JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
7 July 1999 *

In Case T-106/96,

Wirtschaftsvereinigung Stahl, an association formed under German law, established in Düsseldorf, Germany, represented by Jochim Sedemund, Rechtsanwalt, Berlin, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicant,

v

Commission of the European Communities, represented by Paul F. Nemitz and Frank Paul, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Council of the European Union, represented by Guus Houttuin and Stephan Marquardt, of its Legal Service, acting as Agents, with an address for service in

* Language of the case: German.

Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Department of the European Investment Bank, 100 Boulevard Konrad Adenauer,

intervener,

APPLICATION for annulment of Commission Decision 96/315/ECSC of 7 February 1996 concerning aid to be granted by Ireland to the steel company Irish Steel (OJ 1996 L 121, p. 16),

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

composed of: R.M. Moura Ramos, President, R. García-Valdecasas, V. Tiili, P. Lindh and P. Mengozzi, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 25 November 1998,

gives the following

Judgment

Legal background

1 In principle, the Treaty establishing the European Coal and Steel Community (hereinafter 'the Treaty') prohibits State aid to the steel industry. Article 4(c) states that 'subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever', are incompatible with the common market in coal and steel.

2 The first and second paragraphs of Article 95 of the Treaty provide:

'In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the Commission is necessary to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.

Any decision so taken or recommendation so made shall determine what penalties, if any, may be imposed.'

3 In order to meet the needs of restructuring the steel sector, the Commission took the first two paragraphs of Article 95 of the Treaty as the legal basis for setting up, as from the early 1980s, a Community scheme under which the grant of aid to the steel industry could be authorised in a limited number of cases. The scheme has undergone successive amendments with a view to resolving the specific economic difficulties of the steel industry. Thus, the Community code governing aid to the steel industry which was in force at the material time was the fifth in the series and was established by Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry (OJ 1991 L 362, p. 57, hereinafter 'the Fifth Code'). It remained in force until 31 December 1996. With effect from 1 January 1997, it was replaced by Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (OJ 1996 L 338, p. 42), which forms the sixth steel aid code. It is clear from the preamble to the Fifth Code that, like its predecessors, it introduced Community rules which were intended to apply to aid, whether specific or non-specific, granted by Member States in any form whatsoever. The Fifth Code did not authorise either operating or restructuring aid, save in the case of aid for closure (Case T-243/94 *British Steel* v *Commission* [1997] ECR II-1887 (hereinafter '*British Steel*'), paragraph 3).

4 In tandem with the Fifth Code, which constituted a general decision, the Commission had recourse on several occasions to Article 95 of the Treaty in order to adopt individual decisions authorising specific aid by way of exception. In that context, the Commission adopted on 12 April 1994 six individual decisions authorising the grant of State aid to various steel undertakings. Those decisions were contested in three actions for annulment before the Court of First Instance, resulting in the judgments of 24 October 1997 in Case T-239/94 *EISA* v *Commission* [1997] ECR II-1839 (hereinafter '*EISA*'); *British Steel*; and Case T-244/94 *Wirtschaftsvereinigung Stahl and Others* v *Commission* [1997] ECR II-1963 (hereinafter '*Wirtschaftsvereinigung*').

Facts

5 Irish Steel Ltd is a 100% State-owned company, operating Ireland's only steel-making and rolling plant, and is situated in Haulbowline, Cobh, County Cork. It has a liquid steel production capacity of 500 000 tonnes per annum and a hot-rolling capacity of 343 000 tonnes per annum in finished products (sections). During the five commercial years from 1990 to 1995, its actual production of hot-rolled products — 278 000, 248 000, 272 000, 276 000 and 258 000 tonnes per annum respectively — was considerably lower than its capacity.

6 Between 1980 and 1985 Irish Steel received aid worth IEP 183 million from the Irish Government with the Commission's prior approval. It then suffered a spell of persistent financial difficulties leading to total losses at the end of the 1994/95 commercial year in excess of IEP 138 million.

7 In 1993 the Irish Government underwrote two loans (worth IEP 10 million and IEP 2 million respectively) which were granted at an effective rate of interest below the market rate. Those loans were deemed necessary to enable Irish Steel to continue operating. That aid was not notified to the Commission at the time.

8 Irish Steel's deteriorating financial performance led the Irish Government to notify the Commission, by letter dated 1 March 1995, of a restructuring plan for the company and associated public financial assistance. The plan allowed for a contribution of IEP 40 million in equity and IEP 10 million by way of the State guaranteed loan referred to above (hereinafter 'the first restructuring plan'). At

the same time, the Irish authorities opened negotiations for the privatisation of Irish Steel.

9 On 4 April 1995, by Commission Notice 95/C 284/04 pursuant to Article 6(4) of [the Fifth Code] to other Member States and other parties concerned regarding aid which Ireland has granted to Irish Steel (OJ 1995 C 284, p. 5; hereinafter 'Notice 95/C'), the Commission gave notice to the parties concerned to submit their comments on the compatibility of the notified measures with the common market. However, the first notification of 1 March 1995 was withdrawn by letter of 7 September 1995 and the Irish authorities submitted a revised notification to the Commission. This concerned a new plan for State aid in exchange for the acquisition of Irish Steel by Ispat International — a privately owned company based in Indonesia, controlled by Indian capital and operating in several countries — following an open bid procedure. The second proposal was not notified to other interested persons at all.

10 According to the Commission's estimates, the total value of the State aid contemplated in connection with the sale of Irish Steel was IEP 38.298 million. The aid was to be apportioned as follows:

— a maximum amount of IEP 17 million for the writing-off of the interest-free Government loan;

— a cash contribution of up to a maximum of IEP 2.831 million to cover a balance sheet deficit;

— a cash contribution of up to a maximum of IEP 2.36 million to cover specific remedial environmental works;

— a cash contribution of up to a maximum of IEP 4.617 million towards the costs of servicing debts;

— a cash contribution of up to a maximum of IEP 0.628 million to cover a deficit in the pension scheme;

— a cash contribution of up to a maximum of IEP 7.2 million to take account of revisions to the restructuring plan as a condition of the Council's assent;

— indemnities of up to a maximum of IEP 2.445 million in respect of possible residual taxation and other costs and financial claims arising from the past;

— up to a maximum of IEP 1.217 million, representing the aid element contained in State guarantees on two loans worth IEP 12 million (which were covered by the procedure opened under Article 6(4) of the Fifth Code, and which under the sale agreement will now effectively be taken over by the investor providing counter cover indemnifying the State against the risks under the guarantees.

11 The second restructuring plan provided for Ispat International to purchase all of the shares in Irish Steel for IEP 1 and to assume all debts and outstanding liabilities, save for the interest-free Government loan of IEP 17 million, which was to be written off. In addition, Ispat International undertook to make an

immediate capital injection of IEP 5 million and to make investments over the next five years totalling IEP 25 million.

12 By letter of 11 October 1995, the Commission notified the second plan to the Council (hereinafter 'the Communication of 11 October 1995') which approved it on 22 December 1995. Commission Decision 96/315/ECSC of 7 February 1996 concerning aid to be granted by Ireland to the steel company Irish Steel, published on 21 May 1996 (OJ 1996 L 121, p. 16; hereinafter 'the contested decision') approved the State aid planned.

13 The Commission made its approval conditional on compliance with the requirements set out in parts V to VII of the contested decision and specified in Articles 2 to 5 thereof. Specifically, in part V of the contested decision it was provided 'that there should be no increase in existing capacity for liquid steel and hot-rolled finished products, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last payment of aid under the plan'.

14 In contrast with the decisions of 12 April 1994, the contested decision did not, however, require production capacity to be reduced because 'it is not technically possible to have capacity reductions... without closing the plant since Irish Steel has only one hot-rolling mill' (part V). Neverthless, it imposed the following additional conditions on Irish Steel:

— its current range of finished products, as communicated to the Commission in November 1995, were not to be extended during the first five years following the payment of aid;

— during that time, beams of a larger size than its current range of sizes were not to be produced;

— it could not exceed set limits to its annual production of hot-rolled finished products and semi-finished products (billets) in each financial year up until 30 June 2000;

— during the same period, it had to maintain its European sales (that is to say, in the Community, Switzerland and Norway) of finished products below a certain ceiling.

15 By deed of 18 June 1996, Irish Steel changed its company name to Irish Ispat Ltd (hereinafter 'Ispat').

Procedure

16 By application lodged at the Registry of the Court of First Instance on 10 July 1996, the association Wirtschaftsvereinigung Stahl brought an action under Article 33 of the Treaty for annulment of the contested decision.

17 At the same time, another action contesting the same decision was brought on 11 June 1996 by British Steel. This was registered at the Court of First Instance as Case T-89/96.

18 In the present case, the Council lodged an application at the Registry of the Court of First Instance on 13 December 1996 seeking leave to intervene in support of the form of order sought by the defendant. By order of 5 February 1997, the President of the First Chamber, Extended Composition, of the Court of First Instance granted leave to intervene.

19 In its application, the applicant asked the Court to order the Commission to produce, by way of a measure of organisation of procedure, all the documents relating to its adoption of the contested decision.

20 On hearing the report of the Judge Rapporteur, the Court of First Instance (Fourth Chamber, Extended Composition) decided to open the oral procedure and called on the parties to reply in writing to certain questions. It also asked the Commission to produce a certified copy of the document SEC (96) 199 and of the certified minutes of the Commission's meeting of 7 February 1996. At the hearing on 25 November 1998, the parties presented oral argument and replied to oral questions put by the Court.

