

Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69 (2) and (3);

THE COURT

hereby :

1. Dismisses Application 26/66 as unfounded;
2. Orders the applicant to bear two-thirds of the costs of the proceedings and the defendant to bear one-third thereof.

Hammes

Trabucchi

Monaco

Delvaux

Donner

Lecourt

Strauß

Delivered in open court in Luxembourg on 14 June 1967.

A. Van Houtte

Registrar

Ch. L. Hammes

President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 2 MAY 1967¹

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¹ — Translated from the German.

*Mr President,
Members of the Court,*

The Hoogovens undertaking, which the Court already knows from a series of earlier cases, has again brought an action against the High Authority, to obtain the annulment of a decision addressed to it under the ferrous scrap equalization scheme.

All that need be said on the facts is the following:

During the functioning of the ferrous scrap equalization scheme the applicant processed into slabs, in addition to its own products, steel ingots from *other undertakings*. The scrap arising therefrom was reused by it for making steel. The dispute turns on whether equalization contributions must be paid on this scrap. Although according to the applicant this scrap must be considered as own arisings exempt from the levy because it was produced in its plant and then re-used, the High Authority regards the quantities of scrap in question, the amount of which, moreover, is not in dispute, as equivalent to bought scrap subject to equalization on the ground that the applicant was only able to inject it into the production cycle with the consent of other undertakings which received specific sums of money by way of consideration.

The High Authority appears to have become acquainted with the significant factors in its argument through a check carried out on its behalf in September 1960 by the Société Fiduciaire Suisse (hereinafter referred to as 'the SFS').

In consequence, after the Directorate-General for Steel had issued General Decision No 7/63 on 8 April 1963, it communicated to the applicant a statement of account and request for payment which also dealt with the quantity of ferrous scrap in dispute. An application against this (Case 28/63) had however to be rejected as inadmissible since there existed no decision which could be contested (see the judgment of 5

December 1963, Rec. 1963, p. 473).

The discussions between the applicant and the High Authority took their course during a protracted administrative procedure. As a result, on the basis of General Decision No 19/65, the applicant was on 23 December 1965 notified of the final rates of contribution applicable to it by means of a new statement of account, this time made up to it by means of a new statement of account, this time made up to 31 December 1965, which again treated the disputed quantity of ferrous scrap as bought subject to equalization.

Since no agreement was subsequently reached, on 20 July 1966 the High Authority finally issued a formal decision in which, as in the statement of account of 23 December 1965, the contribution owed by the applicant in respect of the quantity of ferrous scrap in dispute was calculated at 589 912.42 guilders.

The applicant requests the annulment of this decision on the grounds of:

- infringement of various basic decisions of the ferrous scrap equalization scheme;
- infringement of various provisions of the Treaty, especially the prohibition against discrimination;
- in addition, failure to observe the duty to state the reasons for its decision.

Moreover the applicant is of the opinion that the High Authority alone must bear the cost of the proceedings, even if the application is dismissed, since the High Authority, as a result of the uncertainty created by its administrative actions, caused the applicant to commence legal proceedings.

Let us now consider the individual complaints and whether they can in fact justify the annulment of the contested decision.

Since any other preliminary remarks—even with regard to the admissibility of the application—are unnecessary we can turn directly to the first admission.

Legal consideration

1. Infringement of the general decisions concerning the equalization of ferrous scrap

The question to be asked is whether the treatment accorded by the High Authority to the disputed scrap violates the principles contained in Articles 3 and 4 of Decisions Nos 22/54, 14/55, 2/57 and 16/58, in Article 6 of Decisions Nos 7/63 and 19/65 and in a letter from the OCCF of 9 December 1957 in conjunction with the case-law developed by the Court in this field.

(a) Facts

Before we can turn to the legal discussion in the terms I have just outlined a number of remarks must be made on the facts, because the parties are not in agreement on what legal and commercial relationship governed the scrap which came into being at Hoogovens' premises and was capable of being re-used there. At the present stage of the procedure, the following picture emerges:

It is not disputed that various French and German steel producers concluded contracts for rolling ingots with Breedband and Nederlands Verkoopkantoor voor Walserijprodukten (hereinafter referred to as 'the NVW'), and that Breedband and Hoogovens have a holding in this company. These contracts contain a clause whereby the arisings may be retained by the rolling undertaking against payment of the prevailing price for scrap in the Netherlands. Hoogovens also took part in carrying out those orders, and indeed during the first stage of the work, namely the rolling of the ingots into slabs.

