On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Coal and Steel Community, especially Articles 3, 4 (b), 53 and 80;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, especially Article 22;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 38 and 69;

THE COURT

hereby:

1. **Dismisses the application as unfounded;**
2. **Orders the applicant to pay its own costs and one half of the defendant's costs, the other half of the defendant's costs to be borne by the defendant.**

Hammes Donner Lecourt

Delvaux Trabucchi Strauß Monaco

Delivered in open court in Luxembourg on 13 July 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 6 MAY 1965[1]

Index

1 — Translated from the German.

Mr President,
Members of the Court,

We are concerned today within the context of the liquidation of the ferrous scrap equalization scheme, with another application brought by a German undertaking after it had been called upon to pay a certain sum to the Equalization Fund.

The applicant manufactures wheels and rims for vehicles. In order to provide for its requirements of steel strips it constructed its own steel works and rolling mill, where, according to its statement, production first began on a trial basis in the summer of 1956.

In autumn 1956, or to be precise on 19 October, the undertaking was asked by the German regional office of the Equalization Fund (die Deutsche Schrottverbraucher-Gemeinschaft GmbH, abbreviated to DSVG) for a return of the amount of relevant scrap for the purpose of the levy. The undertaking did not comply at first with this request, but did so later (in a letter of 6 December 1956) by authorizing the DSVG to obtain the necessary information concerning its sales of ferrous scrap from the Deutsche Statistische Bundesamt (the Federal German Statistics Office). At the same time the undertaking corresponded with the authorities running the equalization scheme concerning its liability to pay the levy, which I will deal with later in detail. After that Lemmerz-Werke received a circular of 20 May 1957 from the DSVG, which, with reference to a letter of the Equalization Fund and also to decisions of the Board of the Fund and of the Joint Bureau, stated that certain steel works mentioned in a letter to the High Authority (which included Lemmerz-Werke) were liable to pay contributions only as from 1 February 1957.

In June 1958 and November 1960 the High Authority instructed the Société Fiduciaire Suisse to carry out an investigation at the applicant's works. Later—by a letter of 19 July 1961—the Directorate-General for Steel of the High Authority informed the applicant of the amount of ferrous scrap upon which the calculation of its liability to pay equalization contributions for the period February 1957 to November 1958 was to be based. The applicant was also informed that the circular had been sent to it in error and that, in

calculating its equalization contributions, the amount of ferrous scrap for the period from April 1956 to January 1957 ascertained by the Société Fiduciaire Suisse (7 342 metric tons), which had not hitherto been taken into account, was to be included in the calculation of the equalization contributions. The applicant protested against this in a letter of 1 August 1961, in which it disputed, as it had already done in its correspondence in 1956, its liability to pay the levy for the period before 1 February 1957.

The Court is aware of the subsequent procedure adopted in this case; on 8 April 1963 the High Authority sent the applicant a demand for payment. This led to an application for annulment, which the Court dismissed having regard to the fact that the contested measure lacked the characteristics of a decision (Case 53/63).

Finally after further correspondence between the parties, the High Authority issued a formal decision, laying down in binding form the amount owed by Lemmerz-Werke by way of equalization contributions, and, for the first time, for the period from 1 April 1956 to 31 January 1957 as well as—with reference to arrears of payments—for the period after 31 January 1957.

This decision is the subject-matter of the present proceedings.

The applicant disputes it with a wealth of arguments, some of which had to be examined in the Mannesmann case and some of which apply to the particular facts of the present case.

Owing to the nature of these arguments I have decided to examine the legal issues in accordance with the following plan.

I must first of all consider two questions of admissibility raised by the High Authority which it emphatically insists must be examined.

In considering the various *submissions* I shall deal first with the complaint of an infringement of an essential procedural requirement in the shape of an inadequate statement of reasons.

The next point to consider is whether the applicant, having regard to the fact that its production operations were on a trial basis until 31 January 1957, was not liable to pay any equalization contributions or whether it was liable to do so by reason of its purchase of ferrous scrap from April 1956.

Then come considerations relating to the legal content and consequences of the DSVG's letter of 20 May 1957 including the questions: Was the applicant granted a valid exemption? Can the exemption be revoked and, if so, what are the effects of any such revocation? Have any of the High Authority's claims, which arose in the period prior to February 1957, been forfeited or are they time-barred?

Finally there is the problem of rules governing the payment of interest under the equalization scheme, with which we are familiar from the Mannesmann case, and of dealing with changes in the exchange rates in France and in the Federal Republic of Germany.

Legal consideration

I — Questions of admissibility

The objections of inadmissibility raised by the High Authority refer to the applicant's complaints in respect of its liability to pay equalization contributions after 31 January 1957.

