

OPINION OF THE COURT
DELIVERED ON 4 MARCH 1960

- 1. Amendment of the Treaty within the meaning of the third paragraph of Article 95 of the ECSC Treaty – Amendment of the conditions for the High Authority's exercise of its powers – New conditions.**
 - 2. Amendment of the Treaty within the meaning of the third paragraph of Article 95 of the ECSC Treaty – Prohibition on interfering with the general structure of the Treaty and with the relationship between the powers of the Community and the Member States.**
- 1. The introduction of new conditions permitting the exercise of a power of the High Authority in circumstances other than those referred to in the Treaty does not constitute the grant of a new power, but only an adaptation of the rules for the exercise of a power already conferred upon the High Authority.*
 - 2. Cf. opinion of 17 December 1959 (Rec., Vol. V (1959)).*

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Rossi, Presidents of Chambers, O. Riese, J. Rueff, Ch. L. Hammes and N. Catalano, Judges,

Advocates-General: K. Roemer and M. Lagrange

Registrar: A. Van Houtte

Having regard to the request for the opinion of the Court submitted on 3 February 1960 by the High Authority and the Special Council of Ministers of the European Coal and Steel Community pursuant to the third and fourth paragraphs of Article 95 of the ECSC Treaty;

After hearing the views of the Advocates-General

gives the following

OPINION

Article 95 of the Treaty provides that the amendments referred to in the third paragraph of that article shall be submitted to the Court for its opinion, and that the Court shall determine whether the proposals are compatible with the provisions of the said paragraph.

The provisions which the High Authority and the Special Council of Ministers propose to add to the current text of Article 56 are as follows:

'If fundamental changes, not directly connected with the establishment of the common market, in market conditions for the coal or the steel industry should compel some undertakings permanently to discontinue, curtail or change their activities, the High Authority, on application by the Governments concerned:

(a) may facilitate, in the manner laid down in Article 54, either in the industries within its jurisdiction or, with the assent of the Council, in any other industry, the financing of such programmes as it may approve for the creation of new and economically sound activities or for the conversion of existing undertakings capable of reabsorbing the redundant workers into productive employment;

(b) may provide non-repayable aid towards:

the payment of tideover allowances to workers;

the payment of allowances to undertakings to enable them to continue paying such of their workers as may have to be temporarily laid off as a result of the undertakings' change of activity;

the payment of resettlement allowances to workers;

the financing of vocational retraining for workers having to change their employment.

The High Authority shall make the provision of non-repayable aid conditional upon payment by the State concerned of a special contribution of not less than the amount of that aid, unless an exception is authorized by the Council, acting by two-thirds majority.'

The minutes produced as an annex to the request for the opinion of the Court show that the Special Council of Ministers adopted the amendment proposal at its meeting of 26 January 1960, acting by a five-sixths majority of its members.

In most of its provisions, this proposal is identical to that submitted to the Court by the request of 4 December 1959 upon which the Court delivered its opinion on 17 December 1959.

The only differences between the two texts arise from changes designed to take account of the objections raised by the Court in its abovementioned opinion.

- (a) The ambit of the new Article 56 a is extended to the iron and steel industry.
- (b) The period of validity of the proposed amendment is no longer limited in time.
- (c) The conditions for the application of this provision exclude the exercise of the power under Article 56 for the purpose of dealing with situations arising from the establishment of the Common Market.
- (d) It follows from the new provision that the use of the power conferred on the High Authority is subject to a prior appraisal by the latter of the appropriateness of taking action, and that the exercise of that power presupposes that the High Authority has established the existence of the requisite substantive conditions.

Thus the Court finds that the objections and observations expressed in the Opinion of 17 December 1959 have been met in every respect.

The High Authority and the Special Council of Ministers have however seen fit to join to their request an annex containing 'certain legal considerations expressed at the meeting of the Council'. The considerations thus set out must be examined.

The annex states that an amendment to the Treaty, as provided for by the third paragraph of Article 95, can be lawful only under the following conditions:

- '(a) Fundamental economic or technical changes, directly affecting the common market in coal and steel, must have occurred;
- (b) These changes must make it necessary to adapt the rules for the High Authority's exercise of its powers;
- (c) The amendment of the Treaty must not conflict with the provisions of Articles 2, 3 and 4 of the Treaty or interfere with the relationship between the powers of the High Authority and those of the other institutions of the Community;

and expresses doubts as to the compatibility of the proposed amendment with the second and third conditions set out above.

A. In the first place this argument challenges the interpretation adopted by the Court in its opinion of 17 December 1959, according to which the contemplated extension of the substantive conditions for the application of Article 56 must be considered as 'an adaptation of the rules for the exercise of powers conferred on the High Authority'. On the contrary this argument regards the contemplated extension as the grant of a new power, which would unquestionably be contrary to Article 95.

