JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
10 October 2001 *

In Case T-171/99,

Corus UK Ltd, formerly British Steel plc, then British Steel Ltd, established in London, represented by P.G.H. Collins and M. Levitt, Solicitors, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by J. Currall and W. Wils, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION seeking compensation for the harm allegedly suffered by the applicant through the Commission's refusal to pay it interest on the amount repaid pursuant to a judgment of the Court of First Instance reducing the level of the fine imposed on it,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: B. Vesterdorf, President, M. Vilaras and N.J. Forwood, Judges,

Registrar: G. Herzig, Administrator,

having regard to the written procedure and further to the hearing on 15 November 2000,

gives the following

Judgment

Facts of the dispute

1 On 16 February 1994 the Commission adopted Decision 94/215/ECSC relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements

and concerted practices engaged in by European producers of beams (OJ 1994 L 116, p. 1), by which it found, inter alia, that the applicant had participated in a series of infringements on the Community market in steel beams and imposed on it a fine of ECU 32 million.

2 By application lodged at the Registry of the Court on 13 April 1994, the applicant brought an action seeking annulment of that decision.

3 On 2 June 1994 the applicant paid the full amount of the fine imposed on it.

4 By judgment of 11 March 1999 in Case T-151/94 *British Steel* v *Commission* [1999] ECR II-629, summary publication ('the steel-beams judgment'), the Court annulled Article 1 of Decision 94/215, in so far as that article found that the applicant had participated in an agreement to share the Italian market which had lasted three months, and set at EUR 20 million the amount of the fine imposed on the applicant by Article 4 of that decision.

5 On 23 April 1999 the Commission repaid to the applicant the sum of EUR 12 million, this being the difference between the amount of the fine paid on 2 June 1994 and that set by the Court.

6 The applicant wrote on 23 April 1999 requesting the Commission to pay to it interest on that sum for the period from 2 June 1994 to 23 April 1999.

7 By letter of 16 June 1999 the Commission turned down that request on the ground that, by repaying the principal sum of EUR 12 million, it had satisfied its obligations under Article 34 CS.

Procedure and forms of order sought by the parties

8 The present action was brought by application lodged at the Court Registry on 22 July 1999.

9 The applicant claims that the Court should:

— primarily, pursuant to Article 40 CS:

(a) order the Commission to pay to it the sum of £3 533 474, or such other sum as the Court deems appropriate;

(b) order the Commission to pay to it interest on that sum at a rate which the Court considers to be just in all the circumstances from 24 April 1999 until final judgment;

(c) order the Commission to pay to it interest at 8% per annum on the amounts mentioned under subparagraphs (a) and (b) above as from the date of final judgment in this case until payment thereof;

— in the alternative, pursuant to Article 34 CS:

(a) declare that Decision 94/215 was vitiated by faults of such nature as to render the Community liable;

(b) declare that, as a result of the Commission's fault, the applicant has suffered direct and special harm in being unlawfully deprived of the use of EUR 12 000 000 from 2 June 1994;

(c) refer the case to the Commission and order it to adopt appropriate measures in order to ensure equitable redress for the harm directly resulting from its conduct, and to pay appropriate damages as far as may be necessary;

— order the Commission to pay the costs.

10 The Commission contends that the Court should:

— declare the application inadmissible, alternatively reject it as unfounded, in so far as it seeks compensation under Article 40 CS or under a no-fault principle of unjust enrichment;

— reject the application as unfounded in so far as it seeks a declaration pursuant to Article 34 CS;

— order the applicant to bear the costs.

11 Upon hearing the Report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure. As a measure of procedural organisation, the Commission was requested to reply to certain written questions and to produce certain documents. The Commission complied with those requests within the specified period.

12 The parties presented oral argument and answered questions put to them by the Court at the hearing on 15 November 2000.

