In Case 9/56

MERONI & CO., INDUSTRIE METALLURGICHE, S.P.A., Milan, represented by its director, Aldo Meroni, engineer, assisted by Arturo Cottrau of the Turin Bar and advocate at the Corti di Cassazione, Rome, with an address for service in Luxembourg at the Chambers of Georges Margue, 6 rue Alphonse-Munchen,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by Professor Giulio Pasetti, acting as Agent, assisted by Professor Alberto Trabucchi, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for the annulment of the decision of the High Authority of 24 October 1956, notified to the applicant by post on 12 November 1956, according to which the applicant is required to pay the Caisse de Péréquation des Ferrailles Importées (Imported Ferrous Scrap Equalization Fund), 36 rue Ravenstein, Brussels, the sum of Lit 54 819 656 (fifty-four million eight hundred and nineteen thousand six hundred and fifty-six), being an enforceable decision within the meaning of Article 92 of the Treaty,

THE COURT

composed of: M. Pilotti, President, A. van Kleffens and L. Delvaux, Presidents of Chambers, P. J. S. Serrarens, O. Riese, J. Rueff, Ch. L. Hammes, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houte

gives the following

JUDGMENT

Facts

I — Facts and procedure

By application dated 12 December 1956, entered in the Court Registry on 14 December under No 1363, the undertaking Meroni & Co. claimed that the decision adopted by the High Authority on 24 October 1956 and notified to it by post on 12 November 1956 should be annulled.

The contested decision declares that the applicant is required to pay to the Fund the sum of Lit 54 819 656, the decision being, according to Article 2 thereof, 'enforceable within the meaning of Article 92 of the Treaty'.

The Meroni company claims that the Court should:

Stay the execution of the contested decision;

State that the applicant is entitled if necessary to present evidence and any other pleadings;

Declare the contested decision of the High Authority void and of no effect in law;
Order the defendant to bear the costs.
The statement of defence, lodged by the High Authority on 28 February 1957, contends that the Court should:
As a preliminary issue: declare ... all the claims put forward by Meroni & Co. inadmissible;
Alternatively, as to substance: reject the claims;
In either case order the applicant company to bear the costs.
In their later pleadings, the parties maintained their initial conclusions, except as regards the claim for a stay of execution.
On 17 December 1956, the application was served on the High Authority, represented by its Agent.
The statement of defence, the reply and the rejoinder were lodged respectively on 27 February, 9 May and 20 June 1957, extensions of time having been requested by the parties and granted by orders of the President of the Court.
On 24 June 1957, by a letter addressed to the President of the Court, the defendant lodged two letters addressed by the Campsider company to the applicant on 22 May 1954 and 14 June 1955 and requested that those documents be added to the file.
Pursuant to Article 34 (1) of the Rules of Procedure of the Court, the President appointed Judge Jacques Rueff as Judge-Rapporteur on 31 January 1957.
By order of the same day, the case was assigned to the First Chamber. The latter decided to put certain questions to the parties, the answers to reach the Registry before 20 August 1957. That period was extended at the request of the High Authority until 30 September 1957. The answers to the questions were lodged respectively on 19 August as regards the applicant and 30 September as regards the defendant.
After taking note of the answers given by the parties, the First Chamber, finding that some of the answers were inadequate, asked the parties to produce supplementary answers before 4 November 1957. These supplementary answers reached the Registry on 31 October and 4 November.
On 11 December 1957, upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided, pursuant to Article 34 (4) of the Rules of Procedure, to commence the oral procedure without undertaking any measures of inquiry.
By order of the same day, the President of the Court set down the hearing for 17 January 1958. That date was successively postponed to 20 February and then to 25 February by orders of 19 December 1957 and 6 February 1958.
The oral arguments of the parties were put forward at that hearing.
On 19 March the Advocate-General submitted his opinion to the effect that:

The decision of the High Authority of 24 October 1956 concerning the company Meroni & Co., Industrie Metallurgiche, Società per Azioni, Milan, notified to the latter on 12 November 1956, should be annulled; and that

The defendant should be ordered to bear the costs pursuant to Article 60 (1) of the Rules of Procedure of the Court and the case should be referred back to the High Authority in accordance with Article 34 of the Treaty.

The contested decision was adopted in application of Decisions Nos 22/54 of 26 March 1954 and 14/55 of 26 March 1955 establishing machinery for the equalization of ferrous scrap imported from third countries.
According to the defendant, the purpose of the equalization system was 'to prevent the prices of ferrous scrap within the Community from being aligned on the higher prices of imported ferrous scrap'. Those purposes, thus defined by the representative of the High Authority, are not disputed by the applicant.
The implementation of the system defined in Decision No 14/55 was entrusted to the Office Commun des Consommateurs de Ferraille (Joint Bureau of Ferrous Scrap Consumers hereinafter referred to as 'the Joint Bureau', and to the Caisse de Péréquation des Ferrailles Importées (Imported Ferrous Scrap Equalization Fund hereinafter referred to as 'the Fund'). Article 4 of the said decision provides that if payment is not

