1 April 1954 to 30 November 1958 and what were the usual prices on the international market for imported scrap (taking account of the average tonnages of No 2 American baled scrap and American engines the prices of which were respectively quoted at 10 dollars and 4 dollars per metric ton lower) for the same period';

3. The *defendant High Authority* in its statements of defence contends that the Court should dismiss the applications and order the applicants to bear the costs. In its rejoinder in Case 25/65 (Simet) it contends that the Court should:

'in the first place and by way of a preliminary decision declare the application to be inadmissible;
alternantively, take note that the assessable tonnage has been reduced to 35 574 metric tons and that the amount still due by way of equalization contributions is therefore reduced to 238 631 270 lire, and for the remainder, reject all the submissions in the application and order the applicant to bear the costs'.

III — Procedure

The applications in the two cases were entered at the Registry on 4 May 1965.

By documents lodged on 18 May in both cases the High Authority asked the Court, pursuant to Article 91 of the Rules of Procedure, to declare the applications inadmissible on the ground that they were submitted out of time and to order the applicants to pay the costs of the proceedings. In their observations which they lodged on 17 June the applicants asked the Court to dismiss the High Authority's application on the above-mentioned procedural issue and to order it to pay the costs.

By orders of 13 July the Court in both cases reserved for the final judgment its decision on the defendant's preliminary objection and reserved the costs.

The High Authority lodged its statements of defence on 15 September 1965.

By reason of the common ground between the two cases the Court decided, by order of 30 September, to join them for the purposes of procedure and judgment.

In Case 25/65 (Simet) the reply was lodged in due time on 5 November 1965.

In Case 26/65 (Feram) the time for lodging the reply was extended on several occasions at the applicant's request and was finally fixed for 30 June 1966. Since it was not until 6 July that the applicant asked for a

further extension, the Registrar, by letter of 14 July, informed it that it was barred from lodging a reply and that the written procedure was now to be regarded as closed following the lodging of the High Authority's statement of defence.

The High Authority lodged its rejoinder in Case 25/65 (Simet) on 15 September 1966.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without any preparatory inquiry. The applicant in Case 26/65 (Feram), before the oral procedure was opened, lodged a number of documents. At the request of the Court the defendant, too, lodged a number of documents.

The oral submissions of the parties were presented at the hearings on 8 and 23 November 1966.

On 17 November 1966 the High Authority lodged its written replies to the questions which were put to it at the hearing on 8 November as well as several documents in support.

The Advocate-General delivered his opinion at the hearing on 14 December 1966.

IV — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *Admissibility*

1. The inadmissibility of both applications on the ground of their being out of time

The *defendant* points out that the contested decisions were notified to those to whom they were addressed respectively on 20 March 1965 (Simet) and on 19 March 1965 (Feram) and that the applications against them were not made until 4 May, that is, after the expiry of the time-limits. The applications are thus inadmissible.

The *applicants* make it clear that the two applications were despatched on 21 April at the same time as a communication to the Registry advising it of such despatch. This communication arrived within the period prescribed for the lodging of the applications.

The delay in the delivery of the applications themselves must therefore be regarded as an unforeseeable circumstance or as a case of *force majeure*.

The *defendant* observes, in Case 25/65 (Simet), that the application was sent, not by normal post, but by parcel post, a notoriously slower system.

In any event, according to the case-law and the legal doctrine of the Member States, the hazards of the postal service cannot be invoked in order to justify delay where mandatory limitation periods apply.

2. Inadmissibility of Application 25/65 (Simet) on the ground of disparity between the submissions and the subject-matter of the dispute

The *defendant* maintains that Application 25/65 is inadmissible, since it was expressly brought solely against the enforceable decision concerning the obligation to pay, whereas the submissions refer to the individual decision determining the tonnage of ferrous scrap.

According to the defendant, the submissions contained in an application in adversary proceedings and which relate to a measure other than the contested measure cannot be admitted. Since, therefore, it makes no express mention of the decision fixing the tonnages subject to contribution and contains no submissions relating to the decision concerning the obligation to pay, the application cannot be regarded as admissible in so far as either of the individual decisions is concerned.

The *Applicant Simet* replies that in the recitals contained in the preamble to the decision containing the order to pay

there is a reference to the decision determining its consumption of bought ferrous scrap and that the High Authority itself has therefore established and relied upon the logical and necessary connexion between the two decisions. Moreover the statement of the first submission in the application expressly refers to the two decisions.