Law

Arguments of the parties

13 The applicant submits, as its principal contention, that it is entitled to obtain pecuniary reparation under Article 40 CS by reason of the injury directly caused to it by a fault of the Commission. It contends that the fault in question consists, apart from the illegality of Decision 94/215 itself, in the Commission's refusal to pay to the applicant interest on the fine paid, in so far as that fine has been annulled by the Court. The applicant argues that such refusal is contrary to the obligation on the Commission of *restitutio in integrum* following a judgment annulling a measure, as well as to the principle prohibiting unjust enrichment, which the applicant describes as a general principle of Community law.

14 The applicant argues, in the alternative, that the Commission has incurred liability under Article 34 CS. It submits essentially that, by failing to compensate it for its loss of earnings on the amount of fine unlawfully imposed, the Commission has failed to take the steps necessary to comply with the steel-beams judgment. The applicant is for that reason entitled to bring an action for damages before the Court (see Case T-220/97 *H & R Ecroyd Holdings* v *Commission* [1999] ECR II-1677, paragraphs 55 and 56).

15 With regard to fault, the applicant submits that the irregularities identified by the Court in the steel-beams judgment are errors or instances of an inexcusable lack of care on the Commission's part in the exercise of its powers under the ECSC Treaty, and are thus of such a nature as to render the Community liable. The applicant submits that these irregularities are justified neither by the complexity

of the application of the competition rules nor by the margin of discretion enjoyed by the Commission in this area.

16 The applicant goes on to argue that the harm which it has suffered constitutes direct and special harm within the meaning of Article 34 CS. In assessing this harm, the applicant distinguishes between the periods from 2 June 1994 to 23 April 1999, from 23 April 1999 to the date of the Court's final judgment, and from the date on which that judgment is delivered to the date of payment.

17 So far as the period from 2 June 1994 to 23 April 1999 is concerned, the applicant assesses its loss by reference to the interest cost to it resulting from a diminution of its cash balances in an amount equal to the sterling equivalent of EUR 12 million on 2 June 1994. During that period, the applicant was in a cash surplus situation and was investing funds on a three monthly rolling basis with interest compounded. Since Corus is a sterling-based company with cash balances primarily in sterling, it is, in its view, appropriate to use sterling, rather than euros, as the basis for calculating its losses. The applicant calculates those losses at £3 533 474.

18 For the period from 24 April 1999 to the date of final judgment by the Court, the applicant submits that it continues to suffer loss as a result of the Commission's continued refusal to make restitution in full. This loss is represented by the further loss of the earnings which the above sum of £3 533 474 would have brought to the applicant had the Commission complied in full with the steel-beams judgment. The applicant accordingly requests the Court to order the Commission to pay to it interest on that sum at such rate as the Court may consider to be just in all the circumstances.

19 Finally, the applicant submits that the Commission should be ordered to pay interest on such sums as the Court orders to be paid from the date of final judgment until the date of actual payment, at an annual rate of 8%.

20 The Commission argues that the principal claim under Article 40 CS is inadmissible in so far as it is not based on any fault other than that constituted by the partially annulled Decision itself.

21 The Commission considers that the alternative claim under Article 34 CS is unfounded. At the hearing it accepted, in response to a question from the Court, that its obligation to repay the principal amount of the fine, to the extent determined by the annulment judgment, flows from the second sentence of the first paragraph of Article 34 CS, and exists independently of any finding of fault. By contrast, the Commission considers that the payment of interest on that amount, in so far as it was not ordered in the operative part of the annulment judgment itself, is not a step 'necessary... to comply with the judgment' that it was required to take in order to comply with that provision. The Commission submits that such a payment is therefore subject to proof of a serious fault of such a nature as to render the Community liable, and of direct and special harm within the meaning of the third sentence of the first subparagraph of Article 34 CS and under the conditions defined by the case-law (see Joined Cases C-363/88 and C-364/88 *Finsider and Others* v *Commission* [1992] ECR I-359). The Commission submits that those conditions are not met in the present case.

22 The Commission submits that, in the steel-beams judgment, apart from a minor point concerning the sharing of the Italian market, the Court upheld the Commission's finding of infringement of Article 65 CS in Decision 94/215, as well as the seriousness of the infringement committed. The only annulment was a partial annulment of Article 1 of that decision, which resulted in a reduction by ECU 252 600 of the fine initially imposed. So far as the further reduction of the

fine is concerned, this was the result of the exercise by the Court of its unlimited jurisdiction (see paragraphs 686 to 696 of the grounds of the judgment, the heading under which they appear, and the operative part of the judgment), and not the result of any error or service-related fault on the Commission's part.