effected in due time the High Authority shall intervene by adopting a decision which, in accordance with Article 92, shall be enforceable.
It was in application of that provision that the contested decision was adopted.
The following facts led up to the said decision:
Between 22 October 1954 and 16 August 1956, Campsider (the office representing the Brussels agencies in Italy) periodically sent the Meroni company a provisional account showing that Meroni owed the Fund in Brussels a certain sum. Twenty-six letters are annexed to the rejoinder, and their dates show that they were sent out about twice a month.
Between 8 February 1955 and 18 September 1956, circulars were periodically addressed to the applicant notifying it of the monthly rate of the levy per metric ton of ferrous scrap.
On 22 May 1954 Campsider sent Meroni a registered letter with acknowledgment of receipt reminding it that it had been requested, on 4 and 29 March, to send in monthly statistical returns as to its input and output of ferrous scrap from 1 January of the current year. Campsider informed the applicant that failure to comply 'would lead to direct intervention on the part of the competent authorities'.
On 14 June 1955, Campsider sent a fresh letter to the applicant informing it that if the statistical returns as to its input and output of ferrous scrap as called for by the High Authority were not provided, the Fund would proceed to make an estimate on its own authority of the tonnage of the input of ferrous scrap. In the same letter, the sender informed Meroni of the provisional assessments which has been made from 1 April 1954 to 30 April 1955, stating that any rectifications to be notified should be sent to Brussels before 10 July. The High Authority added the letters of 22 May 1954 and 14 June 1955 to the file four days after the production of its rejoinder, by letter addressed to the President of the Court. However it does not seem that there need be any difficulty as to their admissibility.
On 15 July 1955, Campsider sent a fresh reminder to Meroni, asking it to proceed with the utmost expedition to payment of Lit 10 164 063, a detailed statement being enclosed with the letter.
On 12 April 1956, Meroni suggested to the High Authority that payment be made by instalments of Lit 2 million per month. That proposition was accompanied by reservations as to the value of the equalization system in force.
On 24 October 1956, the High Authority adopted the decision annulment of which is claimed by the applicant.

II — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

(a) *As regards admissibility*, the High Authority first raises an objection of inadmissibility resulting from the fact that Meroni was alleged to have acquiesced in the decisions of the Brussels agencies. Such acquiescence resulted from the letter sent by the applicant on 12 April 1956.
The applicant undertaking declares that the said objection must be rejected, first because it has always taken the trouble to state reservations, and secondly because the decision of the High Authority alone was enforceable and open to challenge in court. Thus any attitude taken up prior to the decision of 24 October 1956 must not be taken into consideration.
The High Authority considers that the application is directed against an individual decision applying a general decision to Meroni so that the latter cannot pray in aid any irregularity in the general decision for the following two reasons: first, the period for bringing an application for annulment against that general decision has expired and, secondly, a private undertaking can only rely on the ground of misuse of powers against a general decision. To these arguments Meroni replies that the objection of illegality is a known and accepted legal concept in the legal systems of the Member States, and, moreover, that it has been introduced into the Treaty in the third paragraph of Article 36.

(b) *As regards the submission of infringement of procedural requirements and failure to*

state reasons: Grouping these two complaints under the same heading, the applicant argues that 'the duty to state reasons is disregarded when there is no statement of the grounds on which a conviction is based and when, as regards an order to pay, no indication is given of the factual and accounting data on which the order to pay is based'.
To this argument the defendant replies first: 'The High Authority adopts the data furnished by the Brussels agencies without being able to add anything thereto. Any other specific explanations would mean unauthorized interference in another body's powers for the purpose of explaining the factors involved in the elaboration of its decisions'. Later, the defendant stated that in its opinion: 'The actual declaration of intention is to be sought in the decision of the High Authority establishing the system, and everything else constitutes an application of the criteria contained in that legislative measure. Therefore the reasons which concern the various undertakings only include those which relate to the application of the general criterion to the particular case and the reasons for that application are to be found in a simple calculation'.

(c) *As regards the submission of manifest failure to observe the provisions of the Treaty and in particular Article 47*, the applicant is of the opinion that the High Authority has infringed Article 47 in that it did not inform the applicant 'exactly and within due time of the precise equalization differential' that it was then required to pay to the Joint Bureau.
As against this assertion, the High Authority points to the second paragraph of the said article according to which it is required not to disclose certain information.

(d) *As regards the submission of misuse of powers*, the applicant asserts that the assent of the Council of Ministers was accompanied by 'six precise recommendations' and none of them had been put into effect. Thus the objectives of Decision No 14/55 were not attained and this failure resulted from a misuse of powers committed by the organizations entrusted with the task of putting the equalization system into effect.

As against this submission, the defendant puts forward the following three arguments:

1. 'An error in the findings as to the import prices and as to the average weighted price within the Community ... is far from being established'.
As regards this reply, the applicant emphasizes that it cannot be required to demonstrate the error in calculation, since it has not been allowed to see the calculations in question.

2. Even supposing that the error referred to constitutes a misuse of powers, 'it was committed during the deliberations of the equalization agencies which the High Authority can no longer contest in view of the fact that its representative on the Brussels agencies did not reserve the final decision to the High Authority under Article 9 of Decisions Nos 22/54 and 14/55'.

3. The existence of a misuse of powers 'would still be irrelevant as regards the annulment of the contested decision. For were such a misuse to exist, in order to be able to contest the decision at issue before the Court, it would be necessary to alter the content thereof and to attribute to it an effect quite different from merely rendering a pre-existing obligation enforceable'.

The applicant argues that the High Authority has committed a second misuse of powers consisting in the fact of not having 'intervened effectively at any time', although it had committed itself to doing so in Decision No 14/55 and although the rate of equalization had increased by 1 200 %.
The defendant answers this complaint by stating that there was no need 'to abolish the system which (had) certainly proved so favourable'.

(e) *As regards the submission of the irregularity of the lump-sum assessment made by the Brussels agencies* for the period from 1 April 1954 to 30 June 1956, Meroni did not send in the monthly statistical returns as to its input and output of ferrous scrap, as requested of it on 4 and 29 March 1954.
The applicant considers that such an esti-

mate was illegal because no decision of the High Authority empowered the Brussels agencies to proceed in that way.
The High Authority replies that the right to have recourse to a lump-sum estimate results from the proceedings of the Joint Bureau itself during its 13th and 22th meetings. In its opinion, such a measure is indispensable, for otherwise the undertakings would evade the equalization system simply by failing to make the necessary returns.