With regard to the legal capacity in which Hoogovens was engaged on the work, a letter from the applicant to the High Authority dated 25 April 1966 might convey the impression that

Hoogovens was a *direct* party to the contracts for rolling, for this letter speaks of ferrous scrap 'recovered in our undertaking's ingot rolling mill from steel which we have rolled in the execution of orders from a number of French and German steelworks' and it also mentions that legal relationships existed 'with regard to the said rolling of steel between the customers placing the orders on the one hand and the NVW, Breedband and Hoogovens on the other'.

As opposed to this, as is demonstrated by a letter sent by the High Authority to the applicant on 15 June 1962, the SFS found that Hoogovens had carried out rolling for Breedband and on each occasion it credited Breedband with the scrap arising on that occasion, by means of individual accounts. Since the applicant does not appear to have disputed this finding in the course of the administrative proceedings, we may deduce from this that there was at least an implied agreement between Breedband and Hoogovens with regard to steel rolling and that this agreement is in its turn to be regarded as one for rolling steel on contract.

The applicant considers that both these conclusions are false. In response to a question put to it by the Court after the close of the written procedure, it declared instead that it had carried out its rolling work in the context of a *joint production venture* (that is to say, of a 'Maatschap' association) agreed between it and Breedband. Under the terms of this agreement, each undertaking had to put parts of its plant at the other's disposition; the business accounts were to be drawn up by Breedband, which was to receive the payment for the rolling, and in this connexion the book-keeping entries relating to the scrap produced were only of importance for the purpose of the joint calculation of the costs; finally the trading profit or loss was to be divided between the partners in proportion to their investments.

In the context of the present proceedings

I may however dispense with clarifying completely all the details of these complex relationships and their precise legal definition since in any event a number of essential points are known exactly. These reside in the fact that ingots supplied by *third parties* were rolled in Hoogovens' works *on behalf and at the risk of other undertakings* (this must also be assumed where there is a fixed price for payment of the rolling work) and in the fact that the ferrous scrap thereby produced was finally to be credited in one way or another in terms of the market price. Even if, as the applicant maintains, contrary to its statements in its letter of 25 April 1966, we admit that only Breedband or the NVW were parties to the contracts with the customers placing the orders, it is surely not unreasonable to assume that there existed between Breedband and Hoogovens at least an implied agreement in the nature of a contract for rolling, under which there must have been a balancing of accounts in respect of the ferrous scrap remaining with Hoogovens which had an economic value and for which Breedband for its part had to make an allowance to customers who placed the orders. If on the other hand we assume that there was between Hoogovens and Breedband a kind of association under the terms of which Hoogovens was to carry out certain works, we still arrive at the conclusion that in the course of balancing out the costs for the purposes of the operational profit or loss, Hoogovens was indirectly bound to incur a part at least of the allowances made to the customers by way of deduction in respect of the scrap arising from the rolling.

In any event, the arisings of scrap in Hoogovens' premises could not be re-used by it without its assuming a financial burden of some kind and without the consent of the *customer who placed the order*. This finding is sufficient for the purposes of the scheme for the equalization of ferrous scrap.

(b) *Must ferrous scrap arising in the course of rolling ingots supplied by third parties be considered as the rolling contractor's own arisings?*

The decisive point of law is thus whether, as the applicant thinks, according to the basic principles of the equalization scheme ferrous scrap arising in the course of rolling must be considered as the own arisings of the undertaking which does the rolling.