3. Inadmissibility of the submissions directed against general Decision No 7/63

The *defendant* observes that a general decision can only be challenged directly on the ground of misuse of powers and that the other grounds can only be put forward in support of an objection of illegality. No such objection, however, has been raised in the present case.
The defendant also makes the point that general Decision No 7/63 constitutes the basis solely of the individual decision concerning the obligation to pay. Since Simet has not, in fact, contested the latter decision, its submissions directed against the general decision are inadmissible.
On the first point the *applicant Simet* replies that, in reliance upon the case-law of the Court, it is entitled to invoke the four grounds for annulment in order to call in question the legality of the general decision on which the contested individual decisions are based.
On the second point it maintains that the two individual decisions are referred to in its application.

B — *The substance of the case*

1. The individual decisions

Case 25/65 (Simet)

(a) The *applicant* remarks that in its recitals the decision fixing its tonnage of ferrous scrap justifies resorting to an estimated assessment on the ground that Simet failed to produce a number of accounting documents, namely:
— the schedules of purchases and movements of ferrous scrap declared each month;
— the suppliers' invoices book;
— the certificates of the weight of ferrous scrap received;
— the cash book;
— the day book.
However, according to the applicant, there is no provision of Italian law or of Community law which requires undertakings to keep schedules of purchases and movements of ferrous scrap declared monthly, certificates of the weight of ferrous scrap received or a cash book.
The applicant maintains, moreover, that it submitted to the High Authority's inspectors the suppliers' invoices book, the day book and the inventories book as well as the annual balance sheets and the profit and loss account. These accounting documents are still available at its premises, and subject to certain conditions laid down by Italian law, to the representatives of the High Authority.
The *defendant* replies that the duty to produce the accounting documents at issue, which constitute essential evidence of the movements of ferrous scrap, is one which results from the general decisions which established the equalization scheme.
By virtue of these decisions undertakings must be in a position to corroborate by concrete evidence the truth of their declarations and the High Authority is empowered to correct declarations in support of which no valid proof is available, which was the case in this instance.
(b) The *applicant* observes that for years it has disputed the High Authority's statements of account and objected to their arbitrary character.
It maintains that it has always properly declared its monthly purchases of ferrous scrap, has never evaded the checks by the High Authority's representatives nor has it ever refused to submit accounting documents which by virtue of

its national law it is bound to preserve. The High Authority therefore had no right whatever to resort to an estimated assessment. It should first have proved that the information furnished by the applicant was incomplete or false.

The *defendant,* on the other hand, states that Simet has not fulfilled its obligation to provide the information necessary for the calculation of its equalization contributions. Its monthly declarations of purchases of ferrous scrap are incorrect and are contradicted by the statement of electricity consumption. What is more, Simet has failed to provide other information which would make it possible to ascertain its actual consumption which is the only basis on which contributions can be calculated. Simet's attitude has prevented the High Authority from basing its assessment directly on exhaustive accounting documents. It was therefore compelled to carry out an estimated assessment based on the information concerning the consumption of electricity provided, albeit after a substantial delay, by the applicant itself.

(c) The *applicant* disputes the relevance of the coefficient (ratio of 850 kWh to each metric ton of steel produced) on which the High Authority based its estimated assessment. It maintains that certain members of the committee of experts consulted by the High Authority were by no means in agreement with this ratio; moreover, other experts suggested different criteria.

Furthermore, the ratio adopted could not apply in the case of the production of ordinary steels or where, as in the present case, small electric furnaces are also used for the production of alloy steels.

The *defendant* replies that the applicant is not entitled to ask the Court to give a judgment on the substance of this matter, for this would involve the assessment of factors and decisions which fall within the High Authority's discretion and the legality of which cannot be the subject of review by the Court. In any event the validity and legality of the inductive system based on the consumption of electricity have on many occasions been confirmed by the Court. Moreover, the criterion, which was approved unanimously by the committee of experts, was applied in a manner as favourable as possible to the applicant. Lastly the defendant disputes that the applicant produced alloy steels.

(d) The *applicant* maintains that, contrary to the High Authority's assertions, the type of furnace which it uses does not have a capacity of between 6 and 7 metric tons, but of 5 metric tons at most. In support of this statement, it produces, as a schedule to its reply, the invoice relating to the purchase of the furnace which shows a capacity of 4 to 5 metric tons.