Law

A — Admissibility

1. The application has been lodged in compliance with the prescribed formalities, and its regularity in that regard has not been contested and does not give rise to any objection on the part of the Court.

2. In its application against the decision of the High Authority dated 24 October 1956, being an enforceable decision within the meaning of Article 92 of the Treaty, the applicant argues that Decision No 14/55 of 26 March 1955 establishing a financial arrangement for ensuring a regular supply of ferrous scrap for the Common Market involves a manifest failure to observe the provisions of the Treaty and is vitiated by misuse of powers.

Article 33 provides that applications 'shall be instituted witin one month of the notification or publication, as the case may be, of the decision or recommendation', and that where they are made by undertakings or associations referred to in Article 48, they are only admissible, where they concern a general decision or recommendation, if the applicants consider the said decisions or recommendations to involve a misuse of powers affecting them.
The application was lodged on 14 December 1956 and although, therefore, the time-limit for instituting proceedings laid down in the last paragraph of Article 33 was respected as regards the decision of 24 October 1956, it had expired as regards Decision No 14/55 of 26 March 1955.
However, Decision No 14/55 of 26 March 1955 is not contested directly, but in the content of an application against the enforceable decision of 24 October 1956. While the decision of 24 October 1956 is an individual decision concerning the applicant, Decision No 14/55 of 26 March 1955 is a general decision on which the decision of 24 October 1956 is based.
In assessing whether the applicant is entitled to claim, in support of its application against the individual decision, that the general decision on which it is based is illegal, the question arises whether the applicant may contest the general decision after the expiry of the period laid down in the last paragraph of Article 33, and raise against the said general decision not only misuse of powers affecting itself, but the four grounds of annulment set out in the first paragraph of Article 33.
As the Advocate General says in his opinion, an illegal general decision ought not

to be applied to an undertaking and no obligations affecting the said undertaking must be deemed to arise therefrom.
Article 36 of the Treaty provides that in support of an application against a decision of the High Authority imposing pecuniary sanctions or periodic penalty payments

'a party may, under the same conditions as in the first paragraph of Article 33 ..., contest the legality of the decision or recommendation which that party is alleged not to have observed'.

That provision of Article 36 should not be regarded as a special rule, applicable only in the case of pecuniary sanctions and periodic penalty payments, but as the application of a general principle, applied by Article 36 to the particular case of an action in which the Court has unlimited jurisdiction.
No argument can be based on the express statement in Article 36 to the effect that *a contrario* the application of the rule laid down is excluded in cases in which it has not been expressly stated. For the Court has decided, in its judgment in Case 8/55, that an argument in reverse is only admissible when no other interpretation appears appropriate and compatible with the provision and its context and with the purpose of the same.
Any other decision would render it difficult, if not impossible, for the undertakings and associations mentioned in Article 48 to exercise their right to bring actions, because it would oblige them to scrutinize every general decision upon publication thereof for provisions which might later adversely affect them or be considered as involving a misuse of powers affecting them.
It would encourage them to let themselves be ordered to pay the pecuniary sanctions or periodic penalty payments for which the Treaty makes provision so as to be able, by virtue of Article 36, to plead the illegality of the general decisions and recommendations which they were alleged not to have observed.
An applicant's right, after the expiration of the period prescribed in the last paragraph of Article 33, to take advantage of the irregularity of general decisions or recommendations in support of proceedings against decisions or recommendations which are individual in character cannot lead to the annulment of the general decision, but only to the annulment of the individual decision which is based on it.
Article 184 of the Treaty establishing the European Economic Community expressly adopts a similar point of view and provides that:

'Notwithstanding the expiry of the period laid down in the third paragraph of Article 173, any party may, in proceedings in which a regulation of the Council or of the Commission is in issue, plead the grounds specified in the first paragraph of Article 173 in order to invoke before the Court of Justice the inapplicability of that regulation'.
Article 156 of the Treaty establishing the European Atomic Energy Community contains a precisely similar provision.

The fact that the position adopted is the same does not constitute a decisive argument but confirms the reasoning set out above by showing that the authors of the new Treaties regarded it as compelling.
The annulment of an individual decision based on the irregularity of the general decisions on which it is based only affects the effects of the general decision in so far as those effects take concrete shape in the annulled individual decision.
To contest an individual decision concerning him, any applicant is entitled to put forward the four grounds of annulment set out in the first paragraph of Article 33.
In the circumstances, there is no reason why an applicant who is contesting an individual decision should not be entitled to put forward the four grounds of annulment set out in the first paragraph of Article 33 so as to question the legality of the general decisions and recommendations on which the individual decision is based.

3. The defendant has contested the admissibility of the application for the annulment of the decision of the High Authority, dated 24 October 1956, being a decision enforceable against the applicant within the meaning of Article 92 of the Treaty, on the ground that the applicant, by its letter of 12 April 1956, gave its consent in advance to the individual decision of 24 October 1956.
The defendant has made it clear that it 'had never intended to give its consent in advance' or to renounce the right to bring a later application against the statement of sums due from it made after 12 April 1956, but that 'it considers it reasonable to object that the offer of payment constituted approval of the actual functioning of the Brussels agencies and thus of the means whereby the latter determined the equalization rate'.
The applicant's letter of 12 April 1956 makes express reservations as regards the calculations resulting in the determination of its debt, and those reservations concern in particular the conditions of application of General Decision No 14/55.
Those reservations render it impossible to consider the letter of 12 April 1956 as constituting recognition of the debt or a renunciation of the right to contest it, despite the offer of payment by instalments which is contained therein.
Therefore the letter of 12 April 1956 does not render the application inadmissible.