23 The Commission points out that enforcement of the competition rules, particularly in the case of secret cartels, is an extremely complex task, and that it enjoys a margin of discretion in fixing the level of fines in order to direct the conduct of undertakings towards compliance with those rules (Case T-49/95 *Van Megen Sports* v *Commission* [1996] ECR II-1799, paragraph 53). In that context, the reasons which led the Court to set the fine at a level different to that initially fixed cannot, in the Commission's view, be regarded as involving a fault of such a nature as to render the Community liable.

24 The Commission also questions the existence of direct and special harm within the meaning of the third sentence of the first paragraph of Article 34 CS.

25 The Commission further submits that there is no causal link between the alleged fault and the alleged loss. The alleged loss results from the applicant's decision to pay the fine immediately rather than to provide a bank guarantee, an option which the Commission had made available to it.

26 The Commission further considers that the principle prohibiting unjust enrichment, as it exists in the contract law of certain Member States, does not constitute a general principle of Community law applicable, in the absence of express provision, to the actions of the institutions, particularly in the field of punishing infringements of the competition rules under the ECSC Treaty. That principle does not therefore apply to circumstances such as those in this case.

27 In the alternative, the Commission argues that, in the logic of unjust enrichment, the amount of compensation should correspond to the lower of the two amounts represented by the applicant's alleged loss, on the one hand, and, on the other, the Community's supposed enrichment. The applicant's calculation is for that reason fundamentally misconceived.

28 Further, that calculation should be carried out in euros, not in pounds sterling, since the initial fine had been set in ecus, the Court fixed its amount in euros, and that was the currency in which the Commission reimbursed the difference. The Commission also submits that the use of national currencies would lead to unjustifiable differences between undertakings according to their nationality.

29 In reply to the questions put by the Court, the Commission set out, at the hearing, the legal and financial arrangements, together with the budgetary and accounting rules, applicable to fines imposed for infringement of the competition rules, in particular where the decision imposing those fines is the subject of an annulment action.

30 It appears from these explanations that, under the EC Treaty, fines are paid into one of the Commission's ordinary commercial accounts. These bank accounts are regularly credited with payments from the 'treasury accounts' in line with the Commission's actual expenditure. Treasury accounts are non-interest bearing accounts held with the public treasuries of the Member States from which the latter pay their contribution to the Community budget. Thus, the Commission argues, the only effect of an undertaking paying a fine is a smaller contribution by the Member States to the Community budget, without any enrichment whatsoever of the Community in the form of interest earned.

31 Under the ECSC, the budget of which is self-financing by way of levies on the production of coal and steel, fines paid by undertakings are added to the levies invested, and therefore yield interest for the Community. These fines are reinvested for three months at a time, with interest compounded, for as long as they are liable to be annulled or reduced by the Community courts.

32 In the present case, according to the Commission's calculations, that part of the applicant's fine annulled by the steel-beams judgment, namely EUR 12 million, invested at an average interest rate of 4.613% during the period from 3 June 1994 to 23 April 1999, taking account of the quarterly capitalisation of interest, yielded a return for the ECSC of EUR 3 016 608.

33 The Commission claims, however, that there is no legal basis in the ECSC Treaty for the repayment of that sum to the applicant. Although it accepts that such repayment could be justified on equitable grounds, in circumstances other than those of the present case, it points out that, as a public administrative body subject to the control of the budget authority and the Court of Auditors, it can make payments only if a legal basis permits it to do so.