Forms of order sought

21 The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, annul that decision in so far as it permits Irish Steel to raise its production to a level in excess of its total production for the commercial year 1994/1995;

— order the Commission to pay the costs.

22 The Commission, supported by the Council, contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

23 The Commission submits that the application is inadmissible: under Article 33 of the Treaty, applications for annulment must be instituted 'within one month of the notification or publication, as the case may be, of the decision'. Furthermore, the Court of Justice has interpreted that article in conjunction with Article 173 of the EC Treaty (now, after amendment, Article 230 EC), which provides that in the absence of publication or notification, time starts to run on the day when the applicant learns of the measure in question (Case 236/86 *Dillinger Hüttenwerke* v *Commission* [1988] ECR 3761).

24 The contested decision, an individual decision addressed to Ireland, was neither notified nor communicated to the applicant. The Commission maintains that, even so, in the present case the applicant learned of the decision for the first time on 25 October 1995, the date of the meeting of the ECSC Consultative Committee (hereinafter 'the Committee') at which it was represented. In any

event, the applicant's statements published in two newspaper articles — in *The Engineer* on 21 March 1996 and *The Irish Times* on 28 March 1996 — show that by then it was already fully acquainted with the content of the contested decision. The one-month time-limit thus started to run, at the latest, at the end of March 1996 and the application lodged on 10 July 1996 is therefore out of time.

25 The Commission also maintains that, contrary to the applicant's argument, Article 33 of the Treaty does not permit a choice between the time of publication and the time when the applicant learns of the measure. That is borne out by a number of considerations, the most important being the meaning and purpose of the time-limit which safeguards legal certainty, the interest of those concerned in being able to react quickly and, in particular, the judgment of the Court of First Instance in Case T-380/94 *AIUFFASS and AKT* v *Commission* [1996] ECR II-2169, paragraph 42.

26 In any event, even if this point were decided in favour of the applicant, to the effect that at the material time it was not fully acquainted with the contested decision, it is settled law that it is for the party which has knowledge of a measure 'to request the whole text thereof within a reasonable period' (Order of 5 March 1993 in Case C-102/92 *Ferriere Acciaierie Sarde* v *Commission* [1993] ECR I-801, paragraphs 18 and 19). The applicant did not satisfy that requirement.

27 The applicant denies that the application is out of time. Under Article 33 of the Treaty, the event which marks the point at which time starts to run is publication. The applicant also denies that it had knowledge of the full content of the contested decision before its publication. In any event, it is open to applicants under Article 33 of the Treaty to bring proceedings either immediately on learning of the contested decision or after its publication.

Findings of the Court

28 The third paragraph of Article 33 of the Treaty provides that proceedings for annulment must be instituted within one month of the notification or publication, as the case may be, of the decision or recommendation. Interpreting that provision in the light of the fifth paragraph of Article 173 of the EC Treaty, the Court of Justice has held that in the absence of publication or notification — but only in that case — it is for the party who has knowledge of a decision concerning it to request the whole text thereof within a reasonable period, failing which that applicant will be time-barred; subject to that, however, time for the purposes of bringing an action can start to run only from the moment when the third party concerned acquires precise knowledge of the content of the decision in question and of the reasons on which it is based, in such a way as to enable it to exercise its right of action (*Dillinger Hüttenwerke* v *Commission*, cited above, paragraph 14 and the case-law cited therein, and Case C-180/88 *Wirtschaftsvereinigung Eisen- und Stahlindustrie* v *Commission* [1990] ECR I-4413, paragraphs 22 to 24).

29 Moreover, in the context of the EC Treaty, the Court of First Instance has already held that the criterion of the day on which a measure came to the knowledge of an applicant, as the starting point of the period prescribed for instituting proceedings, is subsidiary to the criteria of publication or notification of the measure (Case T-11/95 *BP Chemicals* v *Commission* [1998] ECR II-3235, paragraph 47 and the case-law cited therein).

30 In the present case, the decision was published in the *Official Journal of the European Communities* on 21 May 1996. Since the application was lodged on 10 July 1996, it must be held that it was lodged within the one-month period prescribed in the third paragraph of Article 33 of the Treaty, which started to run from the end of the 14th day after publication and was extended by six days on account of distance, pursuant to Article 102(1) and (2) of the Rules of Procedure of the Court of First Instance and Article 1 of Annex II to the Rules of Procedure of the Court of Justice.

31 Consequently, there is no need to apply the subsidiary criterion and the Commission's arguments that the applicant had knowledge of the contested decision before its publication or that it should have requested a copy of the full text thereof within a reasonable period are beside the point.

32 The plea of inadmissibility must therefore be rejected.

Substance

33 In support of its action, the applicant relies on various grounds which may be grouped together as two pleas in law: (i) infringement of the Treaty or of a legal rule for its implementation, and (ii) breach of essential procedural requirements.

34 At the hearing and following the production of certain documents by the Commission, the applicant abandoned one line of argument in support of the latter plea, to the effect that the principle of collegiality had been breached.

The plea alleging infringement of the Treaty or of a legal rule for its implementation

35 Essentially, this plea in law covers nine of the grounds relied on by the applicant: the contested decision is vitiated in so far as (i) it is inconsistent with the Fifth Code, (ii) it infringes the requirements for implementing Article 95 of the Treaty; (iii) it runs counter to the logic of Article 3 of the Treaty; (iv) it breaches the

principle of restrictive interpretation; (v) it attempts to regularise non-notified aid; (vi) it breaches the principle of equal treatment; (vii) it is contrary to Article 56(2) of the Treaty; (viii) it breaches the principle of the protection of legitimate expectations; and (ix) it breaches the principle of proportionality.

Breach of the Fifth Code

— Arguments of the parties

36 The applicant maintains that the Fifth Code constitutes legislation of general application and superior authority which is binding upon the Commission in the adoption of individual decisions. It follows from the second paragraph of Article 14 of the Treaty that the Fifth Code is binding in its entirety upon all those subject to the Community legal order, including the institutions. In view of the fact that the Code embodies detailed rules governing policy regarding aid to the steel sector, any derogation therefrom by the Commission is contrary to the hierarchy of legal rules and breaches the principle of legality. In this connection, the applicant relies on Case T-7/93 *Langnese-Iglo* v *Commission* [1995] ECR II-1533, paragraph 208, and Case T-9/93 *Schöller* v *Commission* [1995] ECR II-1611.

37 Furthermore, unlike the earlier codes, the Fifth Code makes no provision for exemptions. Thus, only aid which satisfies the conditions laid down in Articles 2 to 5 of the Code can be regarded as compatible with the proper functioning of the common market and accordingly authorised by the Commission.

38 At the time when the Fifth Code was adopted, moreover, the Council and the Commission, aware of Irish Steel's precarious financial position, expressly

indicated that they intended to apply strictly the prohibition of State aid to the steel sector and to eliminate exceptions to that rule. Accordingly, the difficulties experienced by Irish Steel, typical of the steel industry, were in no way an unexpected development.

39 The Commission disputes the applicant's claim that the Fifth Code is binding and exhaustive. It would mean that the decision by which the Commission adopted the Code had amended the Treaty by defining with binding force the scope of Article 95. An interpretation which enables a piece of secondary legislation to frustrate a rule of primary law, circumventing the entire procedure for amending the Treaty, cannot be accepted. According to the Commission, if the conditions for its application are satisfied, Article 95 of the Treaty can always provide a legal basis for the adoption of *ad hoc* decisions concerning the grant of aid in particular situations.

40 The Council argues that the Fifth Code and the contested decision are both formally based on the first paragraph of Article 95 of the Treaty. Accordingly, they both have the same legal character and rank. It follows that the Fifth Code does not constitute a rule of law superior to the contested decision, with which the latter must comply.

— Findings of the Court

41 It should be noted at the outset that the preamble to the Fifth Code (see section I, in particular) indicates that the primary purpose was 'not to deprive the steel industry of aid for research and development or for bringing plants into line with new environmental standards'. In order to reduce production overcapacity and restore balance to the market, the Code also authorised, under certain conditions, 'social aid to encourage the partial closure of plants or finance the permanent cessation of all ECSC activities by the least competitive enterprises'. As the Court of First Instance has already held, *inter alia* in *British Steel* (paragraphs 47 and

49), the Code referred in general to certain categories of aid deemed compatible with the Treaty. It introduced derogations of general scope from the prohibition of State aid solely in the case of aid for research and development, environmental protection or closures, and regional aid for steel undertakings established on the territory or part of the territory of certain Member States, provided that the aid in question satisfied certain conditions.

42 Accordingly, the Fifth Code constitutes an exhaustive and binding legal framework only for the types of aid which it lists and which it deems compatible with the Treaty. In the case of aid within the exempted categories which it defines, it establishes a comprehensive system intended to ensure uniform treatment governed by a single procedure. This system is thus binding on the Commission only when it must determine whether aid covered by the Code is compatible with the Treaty. Consequently, it cannot authorise such aid by an individual decision which runs counter to the general rules established by that code (see *EISA*, paragraph 71, *British Steel*, paragraph 50, and *Wirtschaftsvereinigung*, paragraph 42).

