

## Case T-120/89

### Stahlwerke Peine-Salzgitter

v

### Commission of the European Communities

(ECSC — Non-contractual liability of the Community)

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#### Summary of the Judgment

- 1. Action for damages — ECSC — Harm suffered as a result of decisions — Admissibility — Conditions — Prior annulment — Limits*  
(ECSC Treaty, Art. 34)
- 2. Action for damages — ECSC — Harm suffered as a result of annulled decisions — Application for pecuniary reparation — Admissibility — Conditions — Prior finding of fault on the part of the Community which caused direct and special harm — Reasonable time to be allowed to enable the Commission to take the necessary steps to ensure equitable redress*  
(ECSC Treaty, Art. 34)
- 3. Non-contractual liability — ECSC — Legislative measure — Liability of the Community — Conditions*  
(ECSC Treaty, Art. 34; ECSC Treaty, second para. of Art. 215)
- 4. Non-contractual liability — ECSC — Legislative measure — Production and delivery quota system for steel — Determination of quotas for an undertaking — Determination based on an incorrect assessment of 'exceptional circumstances' and of the nature of the aid received — Manifest and grave disregard of the limits on the exercise of discretionary powers — Liability incurred*  
(ECSC Treaty, Art. 34)

5. *Non-contractual liability — ECSC — Legislative measure — Production and delivery quota system for steel — Maintenance by the Commission of an inappropriate ratio between production quotas and delivery quotas through misapprehension of the scope of its powers — Manifest and grave disregard of the limits on the exercise of discretionary powers — Liability incurred*  
(ECSC Treaty, Art. 34)

6. *Non-contractual liability — ECSC — Legislative measure — Conditions — Direct and special harm — Grant to an undertaking, under the steel production and delivery quota system, of quotas not corresponding to its circumstances*  
(ECSC Treaty, Art. 34)

1. The Commission is under an obligation, by virtue of Article 34 of the ECSC Treaty, when a judgment is delivered annulling a decision whose effect was limited to a clearly defined period of time, first, to take the measures required to comply with that judgment, not only as regards the annulled measure but also as regards the express or implied measures which have essentially the same content as the annulled measure and were adopted between the date of entry into force of the annulled measure and the annulling judgment, and, secondly, to take with respect to individual measures the steps made necessary by the annulment of the general measure for whose implementation they were adopted. Accordingly, an action to establish liability on the basis of a declaration that the said subsequent or implementing measures involved fault and that harm resulted from them cannot, having regard to the requirements of Article 34 of the ECSC Treaty, be declared inadmissible for lack of prior annulment by the Court of Justice.

2. An action for damages brought by an undertaking on the basis of the second paragraph of Article 34 of the ECSC Treaty following an annulling judgment is admissible only if, first, it has previously been held by the Community

Court that the annulled measure is vitiated by a fault of such a nature as to render the Community liable and has caused the undertaking to suffer direct and special harm and, secondly, the Commission has, after that finding, been allowed a reasonable time in which to take the steps necessary to ensure equitable redress and, so far as necessary, pay appropriate damages.

3. By virtue of Article 34 of the ECSC Treaty, the annulment of a legislative measure of the Commission is not sufficient to render the Community liable. In view of the need, within a single legal order, albeit one established by three different treaties, to ensure as far as possible the uniform application of Community law and a consistent system of judicial protection, it appears appropriate, where a legislative measure is illegal, to interpret the concept of fault of such a nature as to render the Community liable as used in the first paragraph of Article 34 of the ECSC Treaty in the light of the criteria laid down by the Court of Justice in its decisions on the second paragraph of Article 215 of the EEC Treaty.

4. Having regard to the previous decisions of the Court of Justice, the Commission could not have been unaware, at the time of the adoption, as from 1985, under the

steel production and delivery quota system, of decisions refusing to adjust delivery quotas for certain undertakings and for certain products, of the fact that it was not authorized to take into account, in determining the existence of exceptional difficulties, the position of other categories of products and consequently that it could not lawfully base its refusal on the fact that the undertaking was on the whole making a profit. Moreover, the seriousness of its error is aggravated by the fact that, for no apparent reason, it took an approach diametrically opposed to its previous practice and, in several cases, granted additional quotas to undertakings that were achieving profits, thus manifestly infringing the principle of equality of treatment as between economic agents.

The Commission could not, moreover, having regard to the previous decisions of the Court of Justice, have been unaware that the effect which an aid may have on the profit and loss account of an undertaking cannot be regarded as a valid criterion for the purpose of identifying aid intended to cover operating losses and therefore, by treating as such the aid received by certain undertakings and therefore refusing to adjust their quotas, it committed an error in interpreting the concept of operating losses which must be described as inexcusable. It follows that the Commission manifestly and gravely disregarded the limits which it must observe in the exercise of its discretion when applying the production quota system and consequently it committed a fault of such a nature as to render the Community liable under the first paragraph of Article 34 of the ECSC Treaty.

5. By failing to adjust, under the steel production and delivery quota system, the unfavourable ratio between the delivery quotas and the production quotas of a number of undertakings, even though it itself considered such an adjustment necessary in order to place the quotas on an equitable basis, on the ground that the Council had not given its assent, even though it was clearly apparent from the case-law of the Court of Justice that the Council's assent was required only for the establishment of the production quota system, the Commission manifestly and gravely disregarded the limits on the exercise of its discretion in implementing the production quota system, such conduct constituting a fault of such a nature as to render the Community liable within the meaning of the first paragraph of Article 34 of the ECSC Treaty.

6. An undertaking which, under the steel production and delivery quota system, is compelled, as a result of the Commission's refusal to allow it any adjustment of its delivery quotas, which involves both illegality and fault, to sell a substantial part of its production on the markets of non-member countries under unprofitable conditions, has suffered direct harm within the meaning of the first paragraph of Article 34 of the ECSC Treaty. Such harm is also special harm within the meaning of the same provision in so far as it is established that the undertaking in question is one of a limited and clearly identified number of undertakings which, through an unjustified breach of the principle of equality as between economic agents, have suffered harm going beyond the bounds of the risks inherent in the activities in the sector concerned.