ACADEMY OF
EUROPEAN LAW

AEL 2021/07
Academy of European Law

WORKING PAPER

The Court of Justice in the Archives Project

Analysis of the *Meroni* cases (9/56 and 10/56)

Maria Patrin

European University Institute

Academy of European Law

The Court of Justice in the Archives Project
Analysis of the *Meroni* cases (9/56 and 10/56)

Maria Patrin

AEL Working Paper 2021/07

ISSN 1831-4066

© Maria Patrin, 2021

This work is licensed under a Creative Commons Attribution 4.0 (CC-BY 4.0) International license.

If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the series and number, the year and the publisher.

Published in June 2021 by the European University Institute.
Badia Fiesolana, via dei Roccettini 9
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu

Views expressed in this publication reflect the opinion of individual author(s) and not those of the European University Institute.

This publication is available in Open Access in Cadmus, the EUI Research Repository:

With the support of the Erasmus+ Programme of the European Union

The European Commission supports the EUI through the European Union budget. This publication reflects the views only of the author(s), and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Abstract

This Working Paper is part of the CJEU in the Archives Project, aiming at uncovering the potential of the newly released archival sources of the CJEU through the analysis of the *dossiers de procedure* of selected cases. This case-study focuses on *Meroni*. It argues that the CJEU archival sources allow to better situate *Meroni* in the proper economic and social context and shed new light on the reasoning that led to the ruling. It disentangles the key role of actors, institutions and procedures in shaping the final judgment. The main findings show how the parties contributed to directing the focus of the Court towards the central issues of power delegation and judicial protection. They also highlight the own initiative of the Court in resorting to the principle of institutional balance. Ultimately the analysis points to the dynamic nature of the case, showing that the judgment resulted from the different contextual elements that emerged during the procedure.

Keywords

Meroni – Power delegation – Principle of institutional balance – Judicial protection – Court of Justice of the European Union – Historical Archives.

Acknowledgments

I would like to thank Loic Azoulai, Claire Kilpatrick, Joanne Scott and Marise Cremona for continuous support and feedback on the research work that resulted in this paper. A special thank goes to the staff of the Academy of European Law and of the Historical Archives of the European Union, that made this project possible. I am particularly grateful to Jeff Miller and Hanna Eklund for all their support and to the research team of the CJEU in the Archives project for helpful exchanges and advice. I also warmly thank all the participants of the workshop "The Court of Justice in the Archives Project: First Findings and Next Steps", held in Florence on 21 February 2020, for useful insights and feedback on an earlier version of this paper.

Executive summary

Meroni's *dossier de procédure* sheds light on the context and background of the dispute, on the procedures, on the positions of the parties and on the development of the Court's reasoning.

A. Insights into legal issues and arguments

The most interesting part of the *dossier* are the submissions of the parties, which are only partially reflected in the previously publicly available documents. They show the dynamic nature of the case, pointing to frequent shifts in the parties' argumentations, as well as to their reinterpretation by the Court in the final judgment. Indeed, the object of litigation as it emerges from the *dossier* is not about delegation, nor about institutional balance. These legal issues emerge rather incidentally during the proceedings. The principle of institutional balance, for instance, is an issue that the Court raises on its own initiative. The focus of the case shifts significantly during the course of the litigation – from a matter regarding discrimination and abuse of power to one of judicial protection and power delegation. Ultimately, these findings point to the contingent nature of the path taken by the Court.

B. Insights into context and procedures

The ideological, institutional and economic context emerges from the *dossier*. The arguments of the parties point to the economic rationale, concerns about unfair competition and discriminatory processes against Small and Mid-Size Enterprises (SMEs), as well as the potential disruptions to the internal market. Procedurally, the case management and its timeline are rather straightforward. To be noted are the requests for clarification sent by the Court to the parties and the habit of the early High Authority to recruit an external advisor to join its defence (In this case, Alberto Trabucchi).

C. Insights into actors

The *dossier's* analysis unveils the key role of many actors. Particularly of note is the role of Trabucchi, who arrived at a later stage in support of the High Authority's defence, in shifting the line of reasoning of the High Authority. In addition, the Advocate General and the Juge Rapporteur were instrumental in redirecting the attention of the Court to the core legal issue in the case: judicial protection and how to guarantee it when powers have been delegated to another entity. The breadth of the legal principles formulated by the *Meroni* judgment is even more surprising considering that the early activities of the European Coal and Steel Community (ECSC) Court were rather narrowly focused on economic matters and mostly resulted in low-profile judgments.

D. The dossier as a document (compared to the judgment): length, contents, redactions

The parallel cases *Meroni I* and *Meroni II* each have dossiers that run about 500 pages. The two dossiers are almost identical. About 14% of the materials have been redacted. The redacted material probably contains the oral hearing's report and the preliminary report (*rapport préalable*).

E. Key paragraphs

‘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.’[1]

‘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.’[2]

[1] Case C- 9/56 *Meroni & Co, Industrie Metallurgiche SpA v High Authority*, ECLI:EU:C:1958:7, 152.

[2] ibid.

Table of contents

1. Introduction 5
2. Overview of the case 5
  2.1 Facts and law 5
  2.2 The parties' submissions 6
  2.3 The opinion of the Advocate General 6
  2.4 The judgment of the Court 7
3. Meroni in the academic debate and the evolution of EU law 8
4. The composition of the dossier 10
  4.1 Documents submitted by the parties 11
  4.2 Evidence 12
  4.3 Procedure-related documents 12
  4.4 Public documents and redactions 12
5. What we learn from the dossier 13
  5.1 Context 13
  5.2 Arguments & legal reasoning 14
    5.2.1 The submissions of the parties 18
    5.2.2 The report of the Juge Rapporteur Rueff 22
    5.2.3 Reassessing the Court's reasoning in the light of the parties' submissions 23
  5.3 Actors and institutions 24
  5.4 Procedure & case management 27
  5.5 Use of evidence and legal sources 29
    5.5.1 Evidence 29
    5.5.2 Legal sources 29
6. Concluding reflections on the added value of the dossier 30
Annex 1: Table of content of the dossier and list of documents 33
Bibliography 38

List of tables and figures

Table 1: The composition of the Meroni I dossier de procédure 11
Table 2: Submissions of the parties at a glance 11
Table 3: Summary table of actors' positions 16
Table 4: Summary of main actors of the Meroni case 24
Figure 1: Timeline of Meroni 27

1. Introduction

The so-called *Meroni doctrine* has shaped the conditions under which powers may be delegated in the EU.[3] As noted by Craig: 'The Meroni principle has stood for fifty years as a constitutional limit to delegation and continues to be applied'.[4] It is generally known as a limited-delegation principle, only allowing for the delegation of executive powers of a non-discretionary nature to external bodies. Beyond that, however, *Meroni* is about circumscribing the scope of delegation on the basis of judicial protection. The judgment also contains the first formulation of the well-known principle of institutional balance. In *Meroni*, the Court held that a delegation of discretionary powers would affect the 'balance of powers which is characteristic of the institutional structure of the Community', which acts as a fundamental judicial guarantee.