The *defendant,* while maintaining that its assessment of the capacity of the furnace is based on the declarations made by the undertaking itself to the inspectors of the Société Fiduciaire Suisse, acknowledges the documents produced by the applicant and as a result amends the contested decisions both as regards the tonnage of assessable bought scrap and the amount of the contributions.

The defendant takes the view that these amendments are not its fault as they are due to the applicant's negligence and to its delay in providing the necessary information for the calculation of its contributions. In these circumstances the essence of the reasons of fact and law on which the disputed decisions are founded has not been altered in any way and the decisions must be upheld.

(e) The *applicant* maintains that the ratio between the specific charge of ferrous scrap and steel produced, determined by the High Authority at 1 051 kg per metric ton, should not be assessed at more than 950 kg per metric ton.

The *defendant* replies that the factors on which it based its criteria for assess-

ing the consumption of ferrous scrap were arrived at on the basis of the experience gained, and confirmed on several occasions, with production plant similar to the applicant's. The figure of 950 kg is contradicted, moreover, by the calculation of the input of ferrous scrap carried out by the applicant itself.

(f) The *applicant* maintains that the general decisions on the equalization scheme make contributions entirely dependent upon the consumption of bought ferrous scrap. The High Authority therefore had no right to impose upon it contributions for the period from 1 June 1956 to 31 January 1957 during which Simet bought no ferrous scrap and engaged in no production activity.

The *defendant* replies that the equalization contributions depend on the consumption of ferrous scrap. However, during the period in dispute, the applicant undertaking was engaged in intense activity which must have led it to resort to bought scrap. In this connexion the actual time when the scrap was bought is immaterial.

The *applicant* replies by producing the invoice for the purchase of the furnace. This shows that the furnace was commissioned on 27 November 1956. Simet could not, therefore, have engaged in steel making during the disputed period. The consumption of electricity during that period could only relate to its ancillary departments.

The *defendant*, on the other hand, points out that:

— the furnace was delivered in February 1956;
— on 1 January 1957 there were stocks of semi-finished products (ingots), finished products (rolled) and scrap (1 625 metric tons);
— the trading account for 1956 mentions a consumption of raw materials to the value of approximately 230 million lire;
— the electricity invoices show a regular consumption of electricity since June 1956.

All these factors prove, according to the defendant, that Simet did engage in production between 1 June 1956 and 31 January 1957.

(g) The *applicant* maintains that the High Authority, in exercising its powers under Article 47 of the Treaty, must respect certain guarantees to the benefit of which the undertakings are entitled. In particular, it is not entitled to rely on checks the results of which were never recorded in minutes and of which the applicant is therefore unaware.

The *defendant* replies that there is no express provision or any general principle which requires its servants to record their checks in the form of minutes.

In the present case, moreover, the only factors which can assist in judging whether the decision in question is well-founded are known to the applicant and appear in the decision.

(h) The *applicant* says that, even accepting the legality of using the coefficient kWh/t, the High Authority should have taken account:

— of the capacity of the furnace, the power of the transformer and the age of both;
— of certain processing methods which led to the recovery of a large quantity of arisings which were to be regarded as own resources.

The *defendant's* view is that these are nothing more than assertions on the part of the applicant which are not such as could disprove the correctness of the technical data used by the defendant in its estimated assessment.

Case 26/65 (Feram)

The *applicant* complains that the reasons stated for the contested decision are plainly defective since in them the High Authority states that the calculations were 'based on the declarations made by the undertaking'. However, the declarations as to its consumption com-

municated by Feram differ from the figures adopted by the High Authority to the extent of 1 411 metric tons (31 394 as against 32 805 metric tons).
The *defendant* considers that this argument is made out of time and is unfounded.
The statements of account taken into consideration by the contested decision were communicated in April 1962 to the applicant, which expressed no objection. They were the result of incomplete statements of account expressly accepted by Feram.
The High Authority arrived at its conclusions solely on the basis of the information supplied to it by Feram, information which in no way corresponds to that produced by it in the application.