In support of its argument, the applicant relies in particular upon the case-law developed around the concept of 'own resources' and in this connexion it refers in particular to the judgment of the Court in Case 3/65 (Rec. 1965, p. 1340). In fact a decisive argument *against* the applicant's view can be derived from this decision. In particular it is stated in the judgment that own resources are obtained 'when an undertaking puts back into its production cycle wastes arising from the production or processing, carried out by it or on its behalf, of its own products', that is to say, *inter alia* for the undertaking giving the order for rolling. The same idea is expressed a second time in the judgment in question in the course of discussion of the complaint of discrimination; this discrimination related to the different treatment accorded to the scrap recovered when the ingots were processed for a consideration and returned to the customer placing the order on the one hand, and the ferrous scrap returned to the seller of ingots under a reservation of rights of ownership in the scrap on the other. The Court did not uphold this complaint; it thus considered that scrap arising in the course of rolling steel on contract and returned to the customer is properly to be regarded as the latter's own resources.

However, if such scrap must in principle be regarded as the own arisings of the customer giving the order, it follows logically that it cannot also be regarded as the processing undertaking's own resources in a case where the customer gives

up his right to retain it in return for a consideration.

However the matter cannot rest there for reasons which have yet to be considered in connexion with the OCCF's letter of 9 December 1957. Let us therefore consider the applicant's arguments in detail.

As we know, its arguments turn essentially on those passages of the judgment in Case 3/65 which define own resources in terms of the circumstances of the production of the ferrous scrap, that is to say by an analysis of this process. The term 'own resources' is appropriate where the scrap is to be regarded as the product of the own activity of the undertaking which is exempt from the equalization scheme. According to the applicant these factors must take precedence; on the other hand, in its opinion, it is wrong to make the definition of own arisings dependent on contractual relations with other undertakings affecting the right of ownership in the scrap. Where the scrap simultaneously satisfies the criteria of bought scrap and of own resources, priority should be given to the latter since they constitute criteria of Community law.

It appears to me, however, that the applicant has committed an error of interpretation in the conclusions which it draws from the case-law.

I have already stressed in other cases that taking passages of the judgments out of their context and considering them apart from the particular facts of the case decided may lead to errors. This is also true of the case-law developed with regard to the equalization of ferrous scrap, which must always be considered within its context.

If one proceeds in this way a basic principle of the equalization scheme is thrown into relief. This is the idea that the concept of *bought* scrap plays an essential part and that it must be interpreted *broadly* (that is to say that it

must embrace agreements *similar* to contracts of sale), whilst the exemption of own arisings is the exception, from which it necessarily follows that the criteria developed with regard to it must be interpreted *restrictively*. The judgment in the *Espérance-Longdoz* case expressly confirms this rule (Rec. 1965, p. 1340).

Moreover it seems clear that contractual relations are not of secondary importance for the purpose of considering the problems of the equalization of ferrous scrap. They are so however whenever an endeavour is made, by employing them, to *expand* the concept of 'own resources'. However it is precisely because of the judgment given in Case 3/65 that it is impossible to leave them completely out of account as 'the circumstances of the organization of production', even though, as I have already said, scrap arising in the course of contract-rolling (thus becoming subject to *contractual* relations) and returned to the customer who placed the order must be regarded as the own resources of that customer.

Accordingly there is no justification, in cases of conflict where certain factors point to the existence of bought scrap and certain others to that of own arisings, for preferring the latter on the ground that they are in accordance with Community law. On the contrary, there must first and foremost be considered the criteria of Community law applicable to the concept of purchase, as is clearly indicated in a number of judgments. Where there is found to exist in one form or another a contract equivalent to a contract of sale, the scrap in question must be liable for equalization, and there can be no question of an exemption. According to the case-law, to constitute a contract equivalent to a contract of sale it is unnecessary for the decisive criteria of the national law of purchase and sale to be met¹ (agreement to transfer ownership in consideration of payment of a purchase price). It is sufficient

1 — Case 19/61, [1962] E.C.R. 357.

for example that a third party transfers the ferrous scrap for a consideration. Thus in earlier judgments, the Court has emphasized the fact that an actual transfer for consideration was not necessary (within the context of a group), since the existence in the accounts of a balancing price independent of the market was sufficient to indicate a transfer of ownership (Case 19/61, [1962] E.C.R. 357 et seq.). In the judgment given in Cases 42 and 49/59, the Court even emphasized that a credit note made out by Hoogovens in favour of Breedband was sufficient to prove purchases of ferrous scrap, even assuming that it had only been made out for the purpose of ascertaining the costs of production which were ultimately borne by Hoogovens and Breedband in terms of an agreement whereby they undertook to share the profits and losses.