The High Authority's submission on this point is that the applicant has by its statements in Case 53/63 accepted the calculations in the demand for payment of 8 April 1963; further insufficient reasons for the said complaints are given in the application.

1. *The first objection*

With regard to the first objection the High Authority relies on the following

extract from the application in Case 53/63: 'If the defendant had taken account of the exemption, the arrears of contributions in the notice to pay would have been DM *x* less. (The *balance* of the actual amount of the arrears of contributions results from the fixing of a new provisional rate for the contributions payable to the equalization fund in accordance with Article 4 of Decision No 7/63 and *is not disputed* by the applicant)'.

In fact it is to be inferred from the arguments put forward by the applicant in these proceedings that it only complained against the failure to take account of its exemption from equalization contributions in respect of ferrous scrap up to 31 January 1957.

However I very much doubt whether that can amount to a valid admission of liability. In principle proof of such an admission should be subject to stringent conditions, because the effect of such an admission is the abandonment of legal rights or the final settlement of a legal issue by the person making it.

So far as this case is concerned certain features in Case 53/63, upon which the applicant has laid special emphasis, do not support the presumption that the liability was admitted. It stated in Case 53/63 that it was itself uncertain whether its application was admissible. The application was to be regarded as a measure of the utmost precaution taken to protect its legal rights. Having regard to the uncertainty regarding its right of action the risk with regard to costs had to be reduced and only some of the disputed questions submitted to the Court. With the object of defining the part of the application which the applicant intended to pursue the expression 'not disputed' was used, which simply meant that the parts marked in this way were not proceeded with for the time being. The fact that the balance was not disputed can at best be regarded as *an acceptance of the correctness of an arithmetical calculation* but in no circumstances as acceptance of the legal merits of the High Authority's claim.

This interpretation of Case 53/63 and of the expression used in it seems to me to be the most likely in view of the facts as they were at that time. Therefore it cannot be said that the applicant has renounced the right to put forward complaints, which it can raise against a notice to pay arrears of contributions for the period after 31 January 1957 issued by the High Authority as an enforceable decision.

2. The second objection.

With regard to the High Authority's second objection that the application has not been adequately substantiated it should be noted that according to the Rules of Procedure of the Court only a *brief* statement of the grounds on which the application is based is required. For this purpose it is not enough to give a formal mention of all the grounds specified in the Treaty; there must be an indication of the essence of the arguments which will be of decisive importance in the evaluation of the submissions put forward by the applicant.

In my opinion the application in this case complies with this requirement, because the applicant pleads, with reference to the currency questions, that they were dealt with by the High Authority in such a way as to operate to its disadvantage and, with reference to the question of interest, that there has been unlawful discrimination in that the High Authority waives the interest on overdue payments and therefore has to impose upon debtors, who have paid their contributions punctually, additional contributions made necessary by the new rules of interest. As according to the case-law of the Court legal provisions which are alleged to have been infringed do not have to be cited, and the applicant did not therefore have to refer expressly to those general dicisions, which it intends to contest under the

objection of illegality, its application as a whole cannot be said to have been inadequately substantiated.
Both the High Authority's objections of inadmissibility must therefore be dismissed.

II — The principal claim

1. *Inadequacy of the statement of the reasons upon which the decision was based*

I will deal first with a formal complaint contained in the principal claim in this dispute: it is the applicant's view that that statement of reasons upon which the disputed decision is based is in many respects inadequate.
— Thus it complains that the High Authority states that the communication from the regional office of 20 May 1957, stating that the applicant was liable to pay contributions as from 1 February 1957, was a mistake, without explaining the nature of this mistake.
On this point we learn from the disputed decision that the said communication only referred to independent steel casting mills which manufacture and market steel ingots as secondary products, that is to say, to a category of producers to which Lemmerz-Werke does not belong. This fact can be ascertained from the content of the decision of the Board of the CPFI. This explains, if only by implication, that the applicant was not one of the undertakings to which the decision was addressed, what was the nature of the alleged mistake and thus the essential consideration, in the sense of the requirements of the case-law of the Court, which prompted the High Authority to issue the contested decision, has been given. It is unnecessary in my opinion to include in the statement of the reasons for the decision any more details of the procedure which led to the notification of the Board's decision.
In addition the applicant complains that the statement of the reasons for the decision does not contain any arguments which lead to the conclusion that a mistake of the type mentioned would nullify the measure which was notified.
It does not seem to me, however, that this is an appropriate submission to put forward in connexion with a complaint that the decision has formal defects; it would be otherwise if the arguments were *manifestly* inconclusive. The present case is at least a borderline case, because the inference to be drawn from the contested decision is that the High Authority proceeded on the basis of a manifest error, that is to say, on facts from which the recipient could ascertain that the measure of which he was notified was not intended for him. Looked at in this way the possibility of nullity cannot be rejected *a priori* and the conclusiveness of the High Authority's statements cannot be called in question. Whether these statements prove in the final analysis to be valid can certainly not be decided during the examination of formal defects but only when the substance of the claim is examined.
Still under the head that the statement of reasons is inadequate the applicant complains that, to the extent to which the contested decision revokes the exemption granted to the applicant, the High Authority only drew its attention to the fact that it must recognize that the decision to grant the exemption was not intended for it. This is not a sufficient statement of reasons for the revocation of a decision. The High Authority ought to have stated in addition why it did not attach any decisive importance to the confidence which the applicant could be expected to have in the validity of its decisions.
In principle this complaint of course only applies to the secondary considerations of the High Authority relating to the revocation of the exemption decision. However I shall now proceed on the assumption that this is the case. With