B — Substance

First submission: infringement of an essential procedural requirement

The applicant sees an infringement of an essential procedural requirement in the failure to state reasons in the decision in dispute and in the estimate made by the Fund on its own authority and notified therein.

(I) *Failure to state reasons*

The applicant sees 'a manifest lack of reasons' in the decision of 24 October 1956.
The decision contains only the two following reasons:

'Whereas the limited company Meroni & Co., Industrie Metallurgiche, Stabilimento Elettrosiderurgico, Via della Cebrosa, Settimo Torinese, an undertaking within the meaning of Article 80 of the Treaty, has failed to pay to the Imported Ferrous Scrap Equalization Fund the contributions due for ferrous scrap imported after 1 April 1954 in conformity with the decisions mentioned above;
Whereas the contributions due for the period from 1 April 1954 to 30 June 1956 amount to the sum of Lit 54 819 656.'

Taking into account the case-law of the Court, those two paragraphs cannot constitute a statement of the considerations of law and of fact upon which the decision of 24 October 1956 is based.
It therefore lacks the supporting reasons indispensable for the exercise of judicial review.
Accordingly, the decision of 24 October 1956 does not comply with the requirements of Article 15 of the Treaty, which provides: 'Decisions ... of the High Authority shall state the reasons on which they are based'.
However, in its defence, the High Authority uses the Brussels agencies as a shield: 'The decision of the High Authority did nothing except reproduce the data resulting from the various abstracts of account sent from time to time to the applicant, and clearly no indication of reasons is required for that'.
According to the High Authority, the failure to state reasons which has been observed in the decision of 24 October 1956 cannot constitute an infringement of an essential procedural requirement because that decision has been supplied with the reasons required by the Treaty through the intermediary of the Fund.
For the purposes of the present application, it is not necessary to examine whether the stating of appropriate reasons in the notices to pay addressed by the Fund to the applicant validly absolved the High Authority from stating its own reasons for the decision of 24 October 1956, since the reasons which appear in the said notices do not constitute reasons for the debt, enforcement of which is ordered by the decision of 24 October 1956.
In fact, the payment required by the decision of the High Authority of 24 October 1956 for the period from 1 August 1954 to 30 June 1956 is not equal to the total shown in the notices addressed by the Fund to the Meroni undertaking for that period.
It differs therefrom in particular by the addition of interest for late payment and the deduction of certain payments made by the Meroni company.
Although the notices to pay carried a statement informing the debtor that interest for late payment would be claimed from the 25th day following the date of the notice and although, in his oral arguments, the Agent for the High Authority said that Meroni had been warned of the penalty in a letter of 20 September 1956, the figures appearing on the notices do not mention either any extra charges due for late payment or any deductions on account of earlier payments.
It is impossible to find in the notices to pay addressed by the Fund to the applicant any statement of the reasons for the payment demanded of it.

To be legal, the statement of the reasons for the decision of 24 October 1956 ought to have included an exact and detailed statement of all the individual items comprised in the claim, payment of which was made enforceable by the decision.
Only an account of that kind could make possible a review of the said decision by the Court.
The reasons on which the decision of 24 October 1956 is based have not been sufficiently stated to comply with the law either by the High Authority in the text notified to the applicant or by the Fund in the notices to pay which the latter addressed to it.
This failure to state reasons in connexion with the decision of 24 October 1956 constitutes an infringement of an essential procedural requirement.
Therefore, in application of Article 33 of the Treaty, that decision must be annulled.

(II) *Assessment by the Fund on its own authority*

Although the applicant, in its application, expresses astonishment at the fact that the decision of 24 October 1956 does not give any indication of the facts and figures forming the basis of the order to pay which it makes enforceable, in its reply the said applicant states that it 'presumes—for the Brussels agencies have never supplied it with explanations on this point—that it has been charged on the production and not on the tonnage purchased which was never declared'.
That presumption is confirmed in the rejoinder which states that 'the procedure of lump-sum assessment by the Brussels agencies is merely a remedy for the failure of an undertaking to make returns and is simply a necessary and inevitable consequence of the system of compulsory contributions' and that 'without that remedy there would be no point in providing for the obligation to contribute because in order to defend itself every undertaking would resort to failing to make returns'.
The notices to pay addressed by the Fund to Meroni all contain the following statement: 'Where details for each factory as to tonnage assessable are not received by the 15th day of the second month following the month to which the assessment relates, the managers are authorized to proceed to make lump-sum estimates with the help of the regional offices'. However, the decision of 24 October 1956 does not state that the claim for payments rests on this basis and does not mention the provisions allegedly giving the Fund the power to make an assessment on its own authority in the case of a failure to make a return.
In so far as the obligation which it enforces arises from a lump-sum estimate, the decision of 24 October 1956 did not state the reasons on which it was based.
That failure to state reasons, which leaves the applicant in the dark as to the circumstances in which its debt was calculated, constitutes an infringement of an essential procedural requirement.
For this reason also, in application of Article 33 of the Treaty, the decision of 24 October 1956 must be annulled.

Second submission: manifest failure to observe the provisions of the Treaty

In this second submission, the applicant complains that the High Authority:

(a) did not inform it of 'the objective data on which the Italian undertakings were assessed, in manifest contradiction with Article 47 of the Treaty, which provides that the High Authority 'shall publish such data as could be useful to governments or to any other parties concerned';

(b) only sent 'provisional accounts to the interested parties after 18 months' and only applied to them 'equalization bonuses ... which were also provisional'.