When we apply these principles, the method employed in this case by the High Authority in order to ascertain the scrap subject to the equalization scheme does not give rise to objection. If in particular we are to accept after all that has been said, that the scrap arising at Hoogovens' premises in the course of contract-rolling could only remain with Hoogovens with the *consent* of the customer who placed the order and on payment of a *consideration* to that customer, the criteria necessary for the existence of a contract which may at least be treated as *equivalent* to a contract of sale have in fact been met. But to go on to require that the scrap should originate from the production cycle of a third party is unacceptable for this would amount to disregarding the principle that the concept of purchase is to be *broadly* interpreted.

Nor is it possible to argue against the presumption of a contract which may be treated as equivalent to a contract of sale the fact that at the time when it was concluded the subject-matter of the

contract, the arisings, was not yet in existence nor the fact that the contractor undertaking had a right of ownership in them which existed uninterrupted from their creation until their re-use. It is quite possible to conceive in civil law of an agreement relating to the right of ownership in future goods. It is even possible from the point of view of civil law to speak in the present case of a *transfer* of ownership, since according to certain legal systems when goods belonging to third parties are processed, the law automatically confers on the party placing the order for processing ownership in the end product of the work. Nevertheless this is not a decisive factor, since according to the case-law of the Court, the absence of a *transfer of ownership* does not necessarily justify exemption from the obligation to pay equalization contributions.

If one were to proceed otherwise than in the way I have just indicated, and in particular if the circumstances which the applicant puts forward and which were mentioned in the beginning were given priority, this might result in a reversal of the system incompatible with the principles laid down by the case-law.

In particular it must not be forgotten that these criteria applicable to own arisings were developed in the course of quite unusual cases and that *their absence* led to a refusal to grant an exemption despite the existence of agreements with regard to ownership. As we know, these cases were concerned with group scrap and with scrap returned to the seller of the ingots under a reservation of ownership rights. When this question was discussed, it was said that an exemption of genuine own arisings was justified owing to the improvement in productivity following from the re-use of scrap previously burdened by the equalization contributions of the undertaking concerned¹; in this connex-

1 — Cases 32 and 33/58, Rec. 1958-1959, p. 305.

ion mention was made of a certain organization of production which was run in such a way that the scrap in question was produced and re-used in the same establishment. The practical purpose of those findings was consequently to *restrict* the concept of own arisings and by no means to support the argument that the duty to pay equalization contributions and the possibility of an exemption must be appraised solely or principally in accordance with technical questions concerning the production cycle.

Taking account of the case-law up to now at any rate, it is therefore impossible to accuse the High Authority of wrongly restricting the concept of 'bought scrap' to the detriment of the applicant.

Nevertheless we may still wonder with regard to the first submission what could be the significance, in the applicant's case, of the letter from the OCCF of 9 December 1957, confirmed by the High Authority and notified to the undertakings by a circular from the OCCF of 31 January 1958. However this point may be dealt with briefly.

As we know, this circular governs the obligation to make a declaration and to contribute to the scheme in cases where steel is rolled on contract. According to this circular, scrap arising in this process is to be regarded as belonging to the person placing the order if the contract for rolling so provides. In such a case the contractor has no declaration to make. On the other hand own arisings are regarded as the rolling contractor's own resources if there is a provision to this effect in the contract for rolling. In this case, the person placing the order does not have to make a declaration and above all may not make deductions from the figures relating to bought scrap subject to equalization contributions. In principle the persons concerned may decide who must make the declarations and pay the equalization contribution.