regard to this complaint I have the impression that the applicant's criticism falls outside the field of formal defects and calls for certain substantive legal questions to be answered, in particular the question what considerations have to be taken into account when an administrative measure granting preferential treatment is revoked. On the other hand the assessment of the duty to give the reasons for a decision can only turn upon the legal inferences which the authority making the decision regards as determinative. We deduce from the contested decision that the predominant consideration of the High Authority was that the notification of the exemption decision constituted an easily recognizable mistake. This point of view naturally led it to attach little importance when it considered the interests of all the undertakings concerned to the confidence the applicant could be expected to have in the validity of its decisions.

Further the High Authority also mentioned in the statement of the reasons for its decision its examination of the applicant's economic situation and also referred to the cases decided by the Court dealing with the revocation of exemptions, and therefore by implication to the principles developed in those cases. Accordingly the decision contains sufficient reasons to support the secondary considerations of the High Authority relating to the revocation of the exemption decision, which makes the complaint of the inadequacy of the statement of reasons appear to be unjustified.

Finally I should like to show that an infringement of a procedural requirement cannot be upheld for the following reasons. The applicant finds that there is a contradiction in the contested decision in that the High Authority called upon it to pay its equalization contributions within 30 days but on the other hand said in the statement of the reasons for its decision that other arrangements for payment could be considered at the applicant's request. It also regards the presentation of the facts as misleading, because it is bound to give the impression that the applicant only raised its objections to the letter of the High Authority of 19 July 1961 in its application against Decision No 7/63, whereas in fact it answered the letter on 1 August 1961 and the High Authority took no action until 1963.

I do not see how the last point could have had a decisive influence on the legal conclusions of the High Authority which shows that the complaint based on it is unfounded. So far as the contradiction contained in the decision is concerned, this in my opinion is only apparent: the High Authority determines the applicant's liability to pay without any qualification, but makes it known that easier terms of payment can be granted, provided that the applicant adduces proof that they are necessary, if, that is to say, it is in a position to show that it has economic difficulties, of which the High Authority could clearly not have been aware.

Altogether I do not see how this complaint of an inadequate statement of reasons can succeed.

2. *Was the applicant legally exonerated from paying equalization contributions for the period prior to 1 February 1957?*

As regards the substance of the case what must be considered in the first place is whether, independently of any notification to the applicant of an exemption, before 1957 the applicant could at all be subject to the equalization scheme.

On this point the applicant argues that an undertaking is not subject to the ECSC Treaty until it commences normal production and is liable to pay equalization contributions to the extent to which it uses ferrous scrap. Therefore it cannot be said that the applicant was subject to the ECSC Treaty before July 1956, because until then it had

only purchased scrap and had not engaged in any production at all. From July 1956 to January 1957 it was only engaged in production on a trial basis, which for this reason was not production to which the equalization scheme applied.

For the purpose of the legal examination two periods must be distinguished:

— the period during which only scrap was purchased; and

— the period during which there was production at least within the technical meaning of that word.

If we consider the second period first we notice straight away that the applicant has not stated to what extent production was only carried out on a trial basis during this period. More detailed particulars of the trials showing whether they were technical or concerned with operational efficiency would at least have been useful in evaluating its objection. The applicant must also concede that the High Authority is right to point out that according to the wording of the decision normal production conditions are only relevant for the purpose of the supplementary equalization rate laid down in Decision No 2/57.