(I) *Insufficient information*

In the numerous communications which it addressed to the applicant, the Fund never informed it of anything more than the tonnage assessable and the rate of assessment per unit.
No information has been published, either by the High Authority or by the Brussels agencies, so as to inform those to be charged of the methods whereby their obligations had been worked out or of the facts on which the calculations were based.
It is only through 'an addendum to the answer of the High Authority to the questions put by the Court' that the Court and, it would appear, the applicant, have been informed of the successive formulae whereby the equalization rate was calculated.
Article 5 of the Treaty requires the High Authority to 'publish the reasons for its actions' and Article 47 provides that although

'the High Authority must not disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components ... it shall publish such data as could be useful to governments or to any other parties concerned'.

In the rejoinder, the High Authority has retorted to the applicant that it is 'required to show an elementary respect for professional secrecy'.
In the present case, information collected by cooperative bodies representing at certain periods, and in particular on 4 July 1955, up to 136 undertakings chosen from amongst the larger of the 240 undertakings assessable to the equalization levy cannot be regarded as secret within the meaning of Article 47 of the Treaty.
In failing to publish the reasons for its actions, at least in general terms, and in failing to publish the data not covered by professional secrecy and of possible use to governments or to any other parties concerned, or in failing to require the Brussels agencies to publish the same, the High Authority has infringed Articles 5 and 47 of the Treaty.

For this reason also, in application of Article 33 of the Treaty, the decision of 24 October 1956 must be annulled.

(II) *The provisional nature of the notices to pay addressed to the applicant*

The applicant complains that the High Authority based the decision of 24 October 1956 on provisional accounts, and that the Fund has, up to the date of the application, namely 18 months after the system was introduced, never sent it definitive accounts.
It asks 'whether it can honestly be claimed that an undertaking can succeed in reliably working out its own price-list if it is not informed accurately and in due time of its equalization debt'.
As against the applicant's requirement, the defendant puts forward the very nature of the concept of equalization, which requires 'an *a posteriori* calculation' implying knowledge of the factual data in respect of which equalization is to be effected.
It adds in its rejoinder that 'only small-scale corrections will ever be involved'.
The order of magnitude of the definitive adjustments is unknown, for the corrections notified by the Fund, in particular in its letter of 31 October 1955, are themselves described as provisional.
For the purposes of the present case it would only have been possible to establish them by means of an expert's report.
However, such a report is not indispensable in this case, for the decision of 24 October, with which the application is concerned, must already, for the reasons set out above, be annulled.

Third submission: misuse of powers

The applicant complains that the defendant has committed a misuse of powers:

In basing the decision of 24 October 1956, which is an enforceable decision, on the inaccurate calculations of the Brussels agencies;
In failing to observe the recommendations which the Council of Ministers had appended to the unanimous assent given by it to Decision No 14/55 of the High Authority;
In irregularly delegating to the Brussels agencies powers conferred on it by the Treaty.

(I) *Inaccuracy of the calculations made by the Brussels agencies*

The applicant claims that the Brussels agencies 'artificially took as the average price for internal ferrous scrap a price which was well known to be lower than the real price, whereas, equally artificially, the average price taken for imported ferrous scrap was exaggerated'. It complains that the said agencies thus 'made a travesty

of the facts and created a situation in which the effects of the system were not the same for all the interested parties, some of whom benefited, whereas others conversely suffered loss'.

The applicant has itself admitted 'that it is not in a position to prove its doubts', 'that it still does not know how the import operations were carried out and what was the weighted average rate which was calculated'.

It is not possible to examine whether the applicant's allegations are well founded, in view of the inadequacy of the reasons stated for the decision of 24 October 1956 and the lack of information on the factors used by the Brussels agencies in their calculations.

However, for the purposes of the present application, that examination is not necessary, because the inadequacy of the reasons stated and the failure to publish the data on which the decision of 24 October 1956 is based constitute of themselves infringements of the Treaty of a nature such as to bring about the annulment of the said decision.

(II) *Infringement of the recommendations which the Council of Ministers allegedly appended to its unanimous assent in respect of Decision No 14/55*

The applicant claims that the High Authority did not observe six recommendations which the Council of Ministers appended to the assent which it gave in respect of Decision No 14/55.

Journal Officiel No 8 of 30 March 1955, p. 689, only indicates that the said assent was 'given unanimously in the terms set out in the minutes of the proceedings of the Council'.

The minutes of the Council of Ministers are not published.

Six principles laid down by the Council of Ministers and the High Authority during the meeting of the Council of Ministers of 21 and 22 March 1955, being principles 'on which general policy in the matter of ferrous scrap is to be based', were published in the Third General Report on the Activities of the Community (p. 105) and those six principles appear to be the ones which the applicant has in mind.

However, for the purposes of the present application, it is not necessary to examine the legal consequences which principles published in those circumstances may involve, because for the reasons mentioned above the decision of 24 October 1956 must be annulled.

(III) *Illegality of the delegation of powers resulting from Decision No 14/55*

The applicant claims that in the mind of the High Authority 'the Brussels accounts are unassailable and almost sacrosanct and are certainly of greater weight and authority than are decisions proper, which can always be contested before the Court of Justice'. In other words, the applicant complains that the High Authority has delegated to the Brussels agencies powers conferred upon it by the Treaty, without subjecting their exercise to the conditions which the Treaty would have required if those powers had been exercised directly by it.

The applicant also complains that the High Authority has created 'a situation in which the large- and medium-sized industries predominate over those of limited financial means, which have to obtain their supplies on the internal markets', in other words that it has, by its Decision No 14/55, delegated powers to agencies ill-qualified to exercise them.
Those two complaints refer to the delegation of powers which General Decision No 14/55 granted to the Brussels agencies. The first complaint is concerned with the manner in which the powers were delegated, the second with the actual principle of delegation.
However, before examining those complaints, it is desirable to examine whether Decision No 14/55 did in fact grant a delegation of powers to the Brussels agencies.