2. General Decision No 7/63

(a) *Both applicants* maintain that general Decision No 7/63 infringed an essential procedural requirement, since the High Authority, before adopting it, failed to obtain the unanimous assent of the Council as it is required to do by Article 53 of the Treaty.
The *defendant* replies that there is no provision which requires it to seek the Council's assent before adopting decisions implementing financial arrangements already in existence. In any event, the question has already been resolved in this way by the case-law of the Court.
(b) The *applicants* point out that when the Council issued its opinion on general Decision No 14/55 setting up the equalization scheme it had expressly recommended to the High Authority that it should only increase the equalization contributions for very serious reasons and that it should avoid any undue increase in the consumption of ferrous scrap.
However, the contributions were continually increased until they reached prohibitive rates and the increase in the consumption of ferrous scrap surpassed even the gloomiest forecasts.
The *defendant* replies that Decision No 7/63 did not increase the equalization rate but, on the contrary, reduced it. The increase in the amount of contributions is the result of Decision No 7/61 the legality of which has been recognized by the Court.
An increase in the consumption of ferrous scrap was made necessary by the growth of steel production which is one of the basic objectives of the Treaty.
(c) The *applicants* put forward the following further arguments in support of the submission of misuse of powers:

— the numerous substantial frauds, for which the High Authority must bear responsibility, caused serious injury to the undertakings;
— the absence of any serious supervision on the part of the High Authority over the bodies managing the equalization scheme meant that the calculation of the factors determining the equalization differential was carried out on the basis of data which bore no relation to the real facts;
— by fixing the weighted average for internal scrap at too low a price and the weighted average for imported scrap at too high a price the High Authority caused small undertakings, which essentially consume internal scrap of lesser quality and giving a poor yield, to bear the greater part of the increase in the cost price of imported scrap and was thus guilty of serious discrimination against them.

The *defendant* replies to the complaint of discrimination that all the Community undertakings were entitled to use imported scrap. The choice depended solely on the kind of technical and industrial organization of the undertaking in question. The difference in price between internal scrap and imported scrap is moreover considerably less than that stated by the applicants.
As regards the other arguments put

forward by the applicants, the defendant maintains that they have nothing to do with the submission of misuse of powers. The applicants give no indication of the objectives pursued by the High Authority in the contested general decision. Furthermore, the arguments have no relevance to the present cases.

(d) The applicants complain that the High Authority kept from the undertakings the actual amount of the equalization rate. In particular, Decision No 7/63, a measure designed to settle the accounts between a certain number of undertakings subject to the scheme, should have given each undertaking an accurate account of its debits or credits and enabled it to ascertain the debits or credits of the other undertakings as well as the method of calculation used to arrive at these figures.

The Treaty requires the High Authority, especially as regards publicity for price lists, to notify in good time the final statements of account and to apply the correct rates. Having failed to do this, the High Authority infringed in particular Articles 17 and 78 of the Treaty.

The *defendant* remarks that this line of argument has been rejected in its entirety by the Court in previous cases.

(e) According to the *applicants*, since Decision No 7/63, on the High Authority's own admission, does not create any obligation to pay on the part of undertakings, it cannot serve as a basis for the contested individual decisions.

The *defendant* maintains that Decision No 7/63 lays down the necessary preconditions for establishing the amount of the equalization contributions which the various undertakings had to pay. The actual obligation to pay only ensues as the result of individual implementing decisions.

The *applicant Simet* takes the view that since the Court has ruled that undertakings must wait until the final statements of account have been drawn up before asserting their rights through litigation, the High Authority, too, must wait until then before requiring the undertakings to pay their debts.

Grounds of judgment

I — Admissibility

1. *The objection that the applications are out of time*

The applications, which were sent from Turin by registered parcel post on 21 April 1965, did not reach the Court until the following 4 May. The period of one month fixed by the Treaty, together with the ten days' extension on account of distance to which the applicants in the present case were entitled, for lodging their applications at the Court, has been exceeded. Under Article 37 (3) of the Rules of Procedure the only relevant date in the reckoning of time-limits for making applications is that of lodgment at the Registry. The applicants, however, rely on the existence of unforeseeable circumstances or of *force majeure* which, under the third paragraph of Article 39 of the Protocol on the Statute of the Court of Justice of the ECSC, prevent the expiry of the period from prejudicing their rights.

The principal reason for the delay may be found in the fact that the applications did not reach the Court until four days after their arrival in Luxembourg. This fact must be regarded, so far as the applicants are concerned, as

an unforeseeable circumstance within the meaning of the third paragraph of Article 39 of the Statute. In these circumstances the particular features of the case make it possible to treat the date of the arrival of the applications in Luxembourg as the date of their lodgment at the Registry. Accordingly, Application 25/65 (Simet) is admissible since the contested decision was notified on 20 March and the application was lodged on 30 April 1965, the last day of the prescribed period. On the other hand, since Application 26/65 (Feram) arrived in Luxembourg after the expiry of the period prescribed for contesting the decision notified on 19 March 1965, this application is inadmissible.