34 On this point, the Commission states that it has recently observed that undertakings ordered to pay a fine are, increasingly, tending to pay the fine immediately pending judgment in their action against the decision imposing the fine, rather than providing an acceptable bank guarantee, which they have the option to do. The Commission accordingly decided, on 14 September 1999, to introduce a new practice. Thus, where an undertaking to which a decision imposing a fine is addressed pays the fine, whilst at the same time introducing an action for the annulment or reduction of that fine before the Community courts, the amount of the fine provisionally paid is placed in an interest-bearing bank

account, opened for that purpose by the Commission. The interest earned on the sum placed in the account is subsequently divided between the Commission and the undertaking in proportion to the principal that the Commission is required to repay after final judgment of the Community court. Following the selection of a bank by an open call for tenders, this new practice has been progressively applied since June 2000.

35 The Commission adds, however, that the decision of 14 September 1999 cannot be applied retroactively to the applicant's case. It considers that it introduced the new practice as a measure of good administration in order to improve the situation of the undertakings concerned, without, however, being under any legal obligation to do so.

Findings of the Court

36 It should, first, be noted that the application seeks, as its primary claim, an order that the Commission pay damages and interest, and, as alternative claims, various declarations and orders. Although the applicant has invoked distinct legal bases for these heads of claim, namely Article 40 CS for the primary claim and Article 34 CS for the alternative claims, there is no need to take account of possible errors made by it in designating the text applicable to one or other of the claims since the purpose of the proceedings and summary of the pleas in law appear sufficiently clearly from the application (see, by analogy, Case 12/68 *X* v *Audit Board* [1969] ECR 109, paragraph 7). Consequently, the Court will consider the primary and alternative claims on the basis of both Articles 40 CS and 34 CS.

37 The first paragraph of Article 40 CS provides:

'Without prejudice to the first paragraph of Article 34, the Court shall have jurisdiction to order pecuniary reparation from the Community, on application by the injured party, to make good any injury caused in carrying out this Treaty by a wrongful act or omission on the part of the Community in the performance of its functions.'

38 Article 34 CS provides:

'If the Court declares a decision or recommendation void, it shall refer the matter back to the Commission. The Commission shall take the necessary steps to comply with the judgment. If direct and special harm is suffered by an undertaking or group of undertakings by reason of a decision or recommendation held by the Court to involve a fault of such a nature as to render the Community liable, the Commission shall, using the powers conferred upon it by this Treaty, take steps to ensure equitable redress for the harm resulting directly from the decision or recommendation declared void and, where necessary, pay appropriate damages.

If the Commission fails to take within a reasonable time the necessary steps to comply with the judgment, proceedings for damages may be instituted before the Court.'

39 According to the express wording of those provisions Article 34 CS provides for a specific legal remedy, distinct from that provided by the general rule of

Community liability under Article 40 CS, in cases where the injury relied upon results from a decision of the Commission that has subsequently been annulled by the Community courts.

40 It follows that, if no fault other than that constituted by the annulled decision has contributed to the damage relied on, the applicant can seek to have the Community declared liable only on the basis of Article 34 CS (see, in this respect, *Finsider* v *Commission*, cited above, paragraphs 15, 17 and 18, and the Opinion of Advocate General Van Gerven in that case, [1992] ECR I-383, point 15).

41 In the present case, however, the applicant argues that the fault consists not only in the illegality of Decision 94/215 itself but also in the refusal of the Commission to pay it interest, which fact, in its view, justifies it in basing its primary claim on Article 40 CS.

42 That submission cannot be upheld. Since the damage relied on by the applicant lies in the loss of use of EUR 12 million from 2 June 1994 to 23 April 1999, this arises solely from the adoption and execution of Decision 94/215. The allegedly wrongful refusal of the Commission to compensate this injury constitutes, according to the applicant's own argument, a failure to comply with that institution's obligations under the steel-beams judgment (see paragraphs 13 and 14 above). Even if such a failure could be considered to constitute a fault distinct from that allegedly vitiating the void act, the second paragraph of Article 34 CS makes express provision, in such a case, for a claim for damages before the Court. The basis for such proceedings thus, in any case, remains Article 34 CS.