43 Conversely, aid not falling within the categories exempted from the prohibition by the provisions of the Code may qualify for an individual derogation from that prohibition if the Commission considers, in the exercise of its discretion under Article 95 of the Treaty, that such aid is necessary to attain the objectives of the Treaty. The Fifth Code cannot be intended to prohibit aid which does not fall into any of the categories which it lists exhaustively. The Commission has no power under the first and second paragraphs of Article 95 of the Treaty — that article being concerned only with cases for which the Treaty makes no provision (see Case 9/61 *Netherlands* v *High Authority* [1962] ECR 213, p. 233) — to prohibit certain categories of aid, since a prohibition of that kind is already laid down by the Treaty itself in Article 4(c). Aid falling outside the categories which the Code exempts from the prohibition thus remains subject exclusively to Article 4(c).

Consequently, where such aid nevertheless proves necessary to attain the objectives of the Treaty, the Commission is empowered to rely on Article 95 of the Treaty in order to resolve such an unforeseen situation, if need be, by means of an individual decision (see *EISA*, paragraph 72, *British Steel*, paragraph 51, and *Wirtschaftsvereinigung*, paragraph 43).

44 In the present case, since the State aid covered by the contested decision enables Irish Steel to be restructured and thereby privatised, it does not fall within the scope of the Fifth Code. The Commission was therefore entitled to authorise that aid by an individual decision adopted on the basis of Article 95 of the Treaty, provided that the conditions laid down therein were satisfied.

45 Relying on *EISA*, *British Steel* and *Wirtschaftsvereinigung*, the applicant argued at the hearing that the cash contributions of IEP 2.36 million to cover specific remedial environmental works and IEP 0.628 million to cover a deficit in the pension scheme fall within the categories listed in the Code and, consequently, the Commission was not competent to authorise them without following the procedure provided for therein.

46 Article 3 of the Fifth Code exempts, in principle, 'aid... for bringing into line with new statutory environmental standards plants which entered into service at least two years before the introduction of the standards', provided that this does not exceed '15% net grant equivalent of the investment costs directly related to the environnmental measures concerned'.

47 The aid allocated for specific remedial environmental works (see paragraph 10 above) does not fall within the scope of Article 3 of the Code. Even if it were intended to finance the adaptation of plant to meet statutory requirements for the protection of the environment, it exceeds 15% net grant equivalent of the

investment costs related to those measures. Accordingly, it is not exempted by virtue of Article 3 of the Code from the general prohibition laid down in Article 4(c) of the Treaty.

48 Similarly, Article 4 of the Fifth Code exempts in principle from the prohibition under Article 48(c) of the Treaty aid for partial closure or the permanent cessation of production, where it goes 'towards the costs of payments to workers made redundant or accepting early retirement', provided that certain conditions are satisfied.

49 The cash contribution of IEP 0.628 million, on the other hand, is part of an aid programme for the restructuring of Irish Steel and is not directed to the partial closure of the undertaking or the permanent cessation of production.

50 In those circumstances, that aid may be authorised by an individual decision directly based on Article 95 of the Treaty, since the conditions laid down therein are satisfied (see paragraphs 43 and 44 above). Since the scope of the contested decision is not coterminous with that of the Fifth Code — given that it approves, on exceptional grounds in *ad hoc* cases, aid which in principle cannot be compatible with the Treaty — the Fifth Code has absolutely no bearing on the derogation which that decision authorises. That being so, it is not subject to the conditions laid down in the Code and thus its effect is to supplement the Code for the purposes of achieving the objectives defined by the Treaty.

51 It follows from all the foregoing that the contested decision cannot be regarded as an unjustified derogation from the Fifth Code, but constitutes rather a measure based, like the Code, on the first and second paragraphs of Article 95 of the Treaty. Consequently, the reference to the judgments in *Langnese-Iglo* v *Commission* and *Schöller* v *Commission*, cited above, has no bearing on the present case since the contested decision was not adopted under the Fifth Code.

52 The contested decision is therefore not vitiated by breach of the Fifth Code.

Breach of the conditions of application of Article 95 of the Treaty

— Arguments of the parties

53 The applicant states that the Commission was wrong to base the contested decision on Article 95 of the Treaty. Article 4(c) of the Treaty prohibits 'subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever'. Thus, State aid does not constitute one of the 'cases not provided for in this Treaty' justifying recourse to Article 95 thereof. The applicant also maintains that the expression 'cases not provided for in this Treaty' should be understood in the sense of 'cases for which no rules have been laid down', which is not the position with State aid, in view of the prohibition in Article 4(c). On the contrary, State aid was considered by the Treaty and prohibited. Moreover, this is strictly a matter of law in which the Commission has no discretion.

54 The applicant also argues that even though the Commission stated in the first paragraph of part IV of the contested decision that the subsidies to Irish Steel contribute towards the achievement of the objectives of the Treaty — set out in Articles 2 and 3 in particular — it is not clear which objectives are served. Furthermore, the first paragraph of Article 2 of the Treaty states that the objectives of the Community must be pursued 'through the establishment of a

common market as provided in Article 4'. It is not lawful to take measures in contravention of the prohibition laid down in Article 4(c), on the purported justification that they contribute towards the aims of Articles 2 to 4 of the Treaty.

55 Furthermore, the aid in question does not serve one of the objectives referred to in Articles 2 and 3 of the Treaty. Nothing in the package contributes to 'modernisation of production' or to 'improvement of quality' since it is designed to offset earlier losses. Nor, given the surplus on the supply side of the steel sector, can the aid in question contribute to the 'growth of international trade'. So far as concerns the objective referred to in Article 3(d) of the Treaty, under which the Community institutions are required to 'ensure the maintenance of conditions which will encourage undertakings to expand and improve their production potential', if undertakings were sure of always being able to offset losses by means of State aid, they would be free of the need to innovate and rationalise in order to compete. The same is true of the interests of consumers. The aid in question is not designed to ensure 'an orderly supply to the common market, taking into account the needs of third countries' or to 'ensure that... consumers in the common market have equal access to the sources of production', since supply can be ensured by profit-making steel producers in the Community. Ensuring 'growth of employment' — one of the Community's tasks under the first paragraph of Article 2 of the Treaty — cannot be pursued using State aid because of the prohibition laid down in Article 4(c); nor can it be effected on the basis of individual measures.

56 Lastly, the contested decision is unlawful inasmuch as it is not indispensable for the pursuit of the Treaty's objectives. On that point, the applicant relies on Case 214/83 *Germany* v *Commission* [1985] ECR 3053, paragraph 30.

57 On the question whether the conditions for applying Article 95 of the Treaty are satisfied, the Commission points out that the purpose of that provision is to enable it to react swiftly, effectively and appropriately to unforeseen events which compromise the attainment of the objectives of the Treaty. Consequently, and

contrary to the applicant's assertion, the Commission has a broad discretion in determining whether a set of circumstances constitutes a case 'not provided for in this Treaty', justifying recourse to Article 95 of the Treaty. Furthermore, the applicant has not explained to what extent the Commission misused its powers by classifying Irish Steel's circumstances as an exceptional situation not provided for in the Treaty and by adopting the contested decision. This applies also to the conditions regarding the necessity of the aid in question.

— Findings of the Court

58 Article 4(c) of the Treaty prohibits in principle State aid within the European Coal and Steel Community in so far as it is liable to compromise attainment of the Community's primary objectives laid down in the Treaty, particularly the establishment of conditions of free competition.

59 However, that prohibition does not mean that all State aid within the purview of the ECSC must be regarded as incompatible with the objectives of the Treaty. If Article 4(c) is construed in the light of the Treaty objectives as a whole, as defined in Articles 2 to 4, it does not prevent the grant of State aid which may further the attainment of those objectives. It reserves to the Community institutions the right to determine whether aid is compatible with the Treaty and, where appropriate, to authorise the granting of such aid in matters covered by the Treaty. This analysis is confirmed by Case 30/59 *Steenkolenmijnen in Limburg* v *High Authority* [1961] ECR 1, p. 22, and in *British Steel*, paragraph 41, in which it was held that, just as certain non-public financial assistance to coal and steel-producing undertakings, authorised by Articles 55(2) and 58(2) of the Treaty, can be allocated only by the Commission or with its express authorisation,

Article 4(c) must similarly be interpreted as conferring on the Community institutions exclusive competence with regard to aid within the Community.

60 In the scheme of the Treaty, therefore, Article 4(c) does not prevent the Commission from authorising, by way of derogation, aid contemplated by the Member States and compatible with the objectives of the Treaty, on the basis of the first and second paragraphs of Article 95, with a view to dealing with unforeseen situations (see *Netherlands* v *High Authority*, cited above, and *British Steel*, paragraph 42).

61 In addition, inasmuch as, in contrast with the EC Treaty, the ECSC Treaty does not confer on the Commission or the Council any specific power to authorise State aid, the Commission is empowered by the first and second paragraphs of Article 95 of the ECSC Treaty to take all measures necessary to attain the objectives of the Treaty and, accordingly, under the procedure thereby established, to authorise such aid as it may consider necessary in order to attain those objectives (see, *inter alia*, *EISA*, paragraphs 61 to 64, and the case-law cited). Contrary to the applicant's assertions, since the aid is deemed necessary for the proper operation of the common market in steel, it does not constitute State aid prohibited under the Treaty.