In order to settle this issue it will in particular be of decisive importance to examine the applicant's production figures and their trend, because the way in which they are dealt with under the scheme for the equalization of scrap can only be determined with any degree of certainty by considering, at any rate to some extent, figures for past years. On this point the reports by the Société Fiduciaire Suisse of 12 June 1958 and 20 January 1961, whose correctness the applicant has acknowledged, state that production of steel in one furnace began on 3 July 1956. From the very beginning the size of the production figures (July 1956—747 metric tons, August 1956—1291 metric tons) rebut the presumption that production was on a trial basis. In October 1956 they are already at a level exceeding the average for 1957, that is to say, the year which the applicant freely acknowledges was a year of normal production. According to the High Authority's statements, which have not been disputed, they correspond to the normal output of a 20-ton furnace similar to the one operated by the applicant. Therefore in my opinion, without going into the question of the actual payment of the *general* levy after August 1956, which, as is known, is calculated on the production figures, the conclusion is justified that the period of production on a trial basis at the applicant's works was superseded several months before 1 February 1957 by normal production conditions. But even if it has to be assumed that there had been production on a trial basis for a fixed period, this could not be a factor to be taken into account when considering the applicant's liability to pay equalization contributions in this case where production continued, because the scrap used for abortive production trials was certainly used indirectly for subsequent production so that there was a saving of scrap. This observation and also other considerations which immediately follow make it unnecessary to determine the exact date when the alleged production on a trial basis came to an end.

There appears from a close study of the facts to be no doubt whatever that the date from which the assessment was to be made was carried further back and fixed on the date when purchases of additional scrap commenced, which, it cannot be disputed, were effected in large quantities from April 1956. The High Authority is in my opinion right to regard these operations as necessary preparations for production and to consider therefore as production within the meaning of the Treaty not only the commencement of technical production (which can in any event be relevant for the assessment of the general levies) but also the development of an activity

which must logically lead to production, a situation which indeed can also only be determined with any degree of certainty by a retroactive investigation. Such a concept of production, as the High Authority has shown, corresponds not only to the requirements of the Treaty (the right to obtain information, notification of investments), but also in a special way to those relating to the equalization of ferrous scrap, particularly because the applicant, by effecting purchases of scrap inside the Common Market, has been able to take advantage of the benefits of the equalization scheme from April 1956. If the different view is taken that only those production periods which led to the manufacture and marketing of products are to be regarded as production then, as the High Authority has pointed out, it would be easy to avoid liability to pay equalization contributions by replenishing stocks during a temporary closing down of an undertaking. It is quite clear that the judgment in Case 14/63 (*Clabecq* v *High Authority*) cited by the applicant cannot support its argument, because it only deals with the question of the liability to pay equalization contributions on purchases of scrap *before the equalization scheme entered into force.*

Therefore the liability of the applicant to pay equalization contributions cannot in principle be denied on the ground that it was not engaged in production before 1 February 1957.

3. *Does the circular from the Deutsche Schrottverbraucher - Gemeinschaft (DSVG) of 20 May 1957 exempt the applicant from an assessment for the period from April 1956 to January 1957?*

Following the logical order in which the submissions have been put forward we must ask what were the legal effects of the DSVG's circular of 20 May 1957 and whether they could have been revoked by subsequent measures adopted by the equalization scheme or by the High Authority.

You will recall that according to the wording of the said letter the applicant was informed as follows: 'By a letter of 17 May 1957 [the DSVG wrote] the CPFI gave the following information:

"In accordance with the decisions of 7 and 8 May 1957 made by the Boards of the OCCF [Office Commun des Consommateurs de Ferraille] [Joint Bureau of Ferrous Scrap Consumers] and of the CPFI the steelworks listed in a letter to the High Authority will be liable to pay equalization contributions on that part of their production which corresponds to bought ferrous scrap from 1 February 1957.

Your firm is affected by these decisions."'

The applicant regards this circular as an official notification of the authorities in Brussels concerning the commencement of its liability to pay levy contributions and also concerning its exemption from any assessment on scrap consumed before the date of the circular, that is to say, as a notification which must be classified as an administrative measure creating subjective rights and which can only be revoked under specific conditions. The High Authority on the other hand puts forward in particular the view that the circular was clearly not intended for the applicant and could produce no legal effects so far as the applicant was concerned. No revocation was therefore necessary.

With regard to this significant issue in these proceedings the High Authority has produced a number of documents with its statement of defence. The bundle of documents was added to at the request of the applicant during the oral procedure. It appears to me that most of the documents which were produced undoubtedly help to throw light on the events leading up to the decision of the Board of the CPFI and to the other measures which now have to be

considered. Only a few of them can really have a decisive influence, because when interpreting what is meant by an administrative measure, according to general principles, the only decisive factor is the *declared* intention of those concerned as expressed in *published* statements and not all the surrounding circumstances in any way connected with the measure, which might disclose the *actual intention* of the interested parties. The statements must be subjected to an objective interpretation and a public body must act in conformity with this.