43 It follows that the application must be dismissed in so far as it is founded on Article 40 CS.

44 As for the application under Article 34 CS, it should at the outset be pointed out that the second and third sentences of the first paragraph of that article draw a distinction with regard to the steps that the Commission is required to take when a matter is referred back to it after an annulment, between those steps that are necessary in order to give effect to the annulment decision, and which must be taken by the Commission as a matter of course and in all cases, even in the absence of any fault, and those steps that are compensatory in nature, and which need only be taken to the extent that there has been a prior finding by the Community courts that the void act was vitiated by a fault of such a nature as to render the Community liable, and to the extent that the undertaking has suffered direct and special harm (see Case T-120/89 *Stahlwerke Peine-Salzgitter* v *Commission* [1991] ECR II-279, paragraphs 65 to 69, and the Opinion of Advocate General Gerven in *Finsider* v *Commission*, point 15). In either case, proceedings for damages under the second paragraph of Article 34 CS are admissible only in so far as the Commission has had a reasonable time to take the steps in question.

45 As for the nature of the fault required to render the Community liable under the third sentence of the first paragraph of Article 34 CS, it appears both from the terms of that provision and the case-law of the Court of Justice (*Finsider* v *Commission*, paragraph 20) that the mere illegality of a decision is not enough. When called upon to determine the question of the Community's liability under Article 40 CS, the Court of Justice has used descriptions such as 'inexcusable mistakes' (Joined Cases 14/60, 16/60, 17/60, 20/60, 24/60, 26/60 and 27/60 and 1/61 *Meroni and Others* v *High Authority* [1961] ECR 161, at p. 171), 'gravely neglected the duties of supervision' (Joined Cases 19/60, 21/60, 2/61 and 3/61 *Société Fives Lille Cail and Others* v *High Authority* [1961] ECR 281, at p. 297) or 'lack of care' which was 'obvious' (Joined Cases 29/63, 31/63, 36/63, 39/63 to 47/63, 50/63 and 51/63 *Société anonyme des laminoirs, hauts fourneaux, forges,*

fonderies et usines de la Providence and Others v *High Authority* [1965] ECR 911, at p. 937). It appears from this case-law, read in the light of the opinions of the Advocates General, that, in order to determine the nature of the fault necessary to render the Community liable, whether under Article 34 CS or Article 40 CS, it is necessary to take into account the fields and circumstances in which the Community institution acts. In that respect particular account must be taken of the complexity of the situations which the institution must regulate, the difficulties of applying the legislation and the discretion available to the institution under that legislation (*Finsider* v *Commission*, paragraphs 23 and 24).

46 In the present case, having regard, first, to the field and circumstances in which Decision 94/215 was adopted, and in particular to the history of relations between the European iron and steel industry and the Commission between 1970 and 1994, the extent and complexity of the cartel between the producers of steel beams with which the Commission was confronted, the variety and number of infringements committed, the care taken by the member undertakings of the cartel to conceal their unlawful activities and their lack of cooperation with the investigation, the difficulties in applying the provisions of the ECSC Treaty to agreements and the margin of discretion open to the institution when fixing the amount of the fine (see the steel-beams judgment, paragraph 623), and second, to the considerations which led the Court to reduce the amount of the fine imposed on the applicant by EUR 12 million whilst in all essential respects upholding the Commission's findings of infringement, the Court considers that the illegalities affecting that decision are not sufficiently serious as to constitute a fault of such a nature as to render the Community liable within the meaning of the third sentence of the first paragraph of Article 34 CS.

47 Furthermore, the simple loss of use of a sum of money pending proceedings before the Court, resulting from payment of the fine imposed by the Commission on an undertaking, cannot, in principle, be regarded as constituting special harm within the meaning of the third sentence of the first paragraph of Article 34 CS. Since proceedings instituted before the Court do not have suspensory effect under Article 39 CS, every undertaking ordered to pay a financial penalty under the ECSC Treaty will be exposed to this type of loss.

48 It follows that the claim under Article 34 CS must be dismissed as unfounded in so far as it seeks declarations, first, that Decision 94/215 is vitiated by faults of such a nature as to render the Community liable and, second, that the applicant has suffered direct and special harm within the meaning of that provision.