2. *The objection based on the discrepancy between the submissions and the subject-matter of Application 25/26 (Simet)*

According to the defendant, Application 25/65 (Simet) is expressly directed solely against the decision imposing the obligation to pay, whereas the arguments taken as a whole only relate to the decision fixing the assessable tonnage of ferrous scrap. This discrepancy between the submissions and the subject-matter of the application are said to make the application inadmissible in its entirety.

However, the decision fixing at 37 668 metric tons the basis of Simet's assessment to contribution for the period from 1 June 1956 to 30 November 1958 and the decision imposing the obligation to pay the sum of 252 974 228 lire by way of arrears of contributions to the equalization scheme were both taken by the High Authority on the same date, namely 11 February 1965. The decisions were addressed to the applicant alone. The recitals in the preamble to the second decision expressly refer to the decision determining the consumption of assessable bought scrap. The determination of the assessable tonnages of scrap which logically must precede the fixing of the amount for payment was in fact intended to form the basis for the latter operation. It must therefore be accepted that for practical purposes the two decisions in question constitute a single whole. The application, which was expressly directed against the second decision, must therefore be regarded as directed also, so far as is necessary, against the first. This was clearly the applicant's intention. The High Authority was under no misapprehension on this point and its rights of defence were in no way prejudiced.

Its objection must therefore be dismissed.

3. *The objection relating to the submissions directed against general Decision No 7/63*

(a) Under the second paragraph of Article 33 of the ECSC Treaty the only

ground which an undertaking is entitled to plead in support of an application for the annulment of a general decision of the High Authority is misuse of powers. It cannot plead the four grounds for annulment set forth in the first paragraph of Article 33 unless it claims, by way of an objection, that the general decision on which the contested individual decision is based is illegal. The defendant maintains that in the present case the two applicants pleaded the four grounds in support of an application which sought no more than annulment of general Decision No 7/63.

Since Applications 26/65 (Feram) is inadmissible as being out of time, the objection need only be examined from the point of view of Application 25/65 (Simet). Although there is a passage in the application indicating that its subject-matter is the annulment of general Decision No 7/63, such is not the case as regards the conclusions which are expressly formulated by the applicant Simet. In these circumstances, it must be accepted that the applicant Simet only intended to plead all the grounds for annulment in support of an objection of illegality against Decision No 7/63.

(b) The defendant argues, as regards Case 25/65 (Simet), that its general Decision No 7/63 serves as a basis only for the individual decision of 11 February 1965 imposing the obligation to pay. The application, however, contains no submission or argument against the latter decision. Thus there is lacking in the present case that direct legal connexion between the contested individual measure and the general decision on which it is founded in the absence of which the illegality of the general decision cannot be pleaded.

It has been decided under heading 2 above that the two individual decisions of 11 February 1965 constitute a single whole. In these circumstances the applicant Simet is entitled to plead the illegality of general Decision No 7/63 in support of submissions directed against one or other of the two contested individual decisions.

II — The substance

The justification for resorting to an estimated assessment

Under Article 2 of Decision No 13/58 of 24 July 1958, relating to the management of the financial arrangements instituted by Decisions Nos 22/54, 14/55, 26/55, 3/56 and 2/57, and under Article 15 of Decision No 16/58 of the same date establishing financial arrangement making it possible to ensure a regular supply of scrap to the Common Market, as amended by Decision No 18/58 of 15 October 1958, the High Authority is empowered, where undertakings fail to declare information required for the calculation of contributions, to make estimated assessments. The High Authority is also em-

powered, pursuant to the same provisions, to correct on its own initiative declarations in support of which no valid proof can be supplied.

It follows from these provisions that assessments and corrections of this kind are secondary methods, of an exceptional character, which can only apply under certain conditions. The High Authority has no power to substitute itself for the undertakings except where the latter do not comply with their duty to provide information capable of corroborating the declarations which they have made. Thus, for it to be entitled to act of its own motion, the High Authority must show either that the undertaking has failed to provide the information necessary for its contributions to be ascertained or that it has failed to provide proof in support.

