

Case T-26/90

Società Finanziaria Siderurgica Finsider SpA v Commission of the European Communities

(Steel: exceeding quotas — Scope of a judgment annulling provisions —
Taking into account loss sustained on account of annulled provisions —
Refusal to grant advances — Statement of reasons —
End of the quota system — Legitimate expectations —
Administrative procedure — Unlimited jurisdiction)

Judgment of the Court of First Instance (First Chamber), 5 June 1992 II - 1793

Summary of the Judgment

1. *Action for annulment — Judgment annulling provisions — Scope of the annulment — Determination in the light of grounds referring to a previous judgment — Annulment of Articles 5 and 17 of Decision No 194/88/ECSC*
(ECSC Treaty, Art. 33; General Decision No 194/88, Arts 5 and 17)
2. *Objection of illegality — Measures the illegality of which may be invoked — Individual decisions — Excluded*
(ECSC Treaty, Art. 36, third para.)
3. *ECSC — Production — System of steel production and delivery quotas — Exceeding quotas — Fine — Duty on the Commission to set off against the loss sustained as a result of annulled unlawful provisions — None*
(ECSC Treaty, Arts 34 and 58)

4. *Acts of the institutions — Statement of reasons — Obligation — Purpose — Scope — Individual decisions*

 5. *ECSC — Production — System of steel production and delivery quotas — Exceeding quotas — Advance of quotas from the next quarter — Conditions — Excess to be set off against quotas not used up during the next quarter — Principle of equality as between producers (ECSC Treaty, Arts 4(b) and 58; General Decision No 194/88, Art. 11(3)(e))*

 6. *ECSC — Production — System of steel production and delivery quotas — Gradual termination of the system — Refusal to grant advances of quotas — Refusal consistent with the Commission's previous policy — Protection of legitimate expectations — Infringement — None (General Decision No 194/88)*

 7. *ECSC — Decision imposing a fine or periodic penalty payment — Administrative procedure — Obligation on the Commission to give the party concerned the opportunity to submit comments — Scope (ECSC Treaty, Art. 36, first para.)*

 8. *ECSC — Production — System of steel production and delivery quotas — Exceeding quotas — Fine — Very moderate fine imposed on an undertaking which had benefited under other, unlawful, decisions — Equality as between producers — Reduction — Precluded (ECSC Treaty, Art. 36, second para.; General Decision No 194/88)*
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1. In order to determine the scope of the judgment of the Court of Justice which annulled Articles 5 and 17 of Decision No 198/88 extending the system of monitoring and production quotas for certain products of undertakings in the steel industry, reference must be made to its grounds. Since the grounds of that judgment merely referred to a previous judgment which annulled provisions of identical content in so far as the reference quantities which they used in order to fix the quotas did not enable delivery quotas to be determined on a basis regarded by the Commission as equitable for undertakings the ratio between whose production quotas and delivery quotas was significantly lower than the Community average, reference must be made to the previous judgment, even if its operative part was taken over only in part by the subsequent judgment. In so far as the latter judgment contained no ground additional to those contained in the earlier judgment such as to warrant a more extensive annulment, it can only have annulled the provisions in question in the same manner as the earlier judgment annulled provisions of identical content.

It follows that the Court of Justice did not annul Article 5 of Decision No 194/88 in so far as it constituted the legal basis for the Commission's power to fix the quotas of undertakings, but solely in so far as the reference levels which it employed in order to fix those quotas did not enable delivery quotas to be determined on a basis which the Commission regarded as equitable for undertakings whose ratios between the part of their production quotas intended to be delivered in the common market and their production quotas were significantly lower than the Community average.

impose upon the Commission, in the second procedure, the manner in which it ought to take the necessary measures in order to comply with a judgment of annulment and that the Commission is not under a duty to set off the loss sustained against any overshooting of quotas found.

2. An applicant cannot, in proceedings for a declaration that an individual decision is void, raise an objection of illegality against other individual decisions addressed to it which have become definitive because the time-limit for bringing an action for annulment has expired.

3. The ECSC Treaty provides for separate procedures, on the one hand, for compensating for the direct and special harm suffered by an undertaking on account of a decision annulled by the Court which the Court has held to be vitiated by a fault of such a kind as to make the Community liable and, on the other hand, for imposing sanctions for infringements by undertakings of decisions taken pursuant to the quota system. It follows from the separate nature of those two procedures and from the independence which the first of them leaves to the Commission as regards the manner in which it is to take the necessary measures to comply with judgments of annulment that it is not for the Court to

4. The purpose of the obligation to state reasons for an individual decision is to enable the Court to review the legality of the decision and to provide the party concerned with sufficient information to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested. The extent of that obligation depends on the nature of the measure in question and on the context in which it was adopted.

5. Article 11(3)(e) of Decision No 194/88 has to be interpreted in its context and, in particular in the light of the aim of the system of steel production and delivery quotas introduced pursuant to Article 58 of the ECSC Treaty, namely to distribute on an equitable basis between the various producers the production cuts which are needed in order to reestablish balance between supply and demand in the products concerned. Accordingly, Article 11 aims at introducing a measure of flexibility into the quota system by authorizing overshooting of quotas on a individual basis for specific categories of products or for specific periods, provided that that overshooting is offset by not using up a quota for a specific category of products or during a specific period.

That is the context of Article 11(3)(e), which empowers the Commission to allow an advance of quotas. The application of that provision therefore assumes that the overshooting of quotas during one quarter may be offset by not using up the quota during the next quarter. Failing that, there would be an infringement of the principle that producers are equal in the face of the crisis, which ensues from the general scheme of Article 58 of the Treaty, in particular in so far as that article refers to the principles set out in Articles 2, 3 and 4 of the Treaty and specifically to Article 4(b), which prohibits measures discriminating between producers.

6. Since the Commission indicated in the preamble to Decision No 194/88 that it would maintain the system of production and delivery quotas for a further two quarters for certain products but would couple this with a relaxation in quotas in the second quarter in preparation for the liberalization of the market, the traders concerned could not claim to have been taken by surprise by the end of the system.

As far as the legal consequences of the end of the quota system are concerned, the Commission's decision to refuse to grant the applicant the advances on quotas which it requested for the last quarter in which the system was applied did not

constitute, as far as traders were concerned, a break with its previous policy.

7. The first paragraph of Article 36 of the ECSC Treaty must be interpreted as meaning that, in an administrative procedure which may lead to the imposition of a fine, respect for the rights of the defence has been guaranteed where the interested party has been given the opportunity at formal and informal meetings to submit comments on the alleged overshooting of quotas and on the manner in which it was calculated, even if it would have been preferable to communicate to the applicant formally all the calculations in so far as they would be taken into account in assessing the overshooting of quotas which the Commission found to have taken place.
8. In a situation in which a trader has already obtained from the unlawfulness of a provision of a general decision on the system of steel production and delivery quotas a benefit in excess of the harm which it suffered as a result of the unlawfulness of another provision of that decision which benefit works against a fair sharing amongst undertakings of the burden of the crisis, it is not appropriate for the Court, in the exercise of its unlimited jurisdiction, to reduce the fine imposed for overshooting quotas, *a fortiori* where the fine imposed is substantially lower than the amount provided for as a general rule by Decision No 194/88.