49 In the context of the present action, it remains, however, to be determined whether the payment of arrears of interest on the principal amount of the fine repaid is a step necessary for the enforcement of the annulment decision which the Commission is required to take in any event under the second sentence of the first paragraph of Article 34 CS, even in the absence of any fault on its part of such a nature as to render the Community liable. If so, the failure of the Commission to take such a step within a reasonable period of time would itself give rise to proceedings for damages under the second paragraph of Article 34 CS.

50 It has been held on numerous occasions, under the EC Treaty, that, as a consequence of a judgment of annulment, which takes effect *ex tunc* and thus has the effect of retroactively eliminating the annulled measure from the legal system (see Joined Cases 97/86, 99/86, 193/86 and 215/86 *Asteris and Others* v *Commission* [1988] ECR 2181, paragraph 30; Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 46; Opinion of Advocate General Léger in Case C-127/94 *Ecroyd* [1996] I-2731, I-2735, point 74), the defendant institution is required, by virtue of Article 176 of the EC Treaty (now Article 233 EC), to take the necessary measures to reverse the effects of the illegalities as found in the judgment of annulment. In the case of an act that has already been executed, this may take the form of restoring the applicant to the position he was in prior to that act (see Case 22/70 *Commission* v *Council* [1971] ECR 263, paragraph 60; Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, paragraph 32; Case 21/86 *Samara* v *Commission* [1987] ECR 795, paragraph 7; Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraphs 59 and 60, and *Exporteurs in Levende Varkens and Others* v *Commission*, cited above, paragraph 47).

51 The reasons underlying Article 176 of the EC Treaty constitute grounds for accepting that the same principles apply in the context of the implementation of Article 34 CS (see Case 266/82 *Turner* v *Commission* [1984] ECR 1, paragraph 5).

52 Foremost amongst the steps referred to in the second sentence of the first paragraph of Article 34 CS, in the case of a judgment annulling or reducing the fine imposed on an undertaking for infringement of the Treaty competition rules, is the Commission's obligation to repay all or part of the fine paid by the undertaking in question, in so far as that payment must be described as a sum unduly paid following the annulment decision (see, on this point, the steel-beams judgment, paragraph 697).

53 Contrary to the submission of the Commission, that obligation applies not only to the principal amount of the fine overpaid, but also to default interest on that amount.

54 First, the payment of default interest on the amount overpaid would seem to be an essential component of the Commission's obligation to restore the applicant to his original position following a judgment of annulment, or a judgment exercising the Court's unlimited jurisdiction, since complete reimbursement of a fine unduly paid cannot leave out of account factors, such as the effluxion of time, which may in fact reduce its value (see, by way of analogy, Case C-271/91 *Marshall* [1993] ECR I-4367, paragraph 31 ('*Marshall II*'), and Joined Cases C-397/98 and C-410/98 *Metallgesellschaft and Others* [2001] ECR I-1727, paragraphs 94 and 95). Proper compliance with such a judgment therefore requires, in order fully to restore the applicant to the position in which it legally should have been, that account be taken that such restoration only occurred after an appreciable lapse of time, during which the applicant did not have the use of the sums it had unduly paid (see, by way of analogy, *Samara* v *Commission*, cited above, paragraph 9).

55 Second, a failure to reimburse interest could result, as is particularly the case in the present instance (see paragraph 32 above), in the unjust enrichment of the Community, which would be contrary to the general principles of Community law (Case C-259/87 *Greece* v *Commission* [1990] I-2845, summary publication, paragraph 26). It follows that the Commission is required to reimburse not only the principal amount of the fine unduly paid, but also the amount of any enrichment or benefit it has obtained as a result of such payment.

56 It should be pointed out that according to a generally accepted principle in the domestic laws of the Member States concerning actions for the recovery of sums unduly paid founded on the principle prohibiting unjust enrichment, the question of payment of interest on a capital sum unduly paid is strictly dependent upon the right to recover the principal itself. The determination of the amount due as arrears of interest depends, directly and necessarily, on the amount of the sum unduly paid and on the time which elapsed between the undue payment, or at least the final demand served by the body collecting the payment, and its repayment. Finally, the right to receive such interest is not subject to proof of damage (see the Opinion of Advocate General Trabucchi in Case 26/74 *Roquette Frères* v *Commission* [1976] ECR 677, at p. 691).