Therefore the first question is whether the actual content of the circular notified to the applicant gives rise to any doubts. This is not the case in so far as the applicant is addressed by name and is expressly informed that it is only liable to pay levy contributions from 1 February 1957. The letters of the Equalization Fund to the regional office, of the Equalization Fund to the marketing division of the High Authority and the decision of the Board of the Equalization Fund mentioned in the circular were not annexed to it and the applicant was obviously unaware of them; they must therefore be excluded for the purpose of interpreting the circular. If the High Authority intends to infer that the expression 'corresponding part' of bought scrap used in the circular refers to the particular conditions applicable to production in independent steel casting foundries, this literal argument drawn from the text of the circular does not seem to me to be convincing. Also the fact that another part of the letter expressly refers to steel casting foundries could not cause the applicant to doubt whether it should have been an addressee, because the other passages were introduced with the word 'further' and are therefore independent statements entirely unconnected with the first part of the communication. Therefore the applicant's interpretation of the circular can be accepted and all the more, because it can be clearly inferred from the other documents produced in the proceedings that it was the express intention and not a mistake on the part of the German regional office to distribute the circular to undertakings which like the applicant had not until then been subject to the equalization scheme, as well as to independent steel casting foundries.

In the second place we must consider whether the regional office on its part could rely on a corresponding instruction from the CPFI, because it obviously did not have the power to take decisions on its own authority concerning the date of commencement of the liability to pay equalization contributions. The letter from the CPFI to the regional office of 17 May 1957 is decisive in this respect. It laid down that the steelworks listed in a letter from the CPFI to the marketing division of the High Authority should only be liable to pay equalization contributions from 1 February 1957. The said letter was sent to the regional office; it also contains the applicant's name.

It cannot be said that the inference to be drawn from the letter from the CPFI to the regional office is that, as it bore a reference to steel foundries producing steel ingots, it was ony intended for them. For the purposes of interpretation this fact is not decisive, because in the list annexed to it the steel-works concerned are listed *by name,* and because it can be plainly inferred from the list that the applicant does not operate a steel-casting foundry, which is also emphasized in the letter itself and finally because some undertakings originally on the list were deleted, from which the conclusion can be drawn that the list was carefully scrutinized by the competent authorities. The previous extensive correspondence between the German regional office and the CPFI (cf. letters of 10 January 1957, 5 April 1957, 24 April 1957 and 14 May 1957), concerning the policy

to adopt towards the German undertakings which had not yet been subject to the equalization scheme of which the applicant was one, in conjunction with the problem of retroactively assessing them, could very well have caused the regional office to take the view that the letter of the equalization fund was also intended for undertakings such as the applicant.

However there is a further argument. It can be shown that the order of the CPFI is covered by a resolution of its Board. In this connexion the minutes of the crucial meetings must be compared. According to the minutes of the 32nd meeting of 8 May 1957 under item 8 of the agenda (determination of the date from which independent steel-casting foundries producing and marketing steel ingots are to be liable to the equalization levy on that part of their production corresponding to bought ferrous scrap) the decision was taken 'that the liability of independent steel-casting foundries to pay equalization contributions on that amount of bought ferrous scrap corresponding to their total production of steel ingots begins on 1 February 1957'. It is unnecessary to mention that this resolution did not apply to the applicant. But the resolution was not the end of the matter. The representative of the German regional office in a letter to the Fund of 16 May 1957 proposed the following additional amendment to the decision: 'The undertakings concerned are those listed by name in the CPFI's letter to Mr Rollmann of 27 April 1957 (?)'. The additional sentence must have been incorporated, because at the meeting of the Council a draft of the said letter was distributed, which listed all undertakings *which had not hitherto been called upon to pay equalization contributions*. At the 33rd meeting of Board of 12 and 13 June 1957, attended by the same persons as were present at the previous meeting, when the minutes of the 32nd meeting were approved, this proposal was implemented by the following wording: 'The minutes of the 32nd meeting of the Board and the proposed amendment in Mr Lindeboom's letter of 16 May 1957 are unanimously approved'. The representatives of the High Authority who were present accepted the amendment without any reservations.

Therefore it can in fact be said that according to the manifest intention of *all* the competent authorities at that time the date when the applicant became liable to pay equalization contributions to the Equalization Fund was effectively fixed at 1 February 1957.