To the extent that the applicant refers to those provisions in order to invoke the *illegal nature* of the exemption available to the persons placing the contracts for rolling and consequently to protest against the fact that the scrap returned to them should be regarded as own resources, it is superfluous to give detailed explanations, since I have already given my point of view in previous opinions and the Court itself has given a ruling to this effect in its judgment in Case 3/65. Nevertheless I should like to remark again with regard to the applicant's criticisms that such an exemption is in fact justified if it is admitted that an improvement in productivity by the specific input of arisings is only relevant if it is obtained through scrap already burdened with the equalization contribution in the course of the production of steel *at the premises of* the undertaking concerned. This is so for the person placing the order but not for the undertaking carrying it out in cases of contracts for rolling. Nor may it be said that the natural and legal concept of an undertaking is distorted by conceiving as an undertaking a composite of the steelworks of the persons giving the order and the rolling mill of the undertaking which carries it out since with regard to contracts for rolling the Court has always admitted that as far as the person placing the order is concerned the scrap in question derives from *independent* undertakings, but with this peculiarity, that it is produced *on behalf of* that person under special agreements.

To the extent to which the applicant criticizes the fact that the said provisions were *not* applied to it, it must accept that, by its nature, the circular was only intended for cases where contracts for rolling were concluded between *two* undertakings consuming ferrous scrap and thereby liable for equalization. In those circumstances, it was necessary to provide that the arisings should be dealt with one way or another; in this case

the persons concerned might in principle be left to decide how the equalization contributions are to be shared, on the assumption that where the person giving the order paid the contribution, the price for the rolling would be reduced.

The present case is different. There is clearly no question here of *direct* contractual relations between the applicant as the processing undertaking and the steelworks as persons placing the orders. But in view of the fact that Breedband as an intermediate undertaking (like the NVW) was neither bound to make declarations nor to pay the equalization contribution and since, as we have heard, those placing the orders had not given up their right to claim deductions, there is no question of granting Hoogovens an exemption on the basis of the circular sent by the OCCF.

Thus, all in all, none of the arguments put forward in connexion with the first submission are capable of justifying the annulment of the contested decision.

2. Infringement of Articles 3 (b) (c) and (d), 4 (b) and 5 of the Treaty

Secondly, the applicant complains of an infringement of various provisions of the Treaty which in its opinion all express the same notion: that it is illegal to accord different treatment to comparable situations or, in other words, that *discrimination* is prohibited.

To the extent to which in this connexion it makes a comparison with the treatment accorded to *group scrap* or scrap returned to the seller of ingots *under a reservation of ownership rights*, all that requires saying has already been said in earlier judgments and opinions. These draw an essential distinction between scrap subject to a reservation of ownership rights and scrap arising in the course of rolling and returned to the person placing the order, in that when the ingots were sold, it was possible to

transfer the equalization charge on the scrap used in their production. Moreover there was no control over the organization of the rolling process which was not so in the case of a contract for rolling. It is the same for group scrap. Since in the Court's view, the existence within a group of a single commercial will, and of a uniform economic management is irrelevant, it must be admitted that group undertakings carrying out processing work, at whose premises scrap was recovered, acted on their own responsibility and at their own risk, and in this they differ essentially from undertakings carrying out processing on a contract basis: the latter do not take any economic risks in the manufacture of the finished product and may thus be regarded as a production department of the undertaking placing the order.

It only remains for me, then, to consider whether the undertakings carrying out processing work suffered from an illegal discrimination in connexion with the duty to pay equalization contributions as compared with undertakings which *bought* steel from third parties, processed it and were authorized by the High Authority to re-use the scrap recovered in the process as own resources without paying the contribution.

In my opinion this is not so.

Even if it were defensible to reserve special treatment for own arisings within the framework of the scheme for the equalization of ferrous scrap—the Court has already settled this question definitively in several judgments referring to the same provision of the Treaty (Annex II)—even assuming that it is wrong completely to ignore *legal* concepts both as regards bought scrap and own arisings in the context of the equalization scheme, the only solution remaining is in fact to consider the scrap arising during the processing of the purchased ingots as own resources. There is not the slightest difficulty here with regard to ownership, as it is quite unnecessary to engage in difficult tasks

of interpretation as in the case of reservation of ownership rights. It would be at least artificial to talk here of the purchase of *scrap*, since what was sold was plainly the *steel ingots*, from which were only subsequently obtained, through the rolling, finished and semi-finished products together with the scrap.