62 The criterion of need is satisfied in particular where the sector concerned is in a state of exceptional crisis. In that connection, the Court of Justice emphasised in *Germany* v *Commission*, cited above, paragraph 30, that 'there is a close link, for the purposes of the implementation of the ECSC Treaty, between the granting of aid to the steel industry and the restructuring which that industry is required to undertake'. In the context of that implementation, the Commission determines at its discretion whether aid to accompany restructuring measures is compatible with the fundamental principles of the Treaty (*EISA*, paragraphs 77 and 78).

63 In its review of legality in such matters, therefore, the Court must confine itself to determining whether the Commission has exceeded the scope of its discretion by

a distortion or manifest error of assessment of the facts or by misuse of powers or abuse of process (see, *inter alia*, Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 25).

64 In part IV of the contested decision it is stated that the aim of that measure is '[to provide] the steel industry in Ireland with a sound and economically viable structure'. It must therefore be determined, first, whether or not that aim is consistent with the objectives set in Articles 2 and 3 of the Treaty and, secondly, whether or not the contested decision was necessary in order to attain those objectives.

65 It is established case-law that, in view of the diversity of the objectives set by the Treaty, the Commission's role consists in ensuring at all times that those various objectives are reconciled, by exercising its discretion, in order to meet the requirements of the common interest (see Case 9/56 *Meroni* v *High Authority* [1957 and 1958] ECR 133, pp. 151-152, Case 8/57 *Aciéries Belges* v *High Authority* [1957 and 1958] ECR 245, pp. 254-255, and Joined Cases 351/85 and 360/85 *Fabrique de Fer de Charleroi and Dillinger Hüttenwerke* v *Commission* [1987] ECR 3639, paragraph 15). In particular, in Joined Cases 154/78, 205/78, 206/78, 226/78, 227/78, 228/78, 263/78 and 264/78, 31/79, 39/79, 83/79 and 85/79 *Valsabbia and Others* v *Commission* [1980] ECR 907, paragraph 54, the Court of Justice held that, if the Commission detects any conflict between the various objectives considered individually, it must grant such priority to one or other of the objectives laid down in Article 3 as appears necessary having regard to the economic facts and circumstances in the light of which it adopted its decision.

66 As regards the question whether restoring the recipient undertaking to economic health serves the objectives of the Treaty, it should be recalled that, as the Court of First Instance stated in *EISA*, *British Steel* and *Wirtschaftsvereinigung*, where an undertaking is privatised in order to ensure its viability, and jobs are shed, within reasonable limits, this contributes to attainment of the objectives of the Treaty, given the sensitive nature of the steel industry and the fact that any worsening of the crisis could lead to extremely serious and long-term problems for the economy of the Member State concerned. It is not disputed that the aid at issue is intended to facilitate the privatisation of the public undertaking receiving

it, the restructuring of existing plant and, within reasonable limits, the reduction of jobs (see part II of the contested decision). Nor is it disputed that in a number of Member States the steel industry is of essential importance because of the location of steel plants in regions where there is low employment and because of the importance of the economic interests at stake. In those circumstances, any decisions to close plant or shed jobs would, in the absence of support measures from the public authorities, be likely to create difficulties of the gravest public importance, particularly by exacerbating unemployment and creating the risk of a major economic and social crisis (*British Steel*, paragraph 107). The fact that Irish Steel is the only steel undertaking in Ireland inevitably reinforces the adverse impact which its closure would have on that Member State's economy and employment situation.

67 In those circumstances, by seeking to resolve those difficulties through the restoration of Irish Steel to economic health, the contested decision satisfies the requirements laid down by the Treaty in so far as it is incontestably designed to safeguard 'continuity of employment', as required by the second paragraph of Article 2 of the Treaty. Moreover, it pursues the objectives set out in Article 3 concerning, *inter alia*, 'maintenance of conditions which will encourage undertakings to expand and improve their production potential' (paragraph (d)) and the promotion of 'orderly expansion and modernisation of production, and the improvement of quality, with no protection against competing industries' (paragraph (g)) (see, to that effect, *British Steel*, paragraph 108).

68 It follows that the contested decision reconciles various objectives of the Treaty, with a view to safeguarding the proper functioning of the common market.

69 It remains in addition to verify whether the contested decision was necessary in order to attain those objectives. As the Court of Justice held in *Germany* v *Commission*, cited above, paragraph 30, the Commission 'was under no circumstances entitled to authorise the granting of State aid which was not

necessary to attain the objectives of the Treaty and would be likely to give rise to distortions of competition on the common market in steel' (*British Steel*, paragraph 110).

70 The first point to note is that with regard to State aid, the Court of Justice has consistently held that 'the Commission has a discretion the exercise of which involves complex economic and social assessments which must be made in a Community context' (Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 24; *Matra* v *Commission*, cited above; Joined Cases T-244/93 and T-486/93 *TWD* v *Commission* [1995] ECR II-2265, paragraph 82; and *British Steel*, paragraph 112).

71 It is apparent from both the contested decision (see part III) and the Communication of 11 October 1995 that the restructuring plan linked to the privatisation of Irish Steel was presented to the Commission as the only solution which would enable the company to be restored to viability at a minimum socio-economic cost (see, in particular, paragraph 5 et seq. of the Communication). The sale of the company to a private investor operating at the international level, with wide experience in the steel sector, and the capacity to turn round loss-making steel undertakings, were among the considerations which led the Commission to adopt the contested decision. Furthermore, the viability of the restructuring plan linked to the privatisation of Irish Steel was confirmed by independent experts, who considered the investments proposed by Ispat International likely to achieve the improved efficiency necessary and to reduce costs (see *inter alia* paragraphs 7.15 to 7.18 and 13.1 of the Communication of 11 October 1995).

72 Consequently, the applicant has failed to provide any firm evidence that the Commission infringed the conditions governing the application of Article 95 of the Treaty.

Breach of the general logic of Article 3 of the Treaty

— Arguments of the parties

73 The applicant maintains that the contested decision does not further the objectives laid down in Article 3 of the Treaty; nor, if they cannot be reconciled, of any one of them, and in any event it is not necessary for the attainment of the objectives which it purports to pursue. The Commission's stated objective of ensuring 'supply close to consumers' is one which is not to be found in the Treaty and which is irrelevant, since the main objective in this area is to ensure that consumers have equal access to the market, not closer access. Furthermore, the applicant points out that only 6% of Irish Steel's turnover is achieved in Ireland.

74 The Commission challenges the statement that the contested decision is not liable to contribute to the pursuit of the objectives laid down in Article 3 of the Treaty.

— Findings of the Court

75 This branch of the first plea echoes the arguments put forward by the applicant in relation to the need for the aid in order to attain the objectives of the Treaty (see paragraphs 55 to 57 above). It has already been held that that ground is unfounded. However, it is still useful to observe that in *Aciéries Belges* v *High Authority*, p. 253, the Court of Justice stated that 'in practice it will always be necessary to reconcile to a certain degree the various objectives of Article 3 since it is clearly impossible to attain them all fully and simultaneously: those

objectives constitute general principles which must be observed and harmonised as far as possible'.

76 In the present case, the Commission, in the exercise of its discretion, established that the plan for restoring Irish Steel to viability at a time of crisis for the sector (referred to in part I of the contested decision) was an appropriate means of achieving some of the objectives of the Treaty, particularly those referred to in paragraph 67 above. The arguments put forward by the applicant concerning, in particular, the objective of ensuring 'supply close to consumers' are not sufficient to prove that the Commission made a manifest error of assessment since that objective is only one of the objectives which were taken into consideration at the time of adopting the contested decision.

77 In those circumstances, the applicant has not provided any evidence to suggest that the Commission made an error of assessment in reaching the conclusion that the aid at issue was useful and necessary in the context of achieving certain objectives of the Treaty. Accordingly, the complaint that the Commission's decision was inconsistent with the logic of Article 3 of the Treaty must also be rejected.

Breach of the principle of restrictive interpretation

— Arguments of the parties

78 The applicant argues that the contested decision contravenes the principle of restrictive interpretation as developed by the case-law of the Court of Justice in relation to the interpretation of Article 36 of the EC Treaty (now, after amendment, Article 30 EC), Article 48 of the EC Treaty (now, after amendment,

Article 39 EC) and Article 55 of the EC Treaty (now Article 45 EC). The Commission has also supported that principle in applying Article 92 of the EC Treaty (now, after amendment, Article 87 EC), stating that 'derogations from the principle laid down in Article 92(1) of the EEC Treaty set out in paragraph 3 of that Article must be interpreted narrowly in examining any aid scheme or any individual aid measure' (Commission Decision 89/348/EEC of 23 November 1988 on aid granted by the French Government to an undertaking manufacturing equipment for the motor vehicle industry — Valéo; OJ 1989 L 143, p. 44, part VI, second paragraph).

79 It may be concluded that the exceptions to Article 4(c) of the Treaty on the basis of Article 95 of the Treaty must be confined, as regards their duration and scope, to what is strictly necessary; that they can only be authorised temporarily; and that they must be applied in the same manner to all undertakings. Consequently, only the aid code satisfies those conditions. Recourse to Article 95 of the Treaty, as in the case of the contested decision, serves only to perpetuate aid to undertakings, without ever making them profitable.