57 The Commission's argument that the loss of use of the sum of EUR 12 million, pending proceedings before the Court, results from the applicant's decision to pay the fine instead of providing a bank guarantee must be rejected. In paying the fine, the applicant merely complied with the operative part of an enforceable decision notwithstanding its institution of proceedings before the Court, in accordance with Article 39 CS. Moreover, the option granted by the Commission to the applicant to provide an adequate bank guarantee, rather than paying the fine immediately, was conditional upon the fine bearing interest (see paragraph 48 of the steel-beams judgment).

58 It follows that, in not paying any interest to the applicant on the sum of EUR 12 million repaid in accordance with the steel-beams judgment, the Commission failed to take a step necessary to comply with that judgment. The claim under Article 34 CS, which was brought after a reasonable time had passed, is accordingly well founded in principle, and it is necessary to award compensation to the applicant corresponding to the amount of interest that should have been reimbursed together with the principal sum.

59 As for the currency in which the interest should be calculated and paid, it must be noted that, under Article 4 of Decision 94/215 the fine imposed on the applicant was set in ecus; that the applicant paid the fine in that currency; that, in accordance with Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ 1997 L 162, p. 1), the Court of First Instance in the steel-beams judgment set the amount in euros, and finally, that it was in that currency that the Commission repaid the difference in principal. In those circumstances there is no reason to use any currency other than the euro for the calculation and payment of the interest.

60 Regarding the rate of interest, it should be pointed out that, according to a principle generally accepted in the domestic law of the Member States, in an action for the recovery of a sum unduly paid based on the principle prohibiting unjust enrichment, the claimant is normally entitled to the lower of the two amounts corresponding to the enrichment and the loss. Furthermore, where the loss consists of the loss of use of a sum of money over a period of time, the amount recoverable is generally calculated by reference to the statutory or judicial rate of interest, without compounding.

61 Applying the same principles, mutatis mutandis, to the present proceedings, given the similarities with such an action, it would normally be appropriate to award

the applicant simple interest on the sum of EUR 12 million, at a fixed rate to be determined by the Court, for the period from 2 June 1994 to 23 April 1999.

62 In the present case, however, it appears from the Commission's explanations (see paragraph 32 above) that the sum of EUR 12 million invested at an average interest rate of 4.613 % during the period in question yielded a total return for the ECSC of EUR 3 016 608, taking into account quarterly compounding of interest.

63 It appears fair in the circumstances of this case to award this sum to the applicant.

64 Since this amount should have been paid to the applicant within a reasonable period following the steel-beams judgment, it is further right, in accordance with the forms of order sought in the application, to add to this amount simple interest on those arrears at the fixed rate of 5.75% per annum, corresponding to the interest rate applicable to capital refinancing operations set, at the time, by the Council of Governors of the European Central Bank, increased by two points for the period from 24 April 1999 to the date of the present judgment.

65 Finally, in accordance with the applicant's claim, which has not been challenged by the Commission, it is further appropriate that these two amounts should bear interest from the date of the present judgment until full and final payment. However, the rate of this interest must also be fixed at 5.75% per annum, without compounding.

Costs

66 Under Article 87(2) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they are applied for in the successful party's pleadings. Since the Commission has been unsuccessful in its main submissions, and the applicant has applied for costs, the Commission must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Orders the Commission to pay to the applicant the sum of EUR 3 016 608, together with simple interest on that sum at the fixed rate of 5.75% per annum, for the period from 24 April 1999 to the date of the present judgment;**

2. Orders that the sums referred to in paragraph (1) above shall bear simple interest at the same rate from the date of the present judgment until full and final payment;

3. Dismisses the remainder of the application;

4. Orders the Commission to pay the costs.

Vesterdorf Vilaras Forwood

Delivered in open court in Luxembourg on 10 October 2001.

H. Jung
Registrar

B. Vesterdorf
President