The contested decision relies on the applicant's failure to produce certain accounting documents, which it lists, in order to claim that the High Authority was 'compelled . . . to ascertain the undertaking's consumption of scrap by means of an estimated assessment based on the consumption of electricity'. In this respect it must be noted that by its decision of 22 July 1959 'relating to the carrying out of a check at the premises of the undertaking Simet' and containing instructions that documents be made available, the High Authority demanded the production of certain documents only two of which appear in the list of evidentiary accounting documents contained in the contested decision. According to the defendant, however, 'the general expression used in the decision of 22 July 1959 . . . is capable of covering any kind of document which could serve to verify whether the declarations submitted by the undertaking were correct'. It follows, therefore that the contested decision is wrong in justifying its recourse to an estimated assessment on the ground that the High Authority was compelled to do so 'since the undertaking failed to submit accounting documents', which it lists, when it is apparent from the foregoing considerations that other evidence could have sufficed to serve the desired purpose. More particularly it should be pointed out that, as regards the day book, the defendant has maintained throughout the proceedings that '(the day book) itself would have been enough to enable the High Authority to ascertain the real facts assuming that the day book gave a true reflexion of them'.

On the other hand, as regards the production of documentary evidence, the parties are not in agreement over the applicant's statement that it did not refuse to submit to the inspectors of the High Authority and of the Société Anonyme Fiduciaire Suisse certain accounting documents and more particularly the invoices book and the day book, which are compulsory commercial records under the applicant's national law.

On this point, the information supplied and the documents which were properly laid before the Court, and more particularly the reports of the in-

spectors of the High Authority and of the Société Anonyme Fiduciaire Suisse who were responsible for checking the applicant's declarations—reports which were only submitted to the Court during the oral procedure and at the express request of the Court—do not show that any request was in fact made or, *a fortiori,* refused for the production of the documents set forth in the contested decision. Inspector Chaudat, in his report of 1 April 1960 on the visit which he made to Simet on 22 March 1960, in order (according to the defendant) to 'peruse the documents mentioned in the said individual decision' (of 22 July 1959), remarked that the undertaking's administration manager 'said that he was willing to submit the documents which we requested from him'. The report drawn up on 15 June 1960 by the Société Anonyme Fiduciaire Suisse on the further checks carried out at Simet's premises from 21 to 25 March 1960 makes no mention of any refusal to produce the documents requested. By letter of 5 May 1961 Inspector Chaudat asked the applicant's lawyer to produce a number of documents among which figure none of the documents the production of which is mentioned as necessary in the contested decision. In his report of 14 March 1962 on the checks carried out between May and September 1961, Inspector Chaudat specifies the documents which Simet transmitted to him at his request. Again, among these there is to be found only one of the above-mentioned documents.

In view of these reports, which originate from its own authorized representatives, it ill becomes the High Authority to maintain that the applicant refused to submit documents which it was in fact requested to submit.

Since the contested decision is based exclusively on the statement, which has not been proved, that Simet failed to supply evidence of proof and since the probative value of Simet's declarations has not been called in issue, the decision provides no justification for the ground on which it alleges that it was necessary to resort to an exceptional assessment procedure. Accordingly, both the decision determining the consumption of assessable scrap and, consequently, the decision of the same date, fixing, on the basis of the said estimated assessment, the amount of the contributions due from Simet to the equalization scheme, must be annulled.

III — Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. The defendant High Authority has failed in its submissions on the application of the Simet company (Case 25/65). It must therefore be ordered to pay the costs in that case.

The application of the applicant Feram has been declared to be inadmissible (Case 26/65). It must therefore be ordered to pay the costs in that case.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Coal and Steel Community, especially Articles 5, 14, 15, 17, 33, 36, 47, 53, 78, 80 and 92;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Annuls the two individual decisions of the High Authority dated 11 February 1965 and notified to the Società Industriale Metallurgica di Napoli (Simet) on 20 March 1965;**

2. **Orders the High Authority of the European Coal and Steel Community to pay the costs of the proceedings in Case 25/65;**

3. **Dismisses the application of the company Acciaierie e Ferriere di Roma (Feram);**

4. **Orders the company of Acciaierie e Ferriere di Roma (Feram) to pay the costs of the proceedings in Case 26/65.**

Hammes Trabucchi

Donner Lecourt Strauß

Delivered in open court in Luxembourg on 2 March 1967.

M. J. Eversen
Assistant Registrar
for the Registrar

Ch. L. Hammes
President