80 The applicant points out that Irish Steel has been given State aid regularly. Between 1980 and 1985 it received aid worth IEP 183 million (Communication 95/C). That contribution exceeded Irish Steel's own capital of IEP 125 million. Application of the principle of restrictive interpretation to the grant of State subsidies requires that an undertaking not receive funds to replace its equity more than once.

81 The Commission maintains that the applicant is wrong in treating Article 95 of the Treaty as providing for exception. The article does not refer specifically to any principle of the Treaty but, like Article 235 of the EC Treaty (now Article 308 EC), it is designed to make it possible to attain the objectives of the Treaty in cases for which the Treaty has made no provision.

— Findings of the Court

82 The applicant's arguments are based on the premiss, already held to be incorrect, that only the aid code satisfies the conditions for applying Article 95 of the Treaty in relation to State aid. Moreover, the Court has also ruled that the conditions governing the application of Article 95 of the Treaty, so far as concerns the need for aid in order to achieve certain objectives of the Treaty, are satisfied in the present case (see paragraphs 70 to 72 above).

83 In any event, the principle relied upon has not been breached. It is clear from parts IV, second paragraph, and VI of the contested decision that the aid at issue was of limited duration. Thus the contested decision allowed the recipient undertaking until 30 June 1998 to become profitable (Article 1(2)). Similarly, it imposed a number of conditions (see paragraphs 13 and 14 above) so as to ensure that the aid was confined to what was strictly necessary. In particular, it set the level of net financial charges at the outset at a minimum of 3.5% of annual turnover, the average in the Community steel sector (Articles 2 and 3).

84 The fact that Irish Steel has received aid in the past and that those contributions exceeded its equity of IEP 125 million is only one of the factors to be taken into consideration at the time of taking the decision, in particular as regards the undertaking's ability to return to viability within a reasonable period. However, as has already been mentioned (see paragraph 71 above), it is clear from the contested decision, and more specifically from the Communication of 11 October 1995, that a whole range of factors, particularly Ispat International's intervention, was taken into account. Also, the fact that an undertaking has received aid in the past cannot, as the applicant claims, weigh against it.

85 Consequently, the ground concerning breach of the principle of restrictive interpretation must be rejected.

The unlawful attempt to regularise non-notified aid

— Arguments of the parties

86 The applicant argues, without being contradicted by the defendant, that during 1993 the Irish State underwrote a loan worth IEP 10 million to Irish Steel, which had been granted at a preferential rate. However, the aid thereby given was not notified to the Commission in accordance with Article 6(4) of the Fifth Code (see paragraph 7 above).

87 That aid, which is vitiated by a procedural defect, cannot be regularised *ex post facto* by a Commission decision authorising it. This was confirmed by the Court of Justice in Case C-354/90 *Fédération Nationale du Commerce Extérieur des Produits Alimentaires and Syndicat National des Négociants et Transformateurs de Saumon* ('*FNCE*') v *French State* [1991] ECR I-5505, paragraph 16.

88 In its reply the applicant adds that it is not apparent from the contested decision that the Commission conducted an examination of the compatibility of the aid at issue with the common market. Furthermore, the Commission cannot use Article 95 of the Treaty to regularise aid which has not been notified to it, since that provision refers only to the adoption of decisions to govern cases which will arise in the future.

89 The Commission contends that failure to observe the notification procedure has no bearing on the substantive question of the aid's compatibility with the common market, whether in the case of Article 93(3) of the EC Treaty (now

Article 88(3) EC) or in the case of Article 6 of the Fifth Code, which lays down the same obligation of prior notification and prohibits payment in advance.

— Findings of the Court

90 Under the system established by the ECSC Treaty with respect to State aid, the Commission may — subject to certain conditions and provided that it observes the procedure laid down in Article 95 of the Treaty — authorise aid which is necessary for the proper functioning of the common market in steel. Accordingly, the prohibition laid down in Article 4(c) is neither unconditional nor absolute.

91 In the case of individual decisions, the general logic of that system inherently requires, first, that the Member State apply to the Commission for the procedure provided for in Article 95 of the Treaty to be set in motion and, secondly, that the Commission determine whether the aid is necessary having regard to the objectives of the Treaty. Consequently, the system established by the ECSC Treaty, like that under Article 93 of the EC Treaty, comprises two separate stages: the first is procedural, requiring Member States to notify to the Commission all planned aid and precluding the payment of aid which the Commission has not approved (this follows, quite simply, from Article 4(c) of the ECSC Treaty); the second is substantive and requires the Commission to determine whether the aid is necessary in order to attain certain of the ECSC Treaty's objectives. Article 6 of the Fifth Code, moreover, lays down in relation to aid which it exempts from the prohibition under Article 4(c) a procedure for notification and for the appraisal of compatibility which is entirely comparable.

92 According to the case-file, the aid at issue, which is worth IEP 1.217 million — corresponding to the State guarantee covering two loans totalling IEP 12 million (see paragraph 7 above) — was granted without prior notification to the Commission (see, *inter alia*, paragraph 9 of Notice 95/C). It remains therefore to

be determined whether, given the lack of prior notification, the contested decision constitutes, as the applicant claims, an unlawful attempt to regularise the aid.

93 In the context of the EC Treaty, the Court of Justice has ruled that breach of the obligations laid down in Article 93(3) of the EC Treaty does not relieve the Commission of its duty to determine whether the aid is compatible in the light of Article 92 of the EC Treaty, and that the Commission may not declare aid unlawful without first verifying whether or not it is compatible with the common market (see, to that effect, *FNCE*, paragraph 13).

94 Since the prohibition laid down in Article 4(c) of the Treaty is merely a matter of principle and the Commission has the power to authorise State aid which is deemed necessary for the proper functioning of the common market, the need for prior notification is a procedural matter, in contrast with the final decision as to the aid's compatibility and, more importantly, the need for such aid in order to attain certain objectives of the Treaty. Lack of notification is not sufficient to excuse or even to prevent the Commission from taking action on the basis of Article 95 and, where appropriate, declaring the aid compatible with the common market. In the present case, the Commission found that the aid for the restructuring of Irish Steel, including the aid at issue, was necessary for the proper functioning of the common market and that it did not give rise to unacceptable distortion of competition. Consequently, the fact that notification was not made does not affect the legality of the contested decision, whether as a whole or solely in so far as the non-notified aid is concerned.

95 Furthermore, the position adopted by the Commission does not prevent individuals affected by the advance payment of the aid from claiming before the national courts that the measures implementing the unlawful aid are illegal or for compensation for any damage suffered, even if the aid has subsequently been declared compatible with the common market. The Court of Justice has already

recognised that the prohibition of State aid laid down in Article 4(c) of the Treaty has direct effect (Joined Cases 7/54 and 9/54 *Groupement des Industries Sidérurgiques Luxembourgeoises* v *High Authority* [1954 to 1956] ECR 175, p. 195). Moreover, as the Commission correctly observes, in *FNCE* the Court emphasises the direct effect of Article 93(3) of the EC Treaty and the obligation for the national courts to draw all the necessary legal inferences from that fact in order to redress the situation and, where appropriate, to award compensation to individuals for damage suffered as a result of the unlawful grant of State aid. However, the fact that Article 93(3) of the EC Treaty has direct effect does not necessarily have any bearing on the substantive appraisal of the aid; nor does it invalidate the Commission's decision on the question of compatibility (paragraphs 13 and 14).

96 Furthermore, the applicant's argument concerning the alleged failure to determine whether the aid is compatible with the common market has no foundation. It is clear from part II, seventh paragraph, eighth indent, of the contested decision that the aid at issue was part of a planned package assessed by the Commission. It is also clear from the Communication of 11 October 1995 (see, in particular, paragraphs 11.8 to 11.11) that the Commission arrived at the sum of IEP 1.217 million in the following manner:

'the Commission considers that there is and will remain an aid element in the guarantees since they carried no premium and the new company will continue to benefit from the advantages so obtained; [t]aking into account the duration of the loans (approximately 12 months and 10 years respectively) and assuming that a premium of 3% might have been expected to be paid, the Commission estimates that the guarantees represent an aid element of [IEP] 1.217 million ([ECU] 1.502 [million]) or approximately 10% of the value of the loans' (paragraph 11.10).

97 Consequently, the complaint concerning the allegedly unlawful regularisation of the aid is without foundation.

Breach of the principle of equal treatment

— Arguments of the parties

98 The applicant argues that, by means of the aid codes, the Commission has established the guidelines governing its conduct in this sector. That being so, any departure from those principles, if not sufficiently justified, constitutes a breach of the principle of equal treatment (Case 190/82 *Blomefield* v *Commission* [1983] ECR 3981, paragraph 20, and Case 25/83 *Buick* v *Commission* [1984] ECR 1773, paragraph 15).

99 According to the applicant, the Commission did not specify in the contested decision which aspect of Irish Steel's situation justified departure from the aid code. Thus, the contested decision merely explained in general terms the crisis affecting the Community steel industry as a whole. That background, which was already known to the Commission at the time when it adopted the aid code, cannot justify departure from the rules laid down therein without breaching the principle of equal treatment.

100 The applicant submits that the defendant also breached the principle of equal treatment in that it treated like situations differently. The Commission refused to authorise State aid, in application of the Fifth Code, to steel undertakings whose situation was comparable to that of Irish Steel, such as Hamburger Stahlwerke GmbH and Neue Maxhütte GmbH. Nevertheless, the applicant states that in neither of those cases did the Federal German Government request derogation under Article 95 of the Treaty.