(a) Did Decision No 14/55 grant a delegation of powers to the Brussels agencies?

It is desirable to establish whether Decision No 14/55 'establishing a financial arrangement for ensuring a regular supply of ferrous scrap for the Common Market' constitutes a true delegation, to the Brussels agencies, of powers which had been conferred on the High Authority by the Treaty, or whether it only grants those agencies the power to draw up resolutions the application of which belongs to the High Authority, the latter retaining full responsibility for the same.
Certain provisions of Decision No 14/55 favour the second proposition, in particular:

The recital stating that 'the High Authority is responsible for the proper function of the financial arrangements and thus must be in a position to intervene effectively at any moment';
Article 1, which states that: 'The operation of the aforesaid arrangements under the responsibility of the High Authority shall be given to the Joint Bureau of Ferrous Scrap Consumers (hereinafter referred to as "the Joint Bureau") and to the Imported Ferrous Scrap Equalization Fund (hereinafter referred to as "the Fund")';
The second paragraph of Article 4, which provides that 'if payment is not effected in due time, the Fund shall request the High Authority to intervene, when the latter may' (not 'must') 'take an enforceable decision';
Article 8, which provides that: 'The High Authority shall appoint a permanent representative and his deputy to work with the Joint Bureau and the Fund. The permanent representative or his deputy shall attend all meetings of the Administrative Council and of the General Assembly of the Joint Bureau and of the Fund. The permanent representative or his deputy shall forward immediately to the High Authority the decisions taken by the bodies mentioned above and shall inform the High Authority concerning all matters calling for a ruling by it under Article 9 below';
Article 9, which states that: 'The decisions of the Joint Bureau and of the Fund shall be adopted unanimously by the respective Boards in regard to matters falling

within their own competence and by the two Boards jointly for matters in which they share responsibility. The permanent representative of the High Authority or his deputy may however subordinate the decision to the approval of the High Authority. Where no unanimous decision is taken by the Boards of the Joint Bureau and the Fund regarding the measures provided for in Articles 3 and 4 and in the first paragraph of Article 5 above, the decision shall be taken by the High Authority. The High Authority, its permanent representative or the latter's deputy may call upon the Joint Bureau and the Fund to meet within not more than ten days, and notify those bodies of all proposals advanced. If no meeting takes place within ten days, the High Authority itself may take a decision respecting the proposals concerned'.
Other provisions of Decision No 14/55 confirm the first proposition, and in particular the first paragraph of Article 4:

'The Fund shall notify the undertakings of the amount of contribution payable and of the dates on which payment must be made. It is authorized to collect such payments.',

and the first paragraph of Article 6:

'The Fund shall be the executive body responsible for the financial arrangements established by the decision.'

From those two interpretations, the High Authority has chosen the first, saying in its statement of defence that:

'The High Authority adopts the data furnished by the Brussels agencies without being able to add anything thereto. Any other specific explanations would mean unauthorized interference in another body's powers for the purpose of explaining the factors involved in the elaboration of its decisions ... The prices of imports, the qualities of the ferrous scrap imported and the weighted average price within the Community are factors which the Brussels agencies take into consideration in order to fix the equalization rate. The contested decision does no more than reproduce the result of the application by those agencies of the equalization rate to the applicant. Thus if it were to be admitted that the error of which it complains can constitute a misuse of powers, that misuse of powers was committed during deliberations of the equalization agencies which the High Authority can no longer contest in view of the fact that its representative on the Brussels agencies did not reserve the final decision to the High Authority under Article 9 of Decisions Nos 22/54 and 14/55. For it is beyond the bounds of reason to suppose that a decision of the competent agencies in Brussels, once adopted unanimously and without reservations on the part of the representative of the High Authority, remains exposed to possible changes imposed unilaterally by the High Authority alone. The fact that the unanimous consent of all the members of the deliberating agencies

has been required in order that the decisions shall be binding is of very great significance. However even if, contrary to the clear wording of the articles already quoted and to their logical interpretation, it were to be admitted that the representative of the High Authority can later, at any time, vary or annul those decisions, the submission under discussion would still be irrelevant as regards the annulment of the contested decision. For were such a misuse to exist, in order to be able to contest the decision at issue before the Court, it would be necessary to alter the content thereof and to attribute to it an effect quite different from merely rendering a pre-existing obligation enforceable. Moreover the applicant would have had to demonstrate that in the contested decision the High Authority took over as its own the deliberations of the Brussels agencies which led to the fixing of the equalization rate and that those deliberations constitute a decision of the High Authority itself against which the applicant is entitled to institute proceedings.'

The High Authority could have argued that the power of its representative, pursuant to Article 9 of Decision No 14/55 to 'subordinate the decision to the approval of the High Authority' meant that it remained responsible for any decision of the Brussels agencies. However the above quotation from the statement of defence renders it necessary to take the view that the High Authority does not take over as its own the deliberations of the Brussels agencies leading to the fixing of the equalization rate.
Therefore Decision No 14/55 brings about a true delegation of powers, and the question whether such delegation accords with the requirements of the Treaty must be examined.

(b) Details of the application of Decision No 14/55

If the High Authority had itself exercised the powers the exercise of which is conferred by Decision No 14/55 on the Brussels agencies, those powers would have been subject to the rules laid down by the Treaty and in particular those which impose upon the High Authority:

The duty to state reasons for its decisions and to refer to any opinions which were required to be obtained (Article 15);
The duty to publish annually a general report on its activities and its administrative expenses (Article 17);
The duty to publish such data as could be useful to governments or to any other parties concerned (Article 47).

On the same supposition, its decisions and recommendations would have been subject to review by the Court of Justice on the conditions laid down by Article 33.
Decision No 14/55 did not make the exercise of the powers which it conferred

upon the Brussels agencies subject to any of the conditions to which it would have been subject if the High Authority had exercised them directly.