According to administrative law this measure is to be regarded as a declaratory administrative measure which creates rights from which the applicant can benefit, because, since there are no grounds whatever for the view that it is null and void, it is bound to remain in force until it is expressly revoked.

Now it is true that there was subsequently correspondence between the applicant and the High Authority on the question of its liability to pay equalization contributions for the period prior to 31 January 1957. But, and this is significant, this correspondence was only conducted by the officials of the High Authority after it had taken over the administration of the Equalization Fund. Therefore a revocation of the decision of 20 May 1957 cannot in any circumstances be found in any of these letters but only in the decision which is now disputed.

The next question is whether the revocation can have been legally effective. To answer this question it is unnecessary to make any special comment on the principle that a measure which is to be revoked must be illegal, because obviously the general decisions on the equalization of ferrous scrap provide no opportunity for the exemption of an undertaking which, like the applicant undertaking, complies with all the necessary criteria to make it subject

to the equalization scheme. The applicant does not go so far as to say that as early as May 1957, when it received the circular letter, a retroactive equalization assessment for the period from April 1956 to January 1957 would not have been legally possible and that for this reason the exemption decision is not illegal.

Its first and chief complaint with regard to the question of revocation is rather that the High Authority either completely neglected the necessary evaluation of the interests involved or proceeded on the basis of an erroneous view of the facts, namely that the applicant could have ascertained that the notification to it of the decision of the Board was a mistake. In fact the statement of reasons upon which the decision was based discloses that the High Authority considered that the authorities running the equalization scheme had made a manifest error and for this reason did not consider that the legal situation of the applicant required any special legal protection. Having regard to my previous examination of this issue this view must be discarded as incorrect. The great emphasis which the High Authority places on a letter of 8 November 1956 brought to the notice of the applicant by a letter of the regional office of 28 November 1956, which confirmed that it was liable to pay equalization contributions, cannot alter the relevant facts. Contrary to the view which the High Authority endeavours to put forward this letter is not to be regarded as a statement emanating from the 'highest authority' of the ECSC, but in fact as the communication of an opinion of one official of the High Authority. So far as this letter is concerned, having regard to the way in which the equalization scheme was organized at that time, the communication of the CPFI and the resolution of its Board must be considered as notification of an opinion overriding the one before-mentioned, upon which the applicant could alone rely, all the more so because the letter of 8 November 1956 does not mention the *commencement* of the liability to pay equalization contributions. Further the documents produced during these proceedings show that the head of the marketing division of the High Authority stated as late as 1961 that neither the CPFI nor the German regional office had made any mistake in 1957 when they notified the said decision of exemption. These findings could therefore justify the conclusion that the High Authority, when it issued its decision of revocation, proceeded on the basis of an incorrect assessment of the facts and that as a result its discretionary decision was not objectively substantiated, that is to say, was made without an adequate evaluation of the facts of the case. Strictly speaking this should have resulted in the matter being referred back to the High Authority for administrative review, because in the context of the revocation of an administrative measure creating subjective rights the Court cannot substitute its own discretionary decision for that of the administration.

Nevertheless this does not conclude the examination of this question; we must consider whether there are still other arguments which can be advanced against the legality of the decision of revocation. In doing so we will furthermore be able to rely on the principles concerning the revocation of administrative measures creating subjective rights which have been developed by the Court.

In the first place it is important to ascertain whether the adoption of the administrative measure creating subjective rights was caused either by incorrect or incomplete particulars supplied by the person to whom it was addressed. That these circumstances do not exist in this case emerges very clearly from the oral procedure, during which the applicant produced a letter

to the DSVG of 6 December 1956, authorizing the institutions at Brussels to obtain particulars of its consumption of scrap from the German Federal Statistics Office. Therefore the necessary returns of scrap consumed were available in December 1956. In addition the documents which have been produced show also that with the help of checks carried out at the applicant's office in 1958 its consumption of scrap during the period from April 1956 to January 1957 was ascertained and that the applicant itself delivered to the High Authority in November 1958 a report showing the movements of scrap at its works. Uncooperative behaviour on the part of the applicant cannot therefore be a factor to be taken into account when considering the validity of the revocation.

In the second place consideration must be given to the applicants argument that, since it was not assessed under the equalization scheme at the prescribed time, it was unable to pass on to the purchasers of its finished products the charges arising out of the levy, which having regard to the favourable economic and financial situation at that time could have been done without any difficulty. I should like however to assume that the Court will attach no more decisive importance to this argument than it did in the case of *Hoogovens* v *High Authority,* where the crucial fact was that the applicant took advantage of the benefits of the equalization scheme. Further comments on this point are therefore unnecessary, in particular as the applicant has failed to support its argument on this point with any particulars.