However this purely legal examination may be expanded by economic considerations which are always to be taken into account in solving problems arising in the equalization of ferrous scrap. But in so doing, contrary to the applicant's view, it is unnecessary to keep solely to the question of the manner in which productivity arising was improved as the result of the re-use of ferrous scrap arising, as compared in this case with the applicant's situation (that is to say, the case of an undertaking carrying out processing on a contract basis), since such considerations of *this kind* relating to productivity are not the only decisive ones.

The High Authority rightly remarks that the exemption of own arisings is also guided by the wish to avoid the *double imposition of the levy* on certain quantities of scrap, that is to say, to avoid imposing the levy again on an undertaking for the scrap arising from steel made from scrap on which equalization has already been paid.

In this connexion, the position of an undertaking carrying out contract-rolling differs in essentials from the position of an undertaking which buys steel and one which processes its own. One may start with the fact that the price of the steel included the price of the ferrous scrap used in its production together with the equalization contribution, that is to say, that the buyer of the steel bore the equalization charge, or when the steel in question came from third countries (which amounts to the same thing) it included the price of the 'imported' scrap. The situation of the undertaking carrying out contract-rolling was quite

different. It returned the major part of the processed steel to the customer and merely kept the arisings. It cannot be said here that the equalization contribution was transferred to the processing undertaking, as the price of the rolling work was solely for work carried out and not for the value of the product processed.

In accordance with all these legal and economic considerations, it is therefore justified to accord different treatment, from the point of view of equalization, to undertakings which carry out processing work and those which buy steel and there can be no ground for complaining of illegal discrimination.

Thus the second submission must also be rejected.

3. Failure to state reasons for the decision

Thirdly, the applicant puts forward the submission of infringement of an essential procedural requirement, that is, of an infringement of the obligation to state the reasons for the decision. In its opinion the particulars contained in the contested decision are inexact, and the reasons stated are too general and incomplete. Thus the applicant's actual position is scarcely considered; the contracts which form the basis of its activity are not specified and their object is not indicated. Likewise, the decision does not state under what legal relationships the ownership of the disputed scrap was transferred to the applicant. Finally the High Authority did not consider the question of discrimination raised in the course of the administration proceedings.

Commencing with the first point, the alleged inaccuracy of the statement of reasons for the decision, it was explained in the course of the procedure that there had been a misunderstanding by the applicant in this connexion. When the decision states that Hoogovens paid certain equalization contributions, it

does not refer to the contribution in respect of the ferrous scrap in dispute, but to the contribution for the scrap arising in *Breedband's* plant. The decision as a whole shows this with sufficient clarity. There is thus no inaccuracy.

On the other hand, the other objections give rise to more serious criticisms, in particular owing to recent case-law on the obligation to give reasons for decisions in the context of the ferrous scrap equalization scheme. In fact the statement of reasons for the decision is limited to a brief indication that there were contracts for rolling between Breedband or the NVW on the one hand, and a number of German and French steel undertakings on the other. The scrap arising in the course of this rolling work remained with the processing undertaking under specific clauses and against payment of the price prevailing on the Netherlands market. Under those contracts, Hoogovens was on several occasions called upon to roll ingots supplied by the undertakings placing the orders into slabs and the scrap arising, which Hoogovens was able to re-use, was covered by such a clause.

With regard to the facts there is a distinct lack of detailed particulars. Nevertheless, if the obligation to state the reasons for a decision is interpreted to mean that only the *essential* facts on which the High Authority bases its legal deductions must be indicated, it may be maintained that strictly it had fulfilled this condition by indicating that steel owned by a third party was concerned. On this basis it may be accepted that the High Authority may reserve the right to give further information in the course of the judicial proceedings on the legal and commercial relationships which are features of the facts in question.

Similarly, it is just possible to consider as sufficient the equally sparse information on the legal considerations employed by the High Authority and contained in the findings that the concept of own

resources must be strictly interpreted, that it is of decisive importance in the present case that the rolled ingots were neither produced nor bought by Hoogovens and that the recovered scrap was re-used under the terms of a contract and against the payment of a consideration. On a charitable view, these findings show the points on which the High Authority laid emphasis in its appraisal and the factors which, in its opinion, bespoke the existence of a contract which might be treated as equivalent to a contract of purchase.

Finally, it is not correct to say that the High Authority did not deal with the complaint of discrimination (the question whether it is bound to reply to all the objections raised in the course of the administrative procedure may be left open). In any event it remarks that the case of the purchase and processing of ingots, which was relied upon by the applicant for the purposes of a comparison, reveals special legal, economic and industrial characteristics which distinguishes it clearly from the case of contract-rolling, especially because in the first case the rolling is carried out *on the purchasing undertaking's own behalf*. But on this point too the High Authority was entitled to reserve further development of its line of argument for the judicial proceedings.

Consequently I think that despite certain justified reservations the decision should not be annulled for failure to state reasons, in particular because this decision *concerns the applicant alone* and because the applicant was perfectly well aware of the matters which led the High Authority to its conclusions as the result of the long discussions which were held during the administrative procedure.

4. Costs

In those circumstances, the application must be dismissed as unfounded. Ac-

cording to our Rules of Procedure, the applicant must consequently be ordered to bear the costs. To avoid this result, however, it has pleaded as a secondary point that the question of costs should be settled in its favour in accordance with Article 69 (3) of the Rules of Procedure. In support of its request, it says that the High Authority has caused uncertainty by its handling of this case during the administrative procedure. In particular, the contested decision departs from the principles contained in the OCCF's letter of 9 December 1957. Furthermore, in the statement of reasons for its decision, the High Authority resorted to arguments other than those employed by it in its voluminous correspondence in the course of the administrative procedure and which in its turn displays internal contradictions. In those circumstances the applicant claims that it had good reason to commence proceedings and solve its problems through legal action.

In fact in our case-law there have been cases where although the High Authority was successful it was ordered to pay the costs because its conduct justified the making of an application to the Court. Let us consider more closely whether this is so in the present case.

First of all, with regard to the OCCF's letter of 9 December 1957 I take leave to refer to my earlier observations. It is clear that the letter refers solely to the case of *two* undertakings consuming ferrous scrap which were under an obligation to make declarations and which were bound by the terms of a contract for rolling and not to a situation, as in the present case, where there are no direct relations between the applicant and the undertakings *consuming ferrous scrap*. It is therefore impossible to say that the contested decision departs from the principles contained in the letter in question or that this departure justified an application to the Court.

The same holds good for the allegation that the argument contained in the statement of reasons for the decision diverges from the one which was used in the course of the administrative procedure and which was in itself contradictory. It is unnecessary for me to repeat here the content of the statement of the reasons for the decision, since I have indicated this in connexion with the last submission. With regard to the content of the various letters addressed by the High Authority to the applicant (see letters of 15 June 1962, 6 August 1963, 29 January 1965 and 27 June 1966), broadly speaking the arguments they contain follow the same lines as the reasons for the decision, although in varying detail according to the objections raised by the applicant. These letters are in particular concerned to say that although the applicant was not itself a contracting party, the applicant carried out processing work on steel coming from third parties under contracts for rolling which Breedband had concluded with various customers; those contracts contain a clause whereby Breedband was entitled to retain the arisings. For its part, Hoogovens acquired scrap in the course of work carried out on Breedband's behalf. This scrap might be regarded as the customer's own resources but not as Hoogovens' own resources. It could only be otherwise if the customers had agreed to pay the equalization contribution which was possible in the case of contracts for rolling on the basis of the OCCF's letter of 9 December 1957. Finally, the letters again emphasize the difference between contracts for rolling and the sale of steel under a reservation of the right of ownership of the arisings, and also (in answer to an objection made by the applicant on this point) the different treatment necessarily reserved for scrap arising in the course of rolling bought steel.

Consequently, I am unable to find either

in the letters in question or in the statement of reasons for the decision any divergences in the High Authority's argument capable of misleading the ap-

plicant. There is thus no reason to order the High Authority to pay all or part of the costs in accordance with Article 69 (3) of our Rules of Procedure.

5. Conclusion

I am accordingly of the opinion :

that the application brought by the Hoogovens undertaking against the High Authority of the European Coal and Steel Community is admissible but unfounded. In accordance with the general principles of Article 69 (2) of our Rules of Procedure, the applicant must bear the costs.