Meroni is one of the earliest ECJ cases and is possibly the first judgment that has had a long-lasting influence on the EU's institutional architecture. It was formulated back in 1958 by the then Court of the European Coal and Steel Community (ECSC). Yet the principles it expounded are still applied and discussed today. The *Meroni doctrine* was particularly important in the context of the proliferation of administrative organs and entities that mushroomed starting in the 1960s. It remains very topical, as shown by the recent European Securities and Markets Authity ('*ESMA*') case, which raised again the issue of the delegation of power to external agencies in relation to the new competences of financial supervision assigned to the ESMA in the aftermath of the economic crisis. Over sixty years later, the Court reaffirmed the *Meroni* principle, albeit ruling that the powers delegated to ESMA complied with it.

The opening of the archives of the Court of Justice of the European Union ('CJEU') offers the opportunity to look behind the scenes of *Meroni.* The analysis of the unpublished materials contained in the *dossier de procédure original* allows us to better situate *Meroni* in the context of the litigation and sheds new light on the reasoning that led to the ruling. Ultimately, it can also contribute to the larger academic debate on the value and limits of the *Meroni doctrine*. This paper maps out and investigates the content of the *dossier de procédure*. The first part provides an overview of the case. The second part reviews the academic literature. The third part summarises the composition of the *dossier* and describes the types of documents it contains. The last part of the report is devoted to an analytical examination of the case's procedure, of its context, of the arguments of the parties and of the reasoning of the Court as they emerge from the *dossier*. The conclusions summarise the main findings and illustrate the relevance of the *dossier* and its added value.

2. Overview of the case

2.1 Facts and law

The *Meroni* cases 9/56 and 10/56 involved a challenge by two Italian companies contesting two individual decisions of the High Authority of the ECSC ('High Authority') requiring payment to the Imported Ferrous Scrap Equalization Fund.

The Imported Ferrous Scrap Equalization Fund and the Joint Bureau of Ferrous Scrap Consumers ('the Brussels agencies') were private law companies established to manage an obligatory ferrous-scrap equalisation system (Decision 22/54 and Decision 14/55 of the High

[3] Case 9/56 *Meroni* (n 1); Case C-10/56 *Meroni & Co, Industrie Metallurgiche SpA v High Authority*, ECLI:EU:C:1958:8.

[4] Paul Craig, *EU Administrative Law* 155 (2018).

Authority of the Coal and Steel Community ('general decisions'). The equalisation system aimed at keeping ferrous scrap prices under control in the ECSC market by aligning prices of imported ferrous scrap with prices of ferrous scrap produced within the Community. All Community companies using ferrous scraps were submitted to the equalisation system and underwent the obligation to pay a contribution to the Fund in case of discrepancy. The High Authority could adopt an enforceable decision in case of non-payment.

The two sister companies Meroni were Italian steel companies affected by the system. They were repeatedly required to pay a certain sum to the Fund by the Brussels agencies and their representative branch in Italy (Campsider). As payment was not settled in due time, the High Authority adopted two individual enforceable decisions (on 24 October 1956) with an ultimate payment request. Meroni sought the annulment of the two decisions.

The two cases were not joined during the proceedings, yet they bring forward almost identical arguments.[5] Also the Court's judgments only differ with respect to non-essential elements. As the procedures ran in parallel and the two *dossiers de procédure* contain the same documents, in this report I will consider the two cases jointly. Case 9/56 will be taken as the main reference (as it is the most complete one) and I will highlight relevant discrepancies when necessary.

2.2 The parties' submissions

Meroni contested the High Authority's decisions of 24 October 1956, alleging infringement of procedural requirements and a failure to state the reasons for its decision, arguing that no adequate information was provided with regard to the composition and the method of calculation of the sum claimed. In addition, Meroni contended that the High Authority and the Brussels agencies had infringed the Treaties by failing to communicate in a timely manner the exact data on which the sum required was based. Finally, Meroni raised an objection of misuse of power, arguing that the Brussels agencies had put in place a discriminatory system, contrary to the original objectives of the general decision establishing it.

After having contested the admissibility of the action on several grounds, the **High Authority** argued that it did not supply the full reasons for the individual decisions adopted because it had delegated its tasks to the Brussels agencies and had acted through their intermediary.

2.3 The opinion of the Advocate General

The Advocate General ('AG') Roemer in his opinion first observed that the High Authority should have provided full reasons for its decisions, even if they were based on decisions of the Brussels agencies, thus endorsing the claim of the applicant that the contested decisions were in breach of essential procedural requirements. 'Under the Treaty, it is the High Authority alone which may adopt decisions and the duty to state reasons applies to all decisions of the High Authority'.[6]

He then analysed whether the High Authority could delegate in the first place its powers to a private law association. He observed that the Treaties neither allow not prohibit such a delegation but that at the very least 'it is necessary to require that the guarantees laid down by

---

[5] The main exception is one submission that is only present in case 9/56 and which relate to the Fund's own assessment of the amount of ferrous scrap purchased by Meroni.

[6] Case 9/56 *Meroni & Co, Industrie Metallurgiche SpA v High Authority,* Opinion of the Advocate General, ECLI:EU:C:1958:4.

the Treaties as to legal protection shall continue to exist even in the case of delegation'.[7] However, this was not the case for the *general decisions* of the High Authority, which delegated to the Fund some important powers, such as the power to determine the contribution rate for payment, without providing for criteria to review the calculation of the contribution rate nor for obligations to state reasons and publish data. He therefore recommended annulling the two contested decisions which were based on the *general decisions*.

As noted by Chamon, for AG Roemer judicial protection was certainly the legal focus of the case: 'he took a relaxed stance towards delegation and was foremost pre-occupied with the continued respect for the system of judicial protection'.[8] The issue of power delegation came to the fore mainly as a consequence of the concern for judicial protection: 'the decisive element is whether the guarantees of legal protection to be found in the Treaty also exist in the case of a delegation of power'.[9] For AG Roemer delegation was possible but it had to respect certain requirements, including a law specifying the content of the delegation and guaranteeing complete legal protection. In this light, the issue was not so much the possibility to delegate power nor the type of delegation, but the need to guarantee judicial protection. If the delegation had contained provisions allowing for judicial review of the criteria adopted for establishing the contribution rate, it would have arguably been legal for Roemer. The AG made no references to the discretional nature of the power to delegate or the principle of institutional balance.

2.4 The judgment of the Court

The Court's judgment followed the AG's recommendation to annul the contested decisions, albeit adding supplementary arguments. The Court first agreed with the AG and the applicant that the individual decisions of 24 October 1956 lacked sufficient statement of reasons, which was 'indispensable for the exercise of judicial review'[10]. Secondly, in the most significant part of the judgment, it addressed the question of power delegation and of the conditions under which it was permitted under the Treaty.

The Court noted that if the High Authority had exercised itself the powers that it had delegated to the Brussels agencies, it would have had to respect the Treaty rules concerning the duty to state reasons and to publish data, so as to allow for judicial review. Yet, the High Authority did not attach any of these conditions to the exercise of the powers delegated to the agencies. Therefore, the Court found that the delegation infringed the Treaties. The High Authority could not confer upon the delegated agencies powers different from those which it itself received under the Treaties. Up to this point, the Court very much retraced the AG's reasoning.

In addition, however, the Court went beyond the arguments of the applicant and of the AG to examine the more general issue of whether a delegation of power was at all possible under the Treaties. A delegation of certain powers to bodies established under private law must be possible, the Court argued. However, this delegation must be limited to 'clearly defined executive powers, the exercise of which can be subject to strict review in the light of objective criteria' and could not involve discretionary powers.[11] The Court based its arguments on the principle of institutional balance, or, as it is worded in this ruling, 'balance of powers'. Referring

---

[7] ibid.

[8] Merijn Chamon, 'EU Agencies: Does the Meroni Doctrine Make Sense?', 17 Maastricht Journal of European and Comparative Law 281 (2010).

[9] Case 9/56 *Meroni,* Opinion of the AG (n 6).

[10] Case 9/56 *Meroni* (n 1) 142.

[11] ibid 152.

to Article 3 of the Treaties laying down general objectives to be pursued, the Court recalled that these objectives were binding on the 'Institutions of the Community… within the limits of their respective powers, in the common interest'.[12] This balance of powers was a fundamental guarantee established by the Treaties for the undertakings. It would be made ineffective by a delegation of discretionary power.

In the subsequent examination of the powers delegated by the High Authority to the Brussels agencies the Court found that these powers implied a wide margin of discretion in that they involved choices pertaining to the field of economic policy. Therefore, Decision 14/55 delegating powers to the agencies was found to be unlawful and the individual Decisions of 24 October 2019 based upon it were annulled.

3. Meroni in the academic debate and the evolution of EU law

Meroni's legal story initially started in a rather low-key manner. Legal historians and political scientists studying the activity of the Court of Justice during its early days note that the jurisprudence of the Court of the ECSC was rather unspectacular and that the Court itself was an economic Court specialising in trade issues.[13] Interestingly, these authors do not specify how *Meroni* features in this context. Certainly a case of high technical and economic relevance, *Meroni* nonetheless established a pivotal legal principle of EU law, which distinguishes it from the shy jurisprudence of the ECSC Court. This alone arguably makes *Meroni* a special case worthy of further investigation.

The 1958 *Meroni* judgment went rather unnoticed until the 1990s, when the process of agencification in the EU intensified.[14] With new regulatory agencies being created, the issue of their compatibility with the *Meroni doctrine* of delegation came to the fore. Lenaerts was among the first authors to point out the constitutional limits of the delegation of executive powers to agencies.[15] Since then, scholars have intensely debated the legal scope of the *Meroni doctrine*, its applicability to the newly created agencies and the legal constraints on their powers. The issue became increasingly topical as the agencification process intensified over the years, with new bodies granted important and broad-ranging powers in many regulatory fields (see for example the European Medicine Agency - EMA, European Union Aviation Safety Agency -EASA, European Chemicals Agency - ECHA, European Food Safety Authority - EFSA, and more recently in the wake of the financial crisis, ESMA).[16] Many authors observed that *de facto* EU agencies already enjoyed powers that went well beyond what would be allowed under the *Meroni doctrine*.[17]

---

[12] ibid.

[13] Vera Fritz, *Juges et Avocats Généraux de La Cour de Justice de l'Union Européenne (1952-1972) : Une Approche Biographique de l'histoire d'une Révolution Juridique* 140 (2018); Antoine Vauchez, *L'Union Par Le Droit : L'invention d'un Programme Institutionnel Pour l'Europe* 76 (2013).

[14] Chamon, 'EU Agencies: Does the Meroni Doctrine Make Sense?' (n 8).

[15] Koen Lenaerts, 'Regulating the Regulatory Process: "Delegation of Powers" in the European Community' 18 *European Law Review* 23 (1993).

[16] European Medicines Agency (EMA), European Aviation Safety Agency (EASA), European Chemicals Agency (ECHA), European Food Safety Authority (EFSA), European Securities and Markets Authority (ESMA).

[17] Ellen Vos and Michelle Everson, 'European Agencies: What About the Institutional Balance?', 4 *Maastricht Faculty of Law Working Paper* (2014)

Increasingly scholars started questioning the *Meroni principle*. Some argued that it could not directly apply to agencies.[18] Others endorsed a more flexible reading of the doctrine that would square with more extensive power delegation.[19] For instance, Griller and Orator brought forward a narrow interpretation of the agencies' discretionary choices limited to the basic elements only, which would allow agencies a certain margin of discretion.[20]

Most of these authors focused on the interpretation of the principle of institutional balance in the EU and how to reconcile it with *Meroni*. In this context, the protection of the rights of individuals under delegation emerged as a key concern. Going back to the original meaning of the *Meroni* judgment, Jacqué noted for instance that the principle of institutional balance worked as a 'substitute for the principle of the separation of powers which, in Montesquieu's original exposition of his philosophy, aimed to protect individuals against the abuse of power'.[21] With other means of protection developing, such as the protection of fundamental rights, the principle had fundamentally evolved. On similar grounds, Chamon warned against applying a modern interpretation of institutional balance to *Meroni*, pointing out that the key concern for the Court in 1958 was the judicial protection of the rights of private parties and not the delimitation of the powers of the different institutions.[22] Other authors tried to circumvent the non-delegation of discretionary powers by reverting to the concept of accountability. Under this view a more extensive power delegation would not offset the institutional balance if adequate checks and balances were provided and control mechanisms were strengthened.[23]

From all sides, however, scholars struggled with the dilemma of reconciling the factual (and ever-growing) need for the delegation of important (and often discretionary) powers to external agencies with a legal doctrine that specifically prohibited such a delegation. The *Meroni doctrine* did not remain within the remits of academia but soon reached out to the political and institutional domain. Significantly, the Commission has made extensive political use of a restrictive reading of *Meroni* to preserve the 'unity and integrity of [its] executive functions' and to delimit the range of powers to be attributed to agencies as well as their independence.[24] The Commission's hard stance was however progressively rebalanced by the extension of Community powers into new regulatory fields, which led the Commission to think about agency delegation in functional terms as an opportunity to extend its scope of activities.

For a long time, the Court of Justice did not provide additional guidance on how to interpret *Meroni*. In some rulings in the 2000s it confirmed the general applicability of *Meroni*, but it

---

[18] Renaud Dehousse, 'Misfits: EU Law and the Transformation of European Governance', 2 *Jean Monnet Working Paper* (2002); Edoardo Chiti, 'An Important Part of the EU's Institutional Machinery: Features, Problems and Perspectives of European Agencies', 46 *Common Market Law Review* 1395 (2009).

[19] Giandomenico Majone, 'Delegation of Regulatory Powers in a Mixed Polity', 8 *European Law Journal* 319 (2002); Stefan Griller and Andreas Orator, 'Everything under Control? The "Way Forward" for European Agencies in the Footsteps of the Meroni Doctrine', 35 *European Law Review* 3 (2010); Ellen Vos, 'Reforming the European Commission: What Role to Play for EU Agencies?', 37 *Common Market Law Review* 1113 (2000); Chamon, 'EU Agencies: Does the Meroni Doctrine Make Sense?' (n 8).

[20] Griller and Orator (n 19), 3; Robert Schütze, '"Delegated" Legislation in the (new) European Union: A Constitutional Analysis", in *The Modern Law Review*, 673 (2011).

[21] Jean-Paul Jacqué, 'The Principle of Institutional Balance', 41 *Common Market Law Review* 383 (2004).

[22] Merijn Chamon, 'EU Agencies between *Meroni* and *Romano* or the Devil and the Deep Blue Sea', 48 *Common Market Law Review* 1055 (2011); Chamon, 'EU Agencies: Does the Meroni Doctrine Make Sense?' (n 8).

[23] Griller and Orator (n 19); Vos (n 19); Ellen Vos, 'European Agencies and the Composite EU Executive' in Michelle Everson, Cosimo Monda and Ellen Vos (eds), *European agencies in between institutions and member states* (Aspen Publishers, (2014).

[24] European Commission, *Communication from the Commission: The Operating Framework for the European Regulatory Agencies,* COM(2002) 718 Final.

never clarified its scope nor its direct applicability to modern agencies.[25] Only recently, the *ESMA* case[26] put the *Meroni* principle back on the Court's table, spurring a new wave of interest. In *ESMA*, the United Kingdom directly referred to *Meroni* to challenge the agency's powers to prohibit or impose conditions on short-selling of financial products. This was seen as the much-awaited opportunity to test the applicability of the *Meroni doctrine* to agencies and to clarify its scope. However, the *ESMA* judgment did not entirely settle the issue. The Court reconfirmed the relevance of *Meroni* for EU law agencies but it found that the powers delegated to ESMA were sufficiently circumscribed to comply with the conditions set by *Meroni*. The Court judgment underwent sharp criticism. Some commentators argued that the Court had not only confirmed but even further extended the *Meroni doctrine* to conform to the 'new realities' of European governance.[27] Other authors argued that the Court had over-simplified *Meroni*, by spelling out only vague conditions to delimit the powers of the agencies.[28]

In sum, the story has not ended and the *Meroni doctrine* is still very much alive, while the decentralisation of tasks and powers to external bodies continues. Lately, the *Single Resolution Board ('SRB'),* the central authority within the European Banking Union, was given extensive powers, including to formally decide on the resolution of a bank. Arguably, had the *Meroni* limits not applied, the powers of the agency would have been even larger. To comply with *Meroni*, legislators granted the Commission and the Council control powers over the resolution scheme proposed. Yet, the Board still maintains discretionary powers.[29] The SRB delegation has not so far been challenged in Court.

4. The composition of the dossier

The *Meroni* dossier is composed of six categories of documents, namely:

1. **Submissions of the parties**: written submissions of the parties during the written procedure and the instruction
2. **Evidence**: documents submitted by the parties upon request of the Court or on their own initiative
3. **Procedure-related documents**: Correspondence between the Court (Registrar) and the parties, orders by the President of the Court appointing the chamber and reporting judge, as well as setting or postponing the dates of the procedure
4. **Report for the Oral Hearing by the Juge Rapporteur** (Judge Rueff) – in French
5. **Opinion of the Advocate General** (AG Roemer) – in German
6. **Final judgment of the court**

---

[25] Case C-301/02 P *Carmine Salvatore Tralli v ECB*, ECLI:EU:C:2005:306; Joined Cases C-154 & 155/04 *The Queen, on the application of Alliance for Natural Health and Others v Secretary of State for Health and National Assembly for Wales*, ECLI:EU:C:2005:449; Joined cases T-369/94 and 85/95 *DIR International Film Srl and others v Commission*, ECLI:EU:T:1998:39.

[26] Case C-270/12 *United Kingdom v European Parliament and Council of the European Union*, ECLI:EU:C:2014:18.

[27] Vos and Everson (n 17).

[28] Merijn Chamon, 'The Empowerment of Agencies Under the Meroni Doctrine and Article 114 TFEU: Comment on United Kingdom v. Parliament and Council (Short-Selling) and the Proposed Single Resolution Mechanism', 39 *European Law Review* 380 (2014).

[29] Pamela Lintner, 'De/Centralized Decision Making Under the European Resolution Framework: Does Meroni Hamper the Creation of a European Resolution Authority?', 18 European Business Organization Law Review 591 (2017).

Some documents in the original file have been redacted and are not available to the public. All documents are in Italian with the exception of the Report of the Juge Rapporteur (French) and the Opinion of the AG (German). The table below provides a quantitative overview of the composition of the dossier *Meroni I* (*Meroni II* being almost identical):

Table 1: The composition of the Meroni I dossier de procédure

Category of Document	**Number of Documents**	**% of number of documents**	**number of pages**	**% of the dossier (441 p)**	**% of the original file (510 p)**
Submissions by the parties	8	6%	155	35%	30%
Evidence	70	52%	122	28%	24%
Procedure-related documents	52	39%	71	16%	14%
Report of the Juge Rapporteur	1	1%	22	5%	4%
Opinion of the Advocate General	1	1%	50	11%	10%
Final Judgment	1	1%	21	5%	4%
Documents not available to public			69		14%
TOTAL	**133 (with annexes)**		**510**		

**Note that the greyscale code provided in the table reflects the colour code of Meroni I in Annex 1.*

4.1 Documents submitted by the parties

The submissions of the parties constitute the largest portion of the dossier. They encompass in total eight documents (see table in annex for reference documents):

Table 2: Submissions of the parties at a glance

Meroni	**High Authority**
Doc 1 – written procedure: the application for the annulment of the High Authority Decision of 24 October 1956	**Doc 11– written procedure:** the response of the High Authority
Doc 20 – written procedure: the reply by Meroni	**Doc 24 – written procedure:** the rejoinder by the High Authority
Doc 6 – instruction: answers by Meroni to the Court's questions	**Doc 8 – instruction:** answers by the High Authority to the Court's questions

Doc 12 – instruction: Answers by the High Authority to the Court's additional request for specifications	**Doc 14 – instruction:** Answers by Meroni to the Court's additional request for specifications

4.2 Evidence

The second largest part of the *dossier* is made up of documentary evidence which has been submitted by the parties, namely:

- Correspondence between the undertakings Meroni, the High Authority, the Brussels Agencies and Campsider
- Decisions of the High Authority
- Invoices reporting prices for ferrous scraps and other relevant prices
- Graphs and tables reporting estimations and calculations of market trends and sums to be paid by Meroni

4.3 Procedure-related documents

The *dossier* contains a high number of procedure-related documents. They mostly contain relatively mundane Court orders and communications to the parties. More valuable for research purposes are the requests for clarifications from the Court to the parties in the instruction, which address important questions regarding the methods of calculation and the legal basis for the activities of the Brussels agencies.

Regarding the oral hearing, the only available document is the report of the Juge Rapporteur. The report, which was not available to the public, is partly reproduced in the procedural part of the judgement (facts and arguments of the parties).

The statements of the parties during the oral hearing have been removed from the *dossier*. This is regrettable as the hearing was public and the report of the hearing can be found in the historical archives of the European Commission in Brussels.[30] The content of the oral hearing is therefore not classified and can add valuable insights into the positions of the parties and on the evolution of the case.

4.4 Public documents and redactions

The *dossier* reproduces the original versions of the only two documents that were already publicly available: the Advocate General's opinion (in German) and the Court's final judgment. Together they make up around 14% of the original *dossier*.

Another 14% of the material has been removed from the original file. The *dossier* does not provide any information regarding the type of documents that were removed or their authorship. However, a comparison between the *Meroni I* and the *Meroni II dossier*, as well as the files accessible at the Commission's historical archives, let us conclude with fairly high confidence that the redacted materials concern at least:

- The report of the oral hearing; and
- The preliminary report (*rapport préalable*) for the instruction

[30] Historical Archives of the European Commission, BAC 371/1991 77, Brussels

5. What we learn from the *dossier*

This part of the report provides a content analysis of the *dossier*. It describes the context of the case and summarises the arguments of the parties as they are exposed in their submissions and reassesses the Court's judgment in the light of the submissions. Furthermore, it analyses the case actors, procedures and legal sources.

5.1 Context

The context of the litigation emerges from the analysis of the *dossier* as an important element that can help to better understand what was at stake. The parties put a lot of efforts in explaining the system, its economic rationale and purpose. Whereas the legal framework of the scheme is amply reflected in the publicly available materials, the economic rationale emerges less clearly.

Given the technical nature of the issues raised in *Meroni*, the box below provides a short explanation of the context of the case as it emerges from the *dossier*.

Explanatory box: The equalisation mechanism and the rate of contribution

The equalisation system was introduced in the Communities at a time of shortage of ferrous scrap in the internal market. To keep up with demand European steel companies had to import ferrous scrap at a price that was higher than it was sold in the Community. To prevent the price of Community ferrous scrap from rising to the higher prices of imported ferrous scrap, the High Authority set up the equalisation system. The mechanism reimbursed companies importing ferrous scrap the price differential between the Community price and the imported price. A contribution rate was therefore applied to each company on the basis of the tonnes of purchased ferrous scrap. The Brussels agencies were in charge of determining the rate of contribution, which was uniformly applied to the companies on the basis of the difference between average prices of imported and internal market ferrous scrap. As a result, the companies importing ferrous scrap would be reimbursed, whereas companies buying ferrous scrap in the Community would pay a contribution.

By reading the submissions of the parties, and in particular Meroni's claims, we get a sense of the importance of the issues at stake in the litigation. We learn that the concern for the prices of ferrous scrap and for the contribution to the equalisation system was shared between several companies, that the contribution rate affected substantially the economic performance of small undertakings and that criticism of the system was widespread. Reference was made to other Court cases raising similar issues and Meroni even quoted a speech of a Member of the European Parliament mentioning the problem.[31] Meroni may have significantly exaggerated the economic impact on SMEs, yet it repeatedly raised the issue of discrimination and of the economic consequences of the system. Some direct quotes from Meroni in the file might give a clearer idea of the situation:

[31] Dossier de procédure original *Meroni I*, Meroni's reply, HAEU CJUE-0564, 50

> Such deviations are so serious, especially for the small undertakings, that it is hard to believe how one could reasonably impose them without causing financial distress and the consequent unemployment of thousands of workers. (Appeal)[32]
>
> Therefore a situation has emerged where a few big companies dominate the market at the expenses of the other ones which have to provide for their supply of raw material day per day and that, if maintained, it will lead small undertakings to total economic collapse, leaving full space to the big industrial companies. (Answers to the Court's questions)[33]
>
> It must be added that the gathering of statistical data in Italy has been entrusted to a body which does not appear to be the most appropriate to perform this task, as it is a private association, originally created by a group of big Italian steel companies, with a Board composed of their representatives. (Answers to the Court's questions)[34]

These contextual elements are important to understand why judicial protection became a relevant issue during the case. The controversy was not about technical measurements of a neutral body that was just implementing the directives of the High Authority. It was about an association (mostly managed by big companies) that was responsible for defining the rate of payment for many other undertakings (virtually all). The context leads us to consider the importance of the margin of discretion maintained by the Brussels agencies in another light. It points to the fact that the discretion to fix the contribution rate, which might appear at first to be a technicality (especially if considered in light of the powers and the 'discretion' that EU agencies enjoy nowadays), mattered a great deal in economic terms for the undertakings that participated in the mechanism.

Looking at the prevailing economic ideology is also useful to grasp the point of departure of the Court in its assessment of the case, especially considering that the ECSC Court was predominantly an "economic Court" (see actors). Vauchez notes that from the very beginning the Court was eager to endorse an economic doctrine marked by enthusiasm for competitive markets.[35] The objective to promote fair competition arguably influenced the position of the Court, as *Meroni* is about an Italian SME struggling to find its place in a market dominated by 'big companies'. Ultimately, going back to the rationale of the litigation and its economic reasons helps to situate *Meroni* in its proper context. It tells us what the case was about before the shift that later led to the *Meroni doctrine*, which almost entirely focused on the legal issue of power delegation.

5.2 Arguments & legal reasoning

There were four main issues at stake in *Meroni.* Three originated from submissions put forward by Meroni. The fourth was the question of admissibility, which was raised by the High Authority:

1. Admissibility
2. Infringement of procedural requirements and failure to state reasons
3. Misuse of powers; and
4. Manifest failure to observe the provisions of the Treaties.

The structure of the Court's judgment (along the lines of the report of the Juge Rapporteur) reflected the division along the three submission lines, but it inverted the order between the

[32] Dossier de procédure original *Meroni I*, Meroni's submission, HAEU CJUE-0564, 9

[33] Dossier de procédure original *Meroni I*, Meroni's answers to the Court questions, HAEU CJUE-0565 (DOC 6 of the Q&A) – (translation by the author)

[34] Ibid.

[35] Vauchez (n 13) 76.

second and the third. That is, it addressed the manifest failure to observe the provisions of the Treaties before the allegation of misuse of powers. The opinion of the Advocate General (AG) reorganised the arguments according to whether the complaints were directed towards the individual decision of 24 October 1956, the decisions and activity of the Brussels agencies or the general decisions of the High Authority establishing the equalisation mechanism. This systematisation allowed the AG to emphasise the relationship between the High Authority's decisions and the activities of the agencies, which was central to the judgment.

In the following analysis, I retain the original submission order contained in Meroni's application. Accordingly, *table 3* summarises the positions of the different actors on the most important issues of the case as they emerge from an analysis of the *dossier*. From the outset it can be noted that the arguments raised by Meroni and by the High Authority were not fully reflected in the Advocate General's opinion and the Court's judgment, which in turn introduced new elements in the litigation. A detailed analysis of the parties' submissions is presented below, explaining their litigation strategies, the rationale behind their arguments and how they fed into the Court's ruling.

Table 3: Summary table of actors' positions

Plea	Meroni	High Authority (HA)	Advocate General (AG)	Court
Admissibility	**Admissible**	**Inadmissible**	**Admissible**	**Admissible**
Acquiescence	Meroni did not acquiesce and expressed reservations	Meroni acquiesced by recognizing its obligation to pay	Meroni did not acquiesce	Meroni did not acquiesce
Absence of right to bring an action	A private undertaking can challenge a general decision on the ground of illegality	A private undertaking cannot challenge general decisions after the delay for the application of annulment had expired	It is possible to raise the illegality of a general decision upon which individual decisions are based.	Undertakings can claim the illegality of a general decision, where obligations, requirements and prohibitions arise directly from it
1° plea: infringement of essential procedural requirements - Failure to state reasons	**YES**	**NO**	**YES**	**YES**
	HA's individual decisions do not provide adequate reasons. They do not indicate the criteria for the calculation of the due amount due.	No statement of reason is needed. The HA only adopts the data furnished by the Brussels agencies. The individual decision reflects a simple calculation	Not sufficient reasons provided. Misconception of relationship between HA and Brussels agencies, which are not independent and cannot be hold responsible.	The HA individual decisions lacked the supporting reasons to make judicial review possible
2° plea: misuse of power	**YES**	**NO**	**YES**	**YES**
Discrimination	Equalisation system did not respect the	No discrimination: the system is working well	**X**	**X**

	Council's *avis conforme*. It resulted in discrimination against small undertakings	and helped undertakings such as Meroni to keep prices under control		
Delegation of power & legal protection	Undertakings are denied possibility to defend themselves. Brussels agencies enjoy powers wider than those of the High Authority itself.	The individual decisions of the High Authority are based on the decisions of the Brussels agencies, which, once adopted unanimously, cannot be challenged by the HA.	Delegation of power is possible but must uphold the essential guarantees of legal protection laid down in the Treaties	Delegation of power must make the exercise of those powers subject to the same conditions applying to the HA under the Treaties
Extent of power delegation	X	X	Fixing of contribution rate not only a technical exercise but depended on considerations of economic policy	Delegation of power limited to clearly defined executive powers not involving discretionary choices
Principle of institutional balance	X	X	**X**	Balance of powers in the Treaties is a fundamental guarantee for the undertakings to which it applies that would be made ineffective by a delegation of discretionary power
3° plea: Failure to observe the provisions of the Treaties	**YES**	**NO**	**YES**	**YES**
	Infringement of Art. 47 of the Paris Treaties for inadequate publication of data and provisional nature of accounts released	The equalisation system is based on an ex-post determination of the final rate. Respect for commercial secrecy	Rates of contribution were established by the Brussels agencies in the absence of a power delegation upholding minimum standards of judicial protection	HA failed to publish data not covered by professional secrecy and to provide the reasons for its actions

5.2.1 The submissions of the parties

The single most interesting aspect of the *dossier* is certainly the submissions of the parties. Only a tiny percentage of the arguments of the parties are reflected in the public documents of the cases (the judgment and the AG opinion). The *dossier* brings new insights and facts to the fore. In particular, the parties' submissions shed light on the context and background of the dispute, but they also help to retrace how the reasoning evolved throughout the procedure. At the outset it is worth noticing that what emerges from the *dossier* is a dynamic evolutionary process. The parties shifted their arguments during the course of the procedure and the Court reformulated them in the final judgment. The most striking example of this process is the position of the High Authority, which changed substantially in the time between the defence and the rejoinder.

a) Admissibility

The arguments regarding the admissibility of the appeal are rather intricated and are combined with other pleas. The reasoning of the parties on admissibility are worth considering because they touch upon issues that will inform the substantial part of the judgment, such as the guarantees of legal protection of undertakings and the legal value of the deliberations of the Brussels agencies.

- **Acquiescence**

The High Authority raised an objection of inadmissibility, arguing that Meroni had acquiesced in the decision of the Brussels agencies when, in a letter dated 12 April 1956 (doc Annex 1 of Doc 11 of the written procedure in the table below), it had acknowledged the existence of its debt to the Equalisation Fund and proposed a payment by instalments.

In the same letter, however, **Meroni** expressed several reservations and doubts regarding the criteria for calculating the contribution rate and the average prices of ferrous scraps. Therefore, Meroni contended that this could not imply acquiescence.

Both the AG and the Court sided with Meroni's arguments that the reservations expressed in the letter could not be considered to be 'a recognition of the debt or a renunciation of the right to contest it'.[36]

- **Absence of right to bring action: right of a private undertaking to act against a general decision of the High Authority**

The **High Authority** argued that Meroni's submissions of misuse of powers, which were directed against the general decision of the High Authority, were inadmissible. Indeed, the applicant would have had to demonstrate that the determination of the contribution rate was an individual measure or that it was a general act affected by misuse of power. In short, according to the High Authority, Meroni, as a private undertaking, could not challenge a general decision of the High Authority. It could only challenge an individual decision that concerned it directly.

According to **Meroni,** a general decision could be challenged by an undertaking when it could show that it had a specific, but not necessarily exclusive, interest. Otherwise 'undertakings could never challenge general measures, not even indirectly'.[37]

[36] Case 9/56 *Meroni,* Opinion of the AG (n 6) ; Case 9/56 *Meroni* (n 1) 141.

[37] Dossier de procédure original *Meroni I*, Reply of Meroni, HAEU CJUE-0564, 41 (translation by the author)

The first part of the **Court's judgement** and the **AG's opinion** considered extensively this objection of inadmissibility, noting that it raised important issues related to the legal protection of the undertakings. It concluded that undertakings could allege the illegality of a general decision, where obligations, requirements and prohibitions arose directly from it.

> 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 that might later affect them.[38]

From the outset, there was a notable focus on judicial protection. This concern informed the successive reasoning of the Court.

b) First Submission: Infringement of procedural requirements and failure to state reasons

In its first submission **Meroni** argued that the High Authority did not provide adequate reasons for its decision of 24 October 1956. The decision only stated that Meroni had to pay a certain sum without giving any indication as to how and according to which criteria the amount due was calculated. According to Meroni, the undertaking had a right to know, at a minimum, the essential elements of the facts upon which the decision was made.

> It is evident that, when a small undertaking is required to pay the hyperbolic sum of about 55 million Lit, it is necessary to specify all the elements on which the decision lies because the undertaking concerned has the inviolable right, before it pays or it goes bankrupt if it cannot pay, to know all the probatory and documentary elements which justify the request and which can reassure him about the regularity, validity and conformity to law of the due amount.[39]

Meroni referred to the High Authority's responsibility to control and monitor the Brussels agencies, introducing an important concern for judicial protection, but did not go as far as to claim an improper delegation of powers. The AG and the Court went one step further in connecting the need to ensure the legal guarantees of private undertakings to the powers delegated to the Brussels agencies.

The High Authority responded that it had only ascertained the existence of an obligation to pay on the basis of the calculations of the Brussels agencies. This did not require any statement of reasons. It then added a sentence that would be extensively quoted in the course of the appeal:

> 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.[40]

This statement reveals the High Authority's initial litigation strategy, which aimed to distance itself from the deliberations of the Brussels agencies, as if they were independent bodies that had the power to act unilaterally. In so doing, the High Authority introduced a key element – one that was not inevitable at the beginning of the litigation - that would lead the Court to establish the well-known *Meroni doctrine* on power delegation to external bodies. As the Court relentlessly remarked: 'the High Authority uses the Brussels agencies as a shield'.[41]

---

[38] Case 9/56 *Meroni* (n 1) 140.

[39] Dossier de procédure original *Meroni I*, Meroni's submission, HAEU CJUE-0564, 6 (translation by the author)

[40] Dossier de procédure original *Meroni I*, Response of the High Authority, HAEU CJUE-0564, 5 – quoted in the judgment at p. 138

[41] Case 9/56 *Meroni* (n 1) 142.

It is interesting to note the change in the line of defence in the **High Authority's** rejoinder. The High Authority no longer based its defence on the assertion that it could not intervene in the deliberations of the Brussels agencies, but rather on the automatic application of criteria defined in legislative acts. I quote extensively from the rejoinder:

> 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. If for ascertaining the duty to pay the contribution for each undertaking, the High Authority ought to motivate and to provide updated data for all the undertakings, the technical system operated by the Brussels agencies would be useless.[42]

According to this interpretation, the Brussels agencies simply implemented a technical operation based on the High Authority's general decision. The shift in the argument is evident: The High Authority adopted the conclusions of the agencies not because they were issued by a separate independent body, but because they were technical expressions of criteria already established by law. Arguably, the High Authority realised that shifting responsibility onto the Brussels agencies could be risky and would deprive undertakings of the legal guarantees of judicial protection (as also argued by Meroni – see submission below). Undertakings could neither challenge the decisions of the High Authority nor those of the agencies. Yet, this shift in the reasoning of the High Authority led directly to question the type of delegation granted to the Brussels agencies. As well noted by the **Juge Rapporteur Rueff** in his *rapport*:

> For the High Authority there would be only one, purely mechanic, intermediary between the decision 14/55 and the contested decision, namely a "simple calculation". A reference to the general decision therefore would constitute an adequate statement of reason;
>
> For the applicant, conversely, the application to consumers, individually considered, of the norms of decisions 22/54 and 14/55, require choices involving large discretion. It does not accept that this discretion eludes the judicial control of the Court of Justice.[43]

Both the **AG** and the **Court** argued that the High Authority's individual decision lacked the supporting reasons that would make judicial review possible and thus constituted an infringement of essential procedural requirements. It must be noted that the judgement of the **Court** refers extensively to the High Authority's defence, but mainly to its response, in particular as regards the relation of the High Authority to the Brussels agencies. The initial arguments were, incidentally, never directly dismissed by the High Authority but only qualified in the rejoinder. The change of strategy can thus only be fully appreciated when reading the two unpublished submissions of the High Authority contained in the *dossier*.

c) Second submission: Misuse of powers

In its second plea, **Meroni** argued that the implementation of the equalisation system did not respect the recommendations of the Council in his *avis conforme* to the decision 14/55. It contended that the system had resulted in discrimination against smaller undertakings and that the data taken as the reference point to fix the equalisation rate were not realistic. In particular it claimed that the average prices of ferrous scrap available on the internal market had been lowered, while the average prices for imported ferrous scrap had been increased, leading to

[42] Dossier de procédure original *Meroni I*, High Authority's rejoinder, HAEU CJUE-0564, 12-13 (translation by the author)

[43] Dossier de procédure original *Meroni I*, Report of the Juge Rapporteur, HAEU CJUE-0565, 35 (translation by the author)

the 'dominance of big and medium enterprises on the undertakings which have limited financial resources and rely for their supply on the internal market'.[44]

The **High Authority** initially built its defence on the impossibility of challenging the decisions of the Brussels agencies once they were adopted. It argued that any misuse of power had to be attributed to the deliberations of the Brussels agencies. However, these deliberations could no longer be challenged since the High Authority representative did not raise any objection when they were adopted.

> It cannot be admitted that the decision of the Brussels agencies, once unanimously adopted and without reservations being raised by the HA representative, remains exposed to possible variations unilaterally imposed by the HA.[45]

Meroni easily turned the consequences of the High Authority's argument in its favour. Noting in its reply that the illegitimacy of the Brussels accounts was at the heart of the illegality of the High Authority's decision, Meroni reiterated that the legal guarantees of the undertakings were denied if there was no possibility to challenge the decisions of the Brussels agencies or those of the High Authority. It argued:

> as there is no possibility to challenge by law the Brussels accounts (which are by the way unfair), one must deduce that the undertaking can only wait for the subsequent decision of the High Authority to take legal action. However, if in the proceedings it is to hold that the Brussels accounts are… taboo… and if this objection were to be accepted, one would also have to admit that the undertaking has been denied any possibility to defend itself.[46]

In addition, Meroni went one step forward, suggesting that if the reasoning of the High Authority were accepted, the Brussels agencies would enjoy powers which were wider than those given by the Treaties to the High Authority itself: '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'. [47]

Once again, in the **High Authority's rejoinder** we witness a strategical change. The High Authority abandoned its initial defence strategy, fully centred on the argument that it had simply reproduced the deliberations of the Brussels agencies and was therefore not to be blamed for any error committed by these bodies. Instead, the High Authority stood up for the equalisation system, noting that it was working well and that there was no reason to intervene. It also observed that the system was actually helping undertakings such as Meroni, because in its absence prices would adjust significantly upward to the importation level.

The **Court** built its reasoning on power delegation upon this second plea. The judgment reflected the arguments of the parties, but it adapted them substantially to meet its needs. The Court reinterpreted Meroni's argument as a claim contesting the illegality of the delegation of powers: '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'.[48] Similarly it reformulated the complaint of discrimination as a question about the extent to which powers may be delegated to external entities.[49] This step led the Court to

[44] Dossier de procédure original *Meroni I*, Meroni's submission, HAEU CJUE-0564, 13 (translation by the author)

[45] Dossier de procédure original *Meroni I*, Response of the High Authority, HAEU CJUE-0564, 6 (translation by the author)

[46] Dossier de procédure original *Meroni I*, Meroni's reply, HAEU CJUE-0564, 44.

[47] Ibid.

[48] Case 9/56 *Meroni* (n 1) 146.

[49] ibid.

address the discretionary nature of the power delegation and the principle of institutional balance.

d) Third submission: Manifest failure to observe the provisions of the Treaties

Meroni alleged an infringement of Article 47 of the Paris Treaties, according to which the High Authority must publish the data 'that may be useful to governments or to any other interested parties'. It claimed that the Italian companies had long been kept uninformed about the final equalisation rate. Therefore they were obliged to fix their prices without taking due account of that rate, which eventually reached the level of representing 30% of the transformation cost. Meroni objected that the undertakings should have been informed promptly and exactly regarding the amount to pay rather than provisionally and after many months.

In the response, the **High Authority** observed that the very concept of an equalisation system required that the elements needed to fix the rate of contribution could only be determined *ex post*. Meroni had been duly and regularly informed of the sum that was due and of the elements on which the sum was calculated, taking into account the constraints of the system and an 'elementary respect for commercial secrecy'.

The Court analysed this third submission before the misuse of powers and resolved it relatively quickly in Meroni's favour. Indeed, it also emerged from the *dossier de procédure* that the High Authority and the Brussels agencies informed Meroni (and the Court) of the exact formulae used to calculate the rate of contribution only after the Court's repeated requests.[50]

5.2.2 The report of the Juge Rapporteur Rueff

The report of the Juge Rapporteur was not publicly available before the opening of the Court's archives. It helps to clarify the context and some legal aspects of the case that were rather confused in the parties' submissions. In particular, Rueff notes the fact that the submissions were directed partly against the individual decision of the High Authority, partly against the deliberations of the Brussels agencies, and partly against the general decision of the High Authority. His interpretation of the parties' arguments likely informed the Court's reasoning, which built on the clear distinction between the different types of decisions at stake in the litigation.

More importantly, the report of the Juge Rapporteur was instrumental in identifying that the fundamental legal question was the relationship between the High Authority and the Brussels agencies, thus hinting at the issue of power delegation. It also established a link between the High Authority's defence and the need to examine the role of the Brussels agencies. 'The High Authority did not answer all the complaints raised by Meroni, considering these complaints as somehow directed against a third party, namely the Brussels agencies.'[51] And he concludes: 'Thus the role played by the Brussels agencies, even if they are not parties in the case, constantly emerges during the procedure'.[52]

---

[50] Dossier de procédure original *Meroni I,* High Authority's submission of additional answers to the Court's questions HAEU CJUE-0565, (DOC 12 of the instruction phase in the table below)

[51] Dossier de procédure original *Meroni I*, Report of the Juge Rapporteur, HAEU CJUE-0565, 4 (translation by the author)

[52] Ibid.

5.2.3 Reassessing the Court's reasoning in the light of the parties' submissions

This last section of the content analysis focuses on the judgment itself. It highlights how the arguments of the parties are reflected in the legal reasoning, the discrepancies between the final judgment and the *dossier de procédure* and which arguments the Court introduced on its own initiative. It brings forward two main considerations, concerning respectively, the Court's reinterpretation of the parties' arguments and the Court's choice to resort to the principle of institutional balance.

The reinterpretation of the parties' arguments

Overall, the arguments of the parties are reflected in the Court's judgment. The Court mentioned all the key issues raised by the *mémoires* or emerged during the proceedings. However, the importance given to these arguments varies significantly. Whereas most of the parties' arguments and evidence focus on the statement of reasons, on the methods of calculation and on the failure to publish data, the Court shifted the focus to the delegation of power. To be sure, the judgment annuls the two individual decisions on the grounds of inadequate statement of reasons and failure to publish relevant data. However, the main – and longest - part of the judgment is devoted to the third submission on misuse of powers. In its treatment of this plea, the focus of the Court had little to do with Meroni's original complaints and reformulates them significantly. For instance, the applicant argued extensively on the misuse of power, albeit almost exclusively advancing a failure to observe the recommendations of the Council. The Court dismissed this argument in three paragraphs, noting that it was not necessary to examine it because the decision had to be annulled for other reasons. Instead, the issue of power delegation, which is central in the judgment, was only incidentally mentioned by Meroni (but it was well developed by the Advocate General).

Equally, as the examination of the individual submissions has extensively shown, the judgment mainly referred to the arguments of the High Authority's first defence, whereas it barely quoted from the rejoinder, which shifted the line of defence considerably. The Court based its line of reasoning on the arguments regarding the relationship between the High Authority and the Brussels agencies contained in the response. It remains an open question what the Court's position would have been had the High Authority adopted the rejoinder's line of defence from the beginning or if the Court had considered the arguments put forward in the rejoinder rather than those of the response.

The Court's own arguments

Secondly, the Court introduced its own legal arguments in the case. The examination of the *dossier* shows that the conclusions of the Court do not necessarily stem from the arguments of the parties. Obvious shortcomings emerge in terms of judicial protection in the activities of the Brussels agencies: the invoices sent to Meroni did not match the final sum required; several different criteria were considered in the calculation of the rate of contribution, of which Meroni was not informed; the formulae used for the calculation of the rate are mind-bending and were only disclosed during the course of the litigation. Considering the economic context and the importance of these calculations for steel undertakings, the High Authority had little chance of success.

However, the Court could have just annulled the decision for lack of statement of reasons, or it could have, as suggested by the Advocate General, concluded that the delegation of power was illegal because it did not uphold necessary judicial protection guarantees. The Court, instead, went beyond what was strictly necessary to resolve the dispute and introduced some legal arguments of its own. The last part of the judgment (from page 151, point c: when the Court examines the extent of the power delegation) contains arguments that are nowhere to be found in the course of the proceedings. The Court attached stringent conditions on the

delegation of power to external bodies: delegation was only allowed if it involved 'clearly defined executive powers the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the delegated authority'. In addition, it connected these conditions to the principle of institutional balance, as a 'fundamental guarantee granted by the Treaty' to undertakings.[53]

5.3 Actors and institutions

Some of the actors in the *Meroni* case were well-known lawyers and professors, who continued to influence the evolution of the Court's jurisprudence in the coming years. Identifying the main actors of the case is important especially because *Meroni* is one of the early cases and precedes the season of 'constitutionalisation' of the EU legal order, which started in the 1960s with *Van Gend en Loos* and *