On the other hand, so far as the evaluation of the applicant's right to place its confidence in the validity of the High Authority's decision is concerned in this case, a departure from the existing case-law may well be justified. If in the case of the exemption of large industrial undertakings it can be argued that the well-known tendency of rival undertakings to challenge such preferential treatment has never been able to justify the belief that an exemption once granted cannot be revoked, it is impossible to maintain a similar argument without reservations in the case of an undertaking of the size of the applicant, which on the whole was only liable to pay relatively small equalization contributions to the CPFI and which in addition did not produce steel for sale on the market. In this connexion the argument of the High Authority that the applicant's *bona fide* conviction that its legal position remained unchanged had been shaken for other reasons at a much earlier period must also be rejected. In my opinion this conviction was not shaken by the checks carried out by the Société Fiduciaire Suisse, which were obviously not directed to the problems in this case. Further this could not have been brought about by the issue of Decision No 13/58 which reserved in *general* terms the right to make corrections or by the commencement and termination of proceedings relating to the ultimate application of group scrap (Joined Cases 32 and 33/58). It is only the letter of the High Authority in 1961 which clearly stated that the applicant was liable to pay the levy from April 1956. The applicant's position with regard to the confidence it was entitled to place in the decision of the High Authority is therefore undoubtedly different from that of undertakings which were affected by the problems arising out of group scrap.

In particular the question whether the revocation was effected within an appropriate time-limit, as laid down in the decided cases, gives rise to critical comment in the present case. It is true that this time-limit may be determined on a relatively liberal basis and that compliance with it may be relatively unimportant, in the case of administrative measures creating subjective rights

which are only *declaratory*. Yet even in these cases the Court must in the last resort lay down a point beyond which it is impossible for the administration to rectify even measures relating to the equalization of ferrous scrap.

Let us look at the relevant facts of the present case bearing this in mind: The decision of exemption, as has already been mentioned, is dated 20 May 1957. The time limit for revocation has to be calculated from this date, not however, as the High Authority suggests, from the date when judgment was delivered in the *Meroni* case. A binding revocation was only effected in the contested decision, that is to say, about seven years after the notification of the decision of exemption. During this period there were statements on the part of the High Authority, some of which came to the notice of the applicant (some did not), which however are not relevant because they were only letters from officials of the High Authority who had no authority to make decisions. The fact that their content was not for a long time confirmed by a formal decision of the High Authority might even have strengthened the applicant's assumption that the High Authority was dissociating itself from them.

Every argument put forward by the High Authority to explain the long period of time which elapsed between the issue of the decision of exemption and its revocation (some of them have been dealt with) is fundamentally irrelevant. Neither the existence of other proceedings, which dealt with different problems, nor the reorganization of the equalization machinery, nor the checks carried out at the undertaking's offices, nor the need for repeated alterations of the rate of contributions provide any justification for its delay. In the applicant's case no difficult questions of interpretation, for instance concerning the ultimate application of group scrap, were at issue, for the solution of which the High Authority had to be allowed a sufficiently long period of time. In this case it was simply a question of a comparatively straightforward administrative clarification of a mistake, which in fact had already been discovered at the latest in 1958. Nevertheless the fact that the revocation of the decision which had been taken was only effected after about seven years had elapsed even permits the conclusion that there may have been a wrongful act or omission, which has the important consequence, for the purposes of considering the opportunities which arose for the revocation, that the High Authority would be liable for the amount of equalization payments not recovered as a result of the exemption.

If in connexion with the question of an appropriate time-limit for revocation reference is made to national case-law and administrative practice, the findings strengthen the view that in this case revocation is no longer possible. I have not come across a case where a delay of several years and a failure to act on the part of an administration has not had some effect on the right of revocation. Indeed in cases where a period of three years had elapsed the wording of the judgments indicates that the defensible limits had been reached.[1] The draft of a German Verwaltungsverfahrensgesetz (German Code of Administrative Procedure) lays down a time-limit of one year from notice of the circumstances justifying the revocation (§ 37 IV).[2]

In view of all these arguments I do not hesitate in the case of Lemmerz to dispute the High Authority's right to revoke a decision of exemption issued in 1957 on the ground that the time-limit for such revocation has expired. To use

1 — Judgment of the Bundesverwaltungsgericht of 23 January 1958, MDR 58, 710; Judgment of the Bundesverwaltungsgericht of 8 December 1961, DVBl 62, 562; Judgment of the Verwaltungsgerichtshof, Baden-Württemberg, of 31 March 1958, Zeitschrift für Beamtenrecht 58, 144.