The consequence of this view would be that in practice Article 95 could only be applied for the purpose of the amendment of procedural rules and formalities to be complied with by the High Authority in exercising its powers: It should be pointed out in addition that this could not even extend to all the rules of procedure, for an amendment of the provisions relating to the consultation and the possible agreement of the Special Council of Ministers or the Assembly are already excluded by virtue of the provision which prohibits any interference with the relationship between the powers of the High Authority and of the institutions of the Community.

However such an interpretation of the phrase 'rules for the . . . exercise of . . . powers' confines the scope for amendment of the Treaty within such narrow limits that it is no longer possible to understand how its authors could have considered the amendment provided for by the third paragraph of Article 95 as an adequate means of enabling the Community to deal with 'fundamental economic or technical changes'.

On the other hand, the Court interprets the abovementioned text of Article 95 as meaning that amendments may also be made to the definition of the conditions to which the exercise of the powers granted is subject.

It further asserted in the annex that the powers of the High Authority laid down in Article 56 are to be strictly interpreted and almost constitute an exception because that article constitutes a supplement to Article 46 and that this shows that the authors of the Treaty wished to provide for 'readaptation aid' only in situations 'within the ambit of the Treaty'.

That objection cannot be upheld.

The Treaty does indeed expressly confer on the High Authority a power with regard to readaptation, both in the case laid down in Article 56 of the Treaty and in those laid down in Article 23 of the Convention on the Transitional Provisions.

The conditions for the application of this power are:

- (a) As regards Article 56 of the Treaty, the introduction of new technical processes or equipment;
- (b) As regards Article 23 of the Convention, the consequences of the establishment of the Common Market.

It is true that the Treaty did not expressly confer on the High Authority a power with regard to readaptation if new economic conditions arise which have the effect of upsetting the structure of the Common Market in one of the Community pro-

ducts, but scope for amendment was provided for in the third paragraph of Article 95 precisely in order to deal with 'fundamental economic or technical changes directly affecting the common market in coal and steel'.

Hence, the introduction of new conditions permitting the exercise of the power with regard to readaptation in circumstances other than those laid down in Article 56 does not constitute the grant of a new power, but only an adaptation of the rules for the exercise of a power already conferred upon the High Authority.

Consequently the fact that the new conditions laid down by the contemplated proposal cannot be linked to the powers conferred on the High Authority by Article 46 does not form an obstacle to the proposed amendment, because the purpose of this amendment is precisely to meet the consequences of a fundamental change which was not foreseen when the Treaty was drawn up and which appeared only subsequently.

Thus the interpretation of Article 95, given on this point in the Opinion of 17 December 1959 must be upheld.

B. The annex further states that the contemplated proposal interferes with the relationship between the powers of the High Authority and of the other institutions of the Community 'as well as of the Member States' because it unlawfully transfers the powers of the Member States to the High Authority.

On this point, it should be pointed out that Article 95 prohibits only an amendment to the relationship between the powers of the High Authority and of the other institutions of the Community, and makes no mention of the relationship between the powers of the High Authority and of the Member States.

However it must be admitted, as the Court has already found in its Opinion of 17 December 1959, that it is clear from the provisions of the third paragraph of Article 95 that that provision cannot be invoked in order to amend the relationship between the powers of the Community and of the Member States as established by the Treaty.

Nevertheless, as was also stated in the Opinion of 17 December 1959, there can be no question in the present case of a transfer of power because the proposed amendment does not place any restriction on the powers of the Member States.

C. Finally, it is alleged in the annex that if the proposed amendment were adopted, it would necessitate a considerable increase in the levies and might thereby prevent the High Authority from ensuring the maintenance of conditions which will encourage undertakings to expand and improve their production potential, as it has a duty to do under Article 3 (d) of the Treaty.

Although it is true that the High Authority's power to impose levies is limited to the cases listed in Article 50, which makes reference *inter alia* to Article 56, it is also true that the proposed amendment does not constitute the grant of new powers within the framework of Article 50 since, as stated above, it does not involve the bestowal of any new powers.

Moreover, since the new proposal has taken account of the Court's suggestion and provides for only a power and not a duty for the High Authority to intervene, there is no reason to fear any conflict with the meaning and scope of Article 50 (2).

Finally the appraisal of any disadvantages of a possible, but not inevitable, increase in the rate of levy is a political and not a legal matter.

There can be no question of admitting that the proposed amendment is contrary to Article 3 (d), for although it may result in an increase in the amount of the levy, it is intended on the other hand to promote the rationalization of the market necessitated by changes which have occurred in economic conditions.

On those grounds,

Having regard to the third and fourth paragraphs of Article 95 of the ECSC Treaty;
Having regard to Article 107 of the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

is of the opinion that:

The proposed amendment to Article 56 of the Treaty establishing the European Coal and Steel Community, as submitted to the Court by the High Authority and the Special Council of Ministers by letter of 3 February 1960, is compatible with the provisions of the third and fourth paragraphs of Article 95 of the Treaty.

Delivered in open court in Luxembourg on 4 March 1960.

	Donner	Delvaux	Rossi	
Riese	Rueff	Hammes		Catalano