101 The Commission denies having refused aid in like situations. The examples quoted by the applicant cannot be taken into account since, in those cases, a derogation under Article 95 of the Treaty was not sought. Consequently, the question whether that provision could apply did not arise. Furthermore, the situations of Neue Maxhütte GmbH and Hamburger Stahlwerke GmbH differ in various significant respects from that of Irish Steel, particularly in so far as they had not drawn up a proper restructuring programme.

— Findings of the Court

102 The first point to note is that this complaint relies partly on the argument — already dismissed — that the Commission should have applied the rules laid down in the Fifth Code to the present case. In seeking to rely on breach of the principle of equal treatment, however, the applicant appears to admit that, even in situations where the Fifth Code is the appropriate law to apply, the Commission may derogate from its rules, provided that such derogation is objective and sufficiently justified. However, as has already been pointed out above, that line of reasoning cannot be accepted. In the present case, the Commission did not derogate from the Fifth Code; it quite simply took the view that the Fifth Code was not applicable.

103 As for the complaint that the Commission contravened the principle of equal treatment in that it treated Irish Steel's situation differently from that of Neue Maxhütte GmbH and Hamburger Stahlwerke GmbH, it is settled law that 'for the Commission to be accused of discrimination, it must be shown to have treated like cases differently, thereby subjecting some to disadvantages as opposed to others, without such differentiation being justified by the existence of substantial objective differences' (see *inter alia* Joined Cases 17/61 and 20/61 *Klöckner-Werke and Hoesch* v *High Authority* [1962] ECR 325, p. 345, and Case 250/83 *Finsider* v *Commission* [1985] ECR 131, paragraph 8). In order to determine whether the way in which the Commission allegedly treated Irish Steel's situation constitutes a breach of the principle of equal treatment, it must be seen whether that treatment was based on objective differences.

104 As the Commission submits, Irish Steel's situation was not comparable to those of the other companies mentioned. In the case of Neue Maxhütte GmbH and Hamburger Stahlwerke GmbH, there was no request from the German Government for a derogation under Article 95 of the Treaty; nor was there a restructuring programme enabling the Commission to assess the viability of the aid programmes submitted. Those factors, the truth of which the applicant does not deny, objectively distinguish the situation of those companies from that of Irish Steel.

105 Consequently, the complaint alleging breach of the principle of equal treatment must be rejected.

Infringement of Article 56(2) of the Treaty

— Arguments of the parties

106 The applicant criticises the Commission for not having had recourse to Article 56(2)(a) and (b) of the Treaty in order to deal with Irish Steel's situation. Under that provision, the Irish Government would have had to submit a request to the Commission for authorisation of aid for closure.

107 The fact that the Treaty contains a provision enabling the needs of an unprofitable steel undertaking to be met satisfactorily, and in particular the social consequences of any unavoidable closures to be dealt with, means that the fundamental justification for recourse to Article 95 is lacking, since the case being addressed by the Commission has been provided for in the Treaty.

108 The Commission refutes the applicant's submissions.

— Findings of the Court

109 It is settled law (see, in particular, Case 45/86 *Commission* v *Council* [1987] ECR 1493, paragraph 11) that the choice of the legal basis for a measure may not depend simply on an institution's conviction as to the objective pursued but must be based on objective factors which are amenable to judicial review. Those factors include, in particular, the aim and content of the measure (see Case C-300/89 *Commission* v *Council* [1991] ECR I-2867, paragraph 10). It is also established law that the use, by way of a 'last resort', of Article 95 of the Treaty (equivalent to Article 235 EC) as the legal basis for a measure is justified only where no other provision of the Treaty gives the Community institutions the necessary power to adopt the measure in question (see *Commission* v *Council*, cited above, paragraph 13).

110 It must be determined whether, in the present case, the grant of aid to Irish Steel was covered by Article 56(2) of the Treaty or whether, as the Commission alleges, it fell outside that framework and recourse to Article 95 was therefore necessary.

111 The aid programmes provided for in Article 56(2) of the Treaty are designed to direct employees from undertakings which have had to discontinue production towards new activities. In particular, they concern the vocational retraining and placement of workers who have been made redundant because of the difficulties on the coal and steel market. In those circumstances, Article 56(2) offered the means of resolving one of the problems connected with the restructuring of Irish Steel, namely the vocational retraining and placement of its workers. However,

the framework provided by that article cannot accommodate a solution to the central problem, which concerns the company's profitability. The solution devised, which involves adoption of a programme for restructuring by means of the company's privatisation, in tandem with a State aid package, manifestly falls outside the scope of Article 56(2).

112 Furthermore, as the Commission rightly pointed out, it was asked to adopt a position on the compatibility with the Treaty of the programme of aid which the Irish Government planned to grant to Irish Steel. Article 56, however, makes provision for aid directly from the Community budget, not from the Member State. The way in which those two procedures (national State aid/Community aid) operate in parallel and may complement one another is clear from the following excerpt from the Communication of 11 October 1995: '[a]s regards the retraining grant of [IEP] 0.2 million ([ECU] 0.247 [million]), according to the Irish authorities this represents the Irish Government's matching contribution towards an Article 56(2)(b) ECSC grant aiding the retraining of 134 workers; [i]n accordance with its normal policy on such measures, the Commission accepts that this should be regarded as a State aid compatible with the common market since it represents the national co-financing required for Community aid under Article 56(2)(b)' (paragraph 11.6).

113 Accordingly, the objectives the Commission sought to achieve in adopting the contested decision were not covered by Article 56(2) and, consequently, the fact that the decision was adopted on the basis of Article 95 of the Treaty does not make it unlawful.

114 The complaint alleging infringement of Article 56(2) of the Treaty must therefore be dismissed.

Breach of the principle of the protection of legitimate expectations

— Arguments of the parties

115 The applicant maintains that in authorising the aid in question the Commission derogated from the principles which, together with the Council, it had itself established in this area. It thus frustrated the expectations of undertakings in the sector, which had believed that State aid which did not comply with the Fifth Code would not be authorised.

116 To be able to rely on a plea of breach of legitimate expectations, it is not necessary for an undertaking to have been assured by a formal legal measure that no further aid would be authorised for its competitors. It is sufficient that the undertaking can rely on the precise and unambiguous nature of all measures adopted by the Community institutions from which they cannot deviate without a valid objective justification (Opinion of Advocate General Trabucchi in Case 169/73 *Compagnie Continentale* v *Council* [1975] ECR 117, p. 140, and Case 223/85 *RSV* v *Commission* [1987] ECR 4617).

117 That position is based not only on the wording of the Fifth Code, which, the applicant maintains, is exhaustive and binding, but also on the basis of several declarations of the Commission and the Council pledging to apply strict rules as regards State aid in that sector and to authorise only aid which is compatible with the Fifth Code.

118 Accordingly, the steel undertakings were convinced that, until 1996 (the date when the Fifth Code was to expire), their investments would not be devalued as a

result of lower prices offered by subsidised competitors. That belief has been undermined by the contested decision without any apparent justification.

119 The fact that the Commission has in the past adopted similar decisions cannot preclude the creation of a legitimate expectation on the part of the applicant since such decisions, like the contested decision, are unlawful.

120 The Commission denies that the measures referred to by the applicant are capable of giving rise to legitimate expectations as claimed and also points out that, in any event, the contested decision cannot undermine that expectation.

121 The Commission observes that the contested decision was based on Article 95 of the Treaty, an article which enables it to deal with situations for which the Treaty has made no provision. Accordingly, by definition, decisions so based will not be such as to impair a legitimate expectation.

122 Furthermore, independently of the question whether the acts and statements relied upon were such as to give rise to a legitimate expectation on the part of the applicant, the contested decision cannot have frustrated that expectation since similar decisions have been taken before.

123 The Council adds that the contested decision was adopted in order to take into account a 'variation of the economic situation' in a particular case. Thus, in terms of both their nature and their objectives, the measures adopted on the basis of Article 95 — including the Fifth Code — cannot create a legal situation which is binding and unchanging in relation to all traders.

— Findings of the Court

124 This plea stems from the argument which has already been rejected that only aid exempted by the Fifth Code could be authorised. However, as the Court of First Instance has already held in *EISA*, *British Steel* and *Wirtschaftsvereinigung*, the Fifth Code does not pursue the same object as the decisions at issue, which were adopted to deal with an exceptional situation. It was not, therefore, in any way capable of giving rise to legitimate expectations as to the possibility of granting individual derogations from the prohibition of State aid, on the basis of the first and second paragraphs of Article 95 of the Treaty, in an unforeseen situation such as that which prompted the adoption of the contested decision (*British Steel*, paragraph 75).

125 Furthermore, and in any event, it is settled case-law of the Court of Justice that: 'whilst the principle of the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained' (see Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 33, and *British Steel*, paragraph 76).

126 The proper functioning of the common market in steel clearly requires constant adjustments to fluctuations in the economic situation and economic operators cannot claim a vested right to the maintenance of the legal situation existing at a given time (see Case 230/78 *Eridania* v *Minister for Agriculture and Forestry* [1979] ECR 2749, paragraph 22, and Case T-472/93 *Campo Ebro and Others* v *Council* [1995] ECR II-421, paragraph 52). Moreover, the Court of Justice has also used the term 'prudent and discriminating traders' to emphasise that, in certain circumstances, it is possible to foresee the adoption of specific measures intended to deal with clear crisis situations, with the effect that the principle of the protection of legitimate expectations cannot be relied upon (see, *inter alia*, *British Steel*, paragraph 77 and the case-law cited therein).

127 However, after the adoption of the individual decisions on 12 April 1994, cited above, which moreover the applicant contested before the Court of First Instance, it cannot be denied that at the time of the adoption of the contested decision, the applicant was aware that the Commission was taking Article 95 of the Treaty as a basis for the adoption of individual decisions authorising State aid with a view to achieving certain objectives of the Treaty.

128 Consequently, the complaint alleging breach of the principle of the protection of legitimate expectations must be rejected.

Breach of the principle of proportionality

— Arguments of the parties

129 The applicant alleges that the Commission breached the principle of proportionality by failing to impose capacity reductions to offset the advantages derived from the aid in question.

130 That principle applies on the basis of Article 5 of the Treaty, to which the first paragraph of Article 95 refers. Under Article 5, the Commission is to carry out its task with only a limited measure of intervention (see Case 2/57 *Compagnie des Hauts Fourneaux de Chasse* v *High Authority* [1957 and 1958] ECR 199).

131 It is settled law that authorisation of aid on the basis of the first and second paragraphs of Article 95 of the Treaty must under no circumstances give rise to distortion of competition in the Community steel industry (*Germany* v *Commission*, cited above, paragraph 30). However, any authorisation of aid granted to an undertaking gives it an advantage in relation to others and by its nature thus affects competition (Case 304/85 *Falck* v *Commission* [1987] ECR 871, paragraph 24).

132 That being so, only aid which is granted 'for a limited time' and coupled with a 'significant reduction in production capacity' (*Germany* v *Commission*, cited above, paragraph 31) can be authorised because it does not entail disadvantages for competitors which are disproportionate in relation to the advantages gained for the common market.

133 The applicant maintains that, in the present case, the contested decision expressly permitted a massive increase in production and that the production limits that the Commission imposed in order to 'minimise distortion of the market' (Article 2(3) and (4) of the contested decision) are not sufficient.

134 According to the data sent to the Council (see paragraph 4 of the Communication of 11 October 1995), Irish Steel had a production capacity of 500 000 tonnes of liquid steel and 343 000 tonnes of long hot-rolled products. During the commercial year 1994/95, production of hot-rolled products amounted to 258 000 tonnes. By contrast, the restructuring plan provided for the full exploitation of current capacity for the production of liquid steel to make billets and hot-rolled products. According to the production ceilings set by the contested decision, the total level of production could already reach 350 000 tonnes during the commercial year 1995/96, representing an increase of approximately 40% by comparison with the previous commercial year.

135 The counterpart measures required by the Commission are not sufficient to prevent the authorised aid from bringing about a disproportionate distortion of

competition. That is to be seen in particular on the market for steel billets where there is excess capacity in the Community and from which a number of German producers withdrew in 1993.

136 The applicant adds that the relevant market for calculating Irish Steel's share of the market in billets is that of steel alloy billets, not that of semi-finished products as the Commission suggests. This would mean that Irish Steel holds 10% of the market, not 0.2% as stated by the Commission.

137 The Commission contends that the counterpart measures required, in particular the production and sales restrictions, are proportionate and do not cause any distortion of competition. Moreover, such distortion has been alleged but not established by the applicant. Furthermore, Irish Steel's billet production at the end of the period covered by the contested decision (90 000 tonnes) only accounts for 0.2% of the current Community consumption of approximately 40 000 000 tonnes, which virtually precludes any distortion of competition.

138 The Commission also maintains that capacity reduction — which, for Irish Steel, is in any case impossible — does not have to be the counterpart measure: the Commission has a discretion to choose other counterpart measures.

139 The Commission adds that the figures used by the applicant are misleading, since during the period 1994/95 total production was abnormally low as a result of very serious strikes. It submits also that the relevant market is the billet market, as it maintained previously, not the market in steel alloy billets, because the producers can switch production from one type of billet to the other without any difficulty.

— Findings of the Court

140 The main thrust of the applicant's argument is that the contested decision infringes the principle of proportionality because it does not require capacity reductions and because the counterpart measures imposed are not sufficient to minimise the impact of the aid on competition.

141 According to the first paragraph of Article 95 of the Treaty, decisions adopted by the Commission to deal with cases not provided for in the Treaty must conform with Article 5 of the Treaty, according to which the Commission is to carry out its task 'with a limited measure of intervention'. The latter provision must be interpreted as embodying the principle of proportionality (see, to that effect, the Opinion of Advocate General Roemer in Case 31/59 *Acciaieria e Tubificio di Brescia* v *High Authority* [1960] ECR 71, p. 88).

142 With regard to State aid, the Court of Justice held in *Germany* v *Commission*, cited above, that the Commission was not entitled to authorise the granting of aid which 'would be likely to give rise to distortion of competition on the common market in steel' (paragraph 30). To the same effect, it held in Case 15/57 *Hauts Fourneaux de Chasse* v *High Authority* [1958] ECR 211, at 227) that that institution 'has a duty to act with circumspection and to intervene only after carefully balancing the various interests concerned whilst so far as possible restricting the foreseeable damage to third parties'.

143 Furthermore, according to established case-law, in this area the Commission enjoys a 'wide discretion... reflecting the political responsibilities conferred on it' (see Case C-8/89 *Zardi* [1990] ECR I-2515, paragraph 11). Consequently, the legality of a decision adopted by the Commission can be affected only if, having

regard to the objective which the Commission intends to pursue, that measure is 'manifestly inappropriate', or out of all proportion (see Case 179/84 *Bozzetti* [1985] ECR 2301 and Case 265/87 *Schräder* [1989] ECR 2237, paragraph 22).

144 The case-law of the Community, particularly *Germany* v *Commission*, cited above, has always in fact highlighted the close relationship between the grant of aid to the steel industry and efforts towards restructuring (paragraph 30). Moreover, the Community judicature has emphasised on several occasions that efforts towards restructuring entail in particular reductions in production capacity on the part of recipient undertakings. However, the factors which are liable to influence the exact levels of aid to be authorised do not consist simply in the tonnage of production capacity to be cut; there are other factors, too, which vary from one region of the Community to another, such as the record of restructuring efforts made, the regional and social problems occasioned by the crisis in the steel industry, technical developments and the adaptation of undertakings to meet market requirements (see *Germany* v *Commission*, cited above, paragraphs 31 and 34, and *British Steel*, paragraph 136).

145 Consequently, just as the principle of proportionality, applied in this context, does not require a quantitative relationship to be established between the amount of aid granted and the size of the capacity reductions required, neither does it dictate that capacity reductions are the only measures possible and sufficient to counterbalance the authorisation of aid. Where the Commission believes that a capacity reduction is not possible, as in this case, or would not best serve the objectives pursued, it may always impose other counterpart measures, such as production and sales restrictions, provided that they serve to minimise the impact of the aid on competition. As the Court of First Instance has already held, the Commission's assessment cannot be reviewed solely by reference to economic criteria. The Commission may legitimately take account of a wide variety of political, economic and social considerations in the exercise of its discretion under Article 95 of the Treaty (*British Steel*, paragraph 136).

146 In Article 2 of the contested decision, the Commission imposed several conditions on Irish Steel:

'1. The beneficiary company shall not increase the existing liquid steel capacity of 500 000 tonnes per annum and the existing hot-rolling capacity of 343 000 tonnes per annum in finished products, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last payment of aid under the plan.

2. The beneficiary company shall not extend its current range of finished products, as communicated to the Commission in November 1995, in the first five years and shall not produce beams of a larger size than its current range of sizes in that period. Within its current range of beams it shall limit production for the Community market of its largest U beams (Imperial), HE beams (metric) and IPE beams to a cumulative 35 000 tonnes per annum during that period.

3. The beneficiary company shall not exceed the following levels of production per financial year:

(1 000 tonnes)

	1995/1996	1996/1997	1997/1998	1998/1999	1999/2000
Hot-rolled finishedproducts	320	335	350	356	361
Billets	30	50	70	80	90

4. The beneficiary company shall not exceed the following levels of European sales (Community, Switzerland and Norway) in hot-rolled finished products per financial year:

(1 000 tonnes)

1995/1996	1996/1997	1997/1998	1998/1999	1999/2000
298	302	312	320	320

...'

147 The production and sales restrictions placed on Irish Steel were the outcome of an exercise in weighing and balancing several factors, such as the specific situation in the steel sector and, in particular, the existing overcapacity (part I of the contested decision); Irish Steel's position on the market concerned (paragraph 4.3 of the Communication of 11 October 1995); Ispat International's capability of restoring the beneficiary undertaking to commercial viability (part III of the contested decision); and the need to impose certain counterpart measures in order to limit the impact on the market of the advantages entailed by the grant of aid, while permitting the undertaking to increase its productivity (part V). The applicant has failed to adduce any cogent evidence to show that setting production and sales ceilings as counterparts for the authorisation of aid is either manifestly inappropriate or disproportionate.

148 As regards the relevant product market for Irish Steel and its market share, which the Commission estimated to be 0.2%, none of the evidence produced by the applicant demonstrates that the Commission made a manifest error of assessment in identifying the market concerned as that of billets in general, rather than steel alloy billets. The very general argument that, in terms of their use, steel alloy billets are quite different from other finished products is not sufficient to call in

question the Commission's finding that at the production level the markets are not, as the applicant claims, separate.

149 The same conclusion must be reached with regard to the complaint concerning the increase in production permitted by the contested decision (hot-rolled finished products: from 320 000 tonnes for 1995/96 to 361 000 tonnes in 1999/2000; billets: from 30 000 tonnes in 1995/96 to 90 000 tonnes in 1999/2000), since the percentages quoted by the applicant are based on comparators which are abnormally low, namely figures from 1994/95 (258 000 tonnes, whereas there have been commercial years during which sales have reached 281 000 tonnes — paragraph 4.4 of the Communication of 11 October 1995).

150 Accordingly, the Commission's findings that the sales increase provided for in the contested decision will only have a minor impact on competition (0.15% of the market in steel alloy billets = (90 000 - 30 000): 40 000 000, see paragraph 137 above), and that the production and sales restrictions on Irish Steel for five years constitute an effective and sufficient alternative to its reducing capacity are not vitiated by a manifest error of assessment.

151 It follows that the complaint alleging breach of the principle of proportionality must be rejected.

152 Consequently, the first plea in law, alleging breach of the Treaty or of a legal rule for its implementation, must be rejected.

The plea alleging breach of essential procedural requirements

153 In support of this plea, the applicant alleges breach of the right to be heard and of the duty to state reasons.

Breach of the right to be heard

— Arguments of the parties

154 The applicant claims that the Commission is required under Article 93(2) of the EC Treaty and Article 6(4) of the Fifth Code to inform interested third parties of the request for authorisation so that they may submit their comments.

155 In the present case, the Commission published the Irish Government's original plan in the Official Journal (Notice 95/C), but did not do so in the case of the second restructuring plan. Consequently, the Commission failed to observe the applicant's right to be heard and to submit in good time its comments on the proposal under consideration.

156 The applicant adds that observance of the right to be heard is an objective procedural obligation for the benefit of all undertakings able to establish an interest. That right cannot be set aside, therefore, on the ground that the undertakings are represented on the Committee.

157 The Commission points out that Article 95 of the Treaty makes no provision for competing undertakings to be heard and that, in the light of the fact that this type of decision is possible only under the ECSC Treaty by way of exception, the case-law concerning Article 93(2) of the EC Treaty cannot apply. The applicant, however, had the opportunity to follow the various stages of the procedure and to put forward its comments regarding the second restructuring programme, since it was represented on the Committee, which was consulted in accordance with Article 95 of the Treaty.

— Findings of the Court

158 The contested decision was adopted on the basis of the first and second paragraphs of Article 95 of the Treaty. This provides for the unanimous assent of the Council and compulsory consultation of the Consultative Committee. It does not confer a right to be heard on the addressees of decisions or on other persons concerned. On the other hand, Article 6(4) of the Fifth Code does confer such a right and states that 'if, after giving notice to the interested parties concerned to submit their comments, the Commission finds that aid in a given case is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision'. That provision appeared in all the aid codes preceding the Fifth Code (see, on that point, Commission Decision No 257/80/ECSC of 1 February 1980 establishing Community rules for specific aids to the steel industry, OJ 1980 L 29, p. 5).

159 In the course of the procedure for adopting the contested decision, the applicant had in any event an opportunity to air its views within the Consultative Committee. Under Article 18 of the Treaty, the Consultative Committee consists of representatives of producers, workers, consumers and dealers. It is not disputed that the applicant, as a representative of the German steel industry, was represented on that Committee. At the latter's 324th meeting on 24 November 1995, the authorisation of aid to Irish Steel was discussed and the applicant's representative had an opportunity to express an opinion on the measures proposed by the Commission (see, to that effect, *British Steel*, paragraph 176).

160 In any event, the publication of Communication 95/C in the Official Journal cannot have misled the applicant regarding the proposal submitted to the Council and on which the Committee's views had been heard. Before that communication was published on 28 October 1995, the applicant was already in a position to know, through its participation at the Committee meeting which took place on 25 October 1995, that the Irish authorities had withdrawn the first restructuring plan and had submitted an amended second plan.

161 It follows that the applicant had an opportunity to make its views known, in accordance with the procedure laid down in Article 95 of the Treaty, on the adoption of the contested decision. Accordingly, the complaint that the contested decision was vitiated by breach of the applicant's right to be heard must be rejected.

Breach of the obligation to state reasons

— Arguments of the parties

162 The applicant claims that the contested decision breaches the obligation laid down in Article 15 of the Treaty to state reasons.

163 According to the case-law, the arguments on which the defendant bases its reasoning must be clear and set out the legal considerations which have a bearing on the structure and content of the decision (see Case 24/62 *Germany* v *Commission* [1963] ECR 63, p. 69, and Case T-459/93 *Siemens* v *Commission* [1995] ECR II-1675, paragraph 31).

164 In the present case, that obligation is particularly important in view of the fact that the measure involved is a derogation based on Article 95 of the Treaty which requires that very specific conditions be satisfied. It is not clear from the contested decision, however, in what respect Irish Steel's situation, having regard to Articles 4(c) and 56(2) of the Treaty, constitutes a case 'not provided for in this Treaty', or which of the objectives referred to in Articles 2 and 3 of the Treaty are being pursued, or why the Commission did not consider the closure of Irish Steel.

165 The Commission maintains that the contested decision satisfies the obligation to state reasons in so far as it sets out, clearly and distinctly, the principal issues of law and of fact necessary in order that the reasoning may be understood (*Germany* v *Commission*, cited above, p. 69).

— Findings of the Court

166 The fourth indent of the second paragraph of Article 5 of the Treaty provides that the Community is to 'publish the reasons for its actions'. The first paragraph of Article 15 provides that 'decisions, recommendations and opinions of the Commission shall state the reasons on which they are based and shall refer to any opinions which were required to be obtained'. It is clear from those provisions, and from the general principles of the Treaty, that the Commission is under an obligation to state reasons when adopting general or individual decisions, whatever the legal basis chosen for that purpose.

167 It is settled law that the statement of reasons must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Community judicature to review it. It is not necessary, however, for the reasoning to go into all the relevant facts and points of law. It must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 86, and Case T-266/94 *Skibsværftsforeningen and Others*

v *Commission* [1996] ECR II-1399, paragraph 230). The statement of the reasons on which a measure is based must also be appraised in relation, *inter alia*, to 'the interest which the addressees or other persons concerned by the measure for the purposes of the second paragraph of Article 33 of the ECSC Treaty may have in obtaining an explanation' (Joined Cases 172/83 and 226/83 *Hoogovens Groep* v *Commission* [1985] ECR 2831, paragraph 24, and *British Steel*, paragraph 160).

168 First, as regards the Commission's classification of Irish Steel's particular situation as a case 'not provided for in [the] Treaty', it is clear from the first and third paragraphs of part IV and from part VIII of the contested decision that, pursuant to Article 4(c) of the Treaty, the aid envisaged could not be authorised except by way of exception, on the basis of Article 95 of the Treaty. The exceptional character of the situation is illustrated in part I of the contested decision by the references to the particularly difficult circumstances of the steel industry over a number of years and the fact that the crisis 'has endangered the sector in several Member States, including Ireland' (part IV).

169 Secondly, according to part V of the contested decision, the reason why the Commission did not plan a capacity reduction in the present case was that this was not 'technically possible... without closing the plant since Irish Steel has only one hot-rolling mill' and, moreover, such a step would have been incompatible with 'the aim of providing the steel industry in Ireland with a sound and economically viable structure' (part IV).

170 Thirdly, part IV of the contested decision describes the extent to which the objectives set out in Articles 2 and 3 of the Treaty and pursued by the Commission in that decision are served by the economic and social impact of the aid planned by Ireland as part of the undertaking's restructuring programme, which independent experts have considered to be viable (see paragraph 67 above).

171 In any event, the failure formally to specify the exact aims of Articles 2 and 3 being pursued in this case cannot be regarded as an inadequacy of the statement of reasons (*Wirtschaftsvereinigung*, paragraph 145).

172 Lastly, according to established case-law, the lack of foundation for the complaint just examined is further confirmed by the fact that it is not disputed that the applicant was closely involved, through its representative on the Committee, in the procedure prior to the adoption of the decision and that it was aware of the factual and legal considerations which led the Commission to consider the aid compatible with the common market and not to require capacity reduction by way of a counterpart measure (see *inter alia* Case 13/72 *Netherlands* v *Commission* [1973] ECR 27, paragraph 12, and *British Steel*, paragraph 168).

173 It follows from the foregoing considerations that the contested decision is not vitiated by breach of the obligation to state reasons.

174 Accordingly, the second plea in law, alleging breach of essential procedural requirements, must be rejected.

175 It follows from all the foregoing that the action must be rejected in its entirety.

Costs

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

177 Under the first subparagraph of Article 87(4) of the Rules of Procedure, institutions which have intervened in the proceedings are to bear their own costs. It follows that the Council, as intervener, must bear its own costs.

On those grounds,

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

hereby:

1. Dismisses the action;

2. **Orders the applicant to pay its own costs and those of the defendant;**

3. **Orders the Council to bear its own costs.**

Moura Ramos García-Valdecasas Tiili

Lindh Mengozzi

Delivered in open court in Luxembourg on 7 July 1999.

H. Jung R. M. Moura Ramos

Registrar President