2 — Cf. Haueisen, Vertrauensschutz im Verwaltungsrecht, DVBl 64, 710.

the applicant's words it has forfeited this right through the negligent conduct of the administration.

If this line of reasoning is followed, the matter must not only be referred back to the High Authority because of a failure by it to evaluate correctly the interests concerned but in addition—without having to examine the other separate submissions of limitation of claims, forfeiture and discrimination in relation to other undertakings which have been similarly exempted—the revocation must finally be declared inadmissible. So far as the period before 1 February 1957 is concerned the application succeeds.

4. *The question of currency problems and the payment of interest*

The application has not yet however been completely disposed of. At least for the purpose of considering the demand for payment of the arrears of contributions for the period *after* 31 January 1957 the well-known submissions in the Mannesmann case on the question of the parity of currencies and the fixing of interest must be examined. In doing this I can at any rate, having regard to the detailed presentation of my views in my opinion of 1 April 1965, be relatively brief.

(a) The question of the parity of currencies

On this question a preliminary observation must first of all be made on the procedure in this case, because the applicant submitted with its reply the opinion of an expert and at the same time—without giving any detailed reasons—stated that it did not agree in all respects with the expert's opinion. From the procedural point of view such a statement appears to be objectionable, because the Court must not be left in doubt as to the nature of an argument put forward by a party. In my opinion the only legal consequences of this can be that the Court should only accept those of the applicant's arguments which are contained in the reply and treat the expert's opinion which has been produced as no more than a reference to the doctrine concerned.

With regard to the currency questions themselves, the present case could create the impression that it has certain special features which were not discussed in the Mannesmann case. The reason for this is that the applicant not only complains of the failure to take into account the revaluation of the German mark, but also of the effect caused by the two devaluations of the French franc on the amount of its debt in respect of equalization contributions. This complaint would, however, only have added a special problem to the legal debate, if the applicant intended for example to argue that the devaluation of the franc, which occurred *during* the operation of the equalization scheme, ought not to have been taken into account at all for the purpose of the equalization of ferrous scrap and that the scheme should have continued to be operated as if the old parity of the franc had been maintained. However this is clearly not the case and it appears difficult to defend such an argument, because it was legally impossible for the equalization scheme to deal with those equalization transactions, which only took place after the change in currency parities, otherwise than on the basis of the new parity.

If however the only question arising out of the devaluation of the franc which has to be considered is whether in law the credits and debits existing *before* the devaluation are to be fixed in accordance with the parity prevailing during the month when equalization is effected or on the date of payment, the problems in the present case are not substantially different from those in the Mannesmann case. In fact it appears possible to refer to all the individual arguments which I examined in detail in the Mannesmann case under heading I 4 which led me to conclude that the rules for applying currency parities in Decision No 21/60 are

in conformity with the principles governing the equalization of ferrous scrap.

(b) Rules on interest

With regard also to the rules on interest there is in principle nothing in the present case to justify the adoption of a view different from the one I took in the Mannesmann case (cf. heading II 3).

There is one point to be noted with regard to the equalization contributions payable for the period *prior to 1 February 1957*, that is to say, for the period during which I submit that the claim succeeds because the revocation could not lawfully be effected. Rules on interest such as those in Decision No 7/61 must naturally appear to be extremely unfair in cases such as the present one, where no attempt was made for many years to collect the equalization contributions, because no action was taken which could be regarded as a formal demand to the applicant to pay the arrears, whereas now the applicant is to all intents and purposes treated as though it had been in arrear with the payment of its contributions. This consideration should not however be used as a ground for calling in question the justification of the new rules on interest, but provides on the contrary an additional reason for quashing the revocation of the exemption which was granted.

(c) With regard to the arrears of contributions for the period after 31 January 1957 the arguments relating to the question of currency parities and the rules on interest cannot justify a partial annulment of the contested decision.

III — Summary and conclusion

In conclusion my opinion is as follows:

The contested decision must be annulled to the extent to which it makes an assessment for the first time on the applicant to equalization contributions for scrap for the period from April 1956 to January 1957. On the other issues the application is admissible but unfounded. With regard to the costs the Court should take into consideration the size of the sums demanded by the High Authority, as well as the extent and complexity of the submissions concerning the various accounting periods, and accordingly order the High Authority to bear three quarters and the applicant to bear one quarter of the costs of the proceedings.

ORDER OF THE COURT
25 NOVEMBER 1964[1]

In Case 111/63

LEMMERZ-WERKE GMBH of Königswinter

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY

defendant,

1 — Language of the Case: German.