Even if the delegation resulting from Decision No 14/55 appeared as legal from the point of view of the Treaty, it could not confer upon the authority receiving the delegation powers different from those which the delegating authority itself received under the Treaty.

The fact that it is possible for the Brussels agencies to take decisions which are exempt from the conditions to which they would have been subject if they had been adopted directly by the High Authority in reality gives the Brussels agencies more extensive powers than those which the High Authority holds from the Treaty.

In not making the decisions of the Brussels agencies subject to the rules to which the decisions of the High Authority are subject under the Treaty, the delegation resulting from Decision No 14/55 infringes the Treaty.

Therefore the Decision of 24 October 1956, which is an enforceable decision in respect of an obligation arising from the application of General Decision No 14/55 which is illegal, must be annulled.

The applicant complains that the Brussels agencies proceeded, without legal authorization, to make on their own authority assessments in respect of it and to make provisional estimates of its debts under the equalization scheme.

While it has been established, in respect of the first submission, that the decision of 24 October 1956 must be annulled for infringement of an essential procedural requirement, because it did not indicate that the amount of the payment claimed had been calculated by way of an assessment effected on the agencies' own authority and a provisional estimate, it appears expedient to inquiry whether the Brussels agencies had the power to make assessments of the equalization contributions in that way.

In its reply to the questions put by the First Chamber, the High Authority declared, on 18 July 1957, that the power to make assessments on the 'agencies' own authority resulted from 'decisions in identical terms adopted on 26 May 1955 by the Imported Ferrous Scrap Equalization Fund and by the Joint Bureau of Ferrous Scrap Consumers, stating that where details for each factory as to tonnages assessable were not received by the 15th day of the second month following the month to which the assessment related, the managers were authorized to proceed to make lump-sum estimates with the help of the regional offices'.

Decision No 14/55 did not give the Brussels agencies the power to have recourse to such a method of assessment, nor did it give the power to apply it retroactively, or the power to notify provisional estimates.

While it is true that the method consisting of assessments made by the High Authority on its own authority is also used as regards the basis for the general levy, that was expressly authorized by Decision No 31/55 of 19 November 1955 (JO No 21 of 28.11.1955, p. 906) after the High Authority had, by Decisions Nos 2/52, Article 4, and 3/52, Article 5, required undertakings to make returns as to their production and laid down detailed rules in respect of the returns.

Any procedure for assessment by a body on its own authority and for provisional estimates must be subject to precise rules so as to exclude any arbitrary decisions and to render it possible to review the data used.
A delegation of powers cannot be presumed and even when empowered to delegate its powers the delegating authority must take an express decision transferring them.
There is no legal basis for the Brussels agencies' assessment on their own authority or for the notification of provisional debts and for this reason also the decision of 24 October 1956, which is an enforceable decision in respect of obligations arising from a procedure lacking any legal foundation, must be annulled.

(c) Extent of the delegation of powers

The applicant complains that the High Authority has, by its Decision No 14/55, delegated to the Brussels agencies powers which they are ill-qualified to exercise.
Article 8 of the Treaty requires the High Authority

'to ensure that the objectives set out in this Treaty are attained in accordance with the provisions thereof'

and does not provide any power to delegate.
However, the possibility of entrusting to bodies established under private law, having a distinct legal personality and possessing powers of their own, the task of putting into effect certain 'financial arrangements common to several undertakings' as mentioned in subparagraph (a) of Article 53 cannot be excluded.
The financial arrangements made by the High Authority itself in application of subparagraph (b) of the same article must serve the same purposes as those authorized in application of subparagraph (a).
Therefore it must be possible for those arrangements to be similar in form and in particular to use the aid of bodies having a distinct legal personality.
Hence the power of the High Authority to authorize or itself to make the financial arrangements mentioned in Article 53 of the Treaty gives it the right to entrust certain powers to such bodies subject to conditions to be determined by it and subject to its supervision.
However, in the light of Article 53, such delegations of powers are only legitimate if the High Authority recognizes them

'to be necessary for the performance of the tasks set out in Article 3 and compatible with this Treaty, and in particular with Article 65.'

Article 3 lays down no fewer than eight distinct, very general objectives, and it is not certain that they can all be simultaneously pursued in their entirety in all circumstances.
In pursuit of the objectives laid down in Article 3 of the Treaty, the High Authority

must permanently reconcile any conflict which may be implied by these objectives when considered individually, and when such conflict arises 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 or circumstances in the light of which it adopts its decisions.

Reconciling the various objectives laid down in Article 3 implies a real discretion involving difficult choices, based on a consideration of the economic facts and circumstances in the light of which those choices are made.

The consequences resulting from a delegation of powers are very different depending on whether it involves clearly defined executive powers the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the delegating authority, or whether it involves a discretionary power, implying a wide margin of discretion which may, according to the use which is made of it, make possible the execution of actual economic policy.

A delegation of the first kind cannot appreciably alter the consequences involved in the exercise of the powers concerned, whereas a delegation of the second kind, since it replaces the choices of the delegator by the choices of the delegate, brings about an actual transfer of responsibility.

In any event under Article 53 as regards the execution of the financial arrangements mentioned therein, it is only the delegation of those powers 'necessary for the performance of the tasks set out in Article 3' which may be authorized.

Such delegations of powers, however, can only relate to clearly defined executive powers, the use of which must be entirely subject to the supervision of the High Authority.

The objectives set out in Article 3 are binding not only on the High Authority, but on the 'institutions of the Community ... within the limits of their respective powers, in the common interest'.

From that provision there can be seen in the balance of powers which is characteristic of the institutional structure of the Community a fundamental guarantee granted by the Treaty in particular to the undertakings and associations of undertakings to which it applies.

To delegate a discretionary power, by entrusting it to bodies other than those which the Treaty has established to effect and supervise the exercise of such power each within the limits of its own authority, would render that guarantee ineffective.

In the light of the criteria set out above, it is appropriate to examine whether the delegation of powers granted by the High Authority to the Brussels agencies by virtue of Decision No 14/55 satisfies the requirements of the Treaty.

Article 5 of Decision No 14/55 provides that:

'The Joint Bureau may propose to the Fund:

(a) the tonnages of scrap imported from third countries of scrap treated as such which may be entitled to equalization;

(b) the conditions to which the entitlement to equalization subsidy is subject ...;

(c) the maximum import price;

(d) the equalization price, which may be fixed either for the date of order of for the date of delivery;

(e) the criteria for calculating economy in scrap due to an increased use of pig-iron;

(f) the amount of the bonus to be granted in regard to these economies.'

The Third General Report on the Activities of the Community published (p. 105) the general principles drawn up by the Council of Ministers and the High Authority 'on which the general policy in the matter of ferrous scrap is to be based'. Those general principles state in the particular that

'The cost of ferrous scrap for the producer of steel—that is to say the sum of the purchase price and the equalization levy—must not exceed a reasonable level in comparison with the level in fact borne by producers of steel in the principal competitor countries.
In order to prevent cost prices from becoming too high in the Community as a whole, and in particular to prevent the net charge borne as a result of the functioning of the Fund in certain regions of the Community from being increased, the amount of the equalization levy must not be increased without due cause.
The effort made to encourage imports and a reasonable level of prices must not lead to an improvident increase in the consumption of ferrous scrap either in existing plant or by the creation of new plant.

...

So far as is technically and economically possible, and to the extent to which other raw materials may be available, every effort should be made to reduce the consumption of ferrous scrap by an increased use of pig-iron.'

Several proposals which, under the above-mentioned Article 5, the competent office must submit to the Fund, in particular the fixing of the 'maximum import price', the 'equalization price', the 'criteria for the calculation of economy in scrap' and the 'amount of the bonus to be granted for such economies' cannot be the result of mere accountancy procedures based on objective criteria laid down by the High Authority.

They imply a wide margin of discretion and are as such the outcome of the exercise of a discretionary power which tends to reconcile the many requirements of a complex and varied economic policy.

In stating in its Third General Report that 'the general policy concerning ferrous scrap must be based on the general principles' drawn up by the Council of Ministers and by the High Authority, the latter implicitly admits that those principles do not suffice for formulating the decisions of the Brussels agencies.
Since objective criteria whereby their decisions may be formulated are lacking, the Brussels agencies must exercise a wide margin of discretion in carrying out the tasks entrusted to them by Decision No 14/55.
However on two occasions, by Decisions Nos 9/56 and 34/56, the High Authority has itself adopted, in the place and stead of the Brussels agencies, decisions which imply the exercise of a discretionary power.
It may be asked whether, in allocating to its own jurisdiction decisions which, in application of Decision No 14/55, could have been adopted by the Brussels agencies, the High Authority intended to reserve to itself the assessment of the economic facts and circumstances relevant to the formulation of those decisions.
However there is nothing to indicate that such was the case, because the High Authority's intervention was not based on the discretionary nature of the decisions in question, but on the provisions of the second paragraph of Article 9 of Decision No 22/54 which provides that

'Where no unanimous decision is taken by the Boards of the Joint Bureau and the Fund, ... the decision shall be taken by the High Authority.'

Article 9 of Decision No 14/55 of the High Authority gives its permanent representative on the Brussels agencies the power to make any decision subject to the approval of the High Authority.
In reserving to itself the power to refuse its approval, the High Authority has not retained sufficient powers for the delegation resulting from Decision No 14/55 to be contained within the limits defined above.
In the paragraph of the statement of defence set out above the High Authority has made it clear that it 'adopts the data furnished by the Brussels agencies without being able to add anything thereto'.
In those circumstances the delegation of powers granted to the Brussels agencies by Decision No 14/55 gives those agencies a degree of latitude which implies a wide margin of discretion and cannot be considered as compatible with the requirements of the Treaty.
The decision of 24 October 1956 is based on a general decision which is unlawful from the point of view of the Treaty and it must, for this reason also, be annulled.

Costs

The defendant has failed in all its submissions.
Under Article 60 (1) of the Rules of Procedure of the Court, the unsuccessful party shall be ordered to pay the costs.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 3, 5, 15, 17, 33, 36, 47, 53, 80 and 92 of the Treaty;
Having regard to the Protocol on the Statute of the Court;
Having regard to the Rules of Procedure of the Court and to the Rules of the Court concerning costs;
Having regard to Decisions Nos 22/54 of 26 March 1954 and 14/55 of 26 March 1955 of the High Authority which establish a financial arrangement for ferrous scrap imported from third countries,

THE COURT

hereby:

1. **Declares that the application is admissible;**

2. **Annuls the Decision of the High Authority of 24 October 1956, notified to the applicant by post on 12 November 1956, according to which the applicant is required to pay to the Imported Ferrous Scrap Equalization Fund, 36, rue Ravenstein, Brussels, the sum of Lit 54 819 656 (fifty-four million, eight hundred and nineteen thousand, six hundred and fifty-six), the said decision being an enforceable decision within the meaning of Article 92 of the Treaty;**

Orders the defendant to pay the costs.

Pilotti van Kleffens Delvaux

Serrarens Riese Rueff Hammes

Delivered in open court in Luxembourg on 13 June 1958.

M. Pilotti
President

J. Rueff
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL ROEMER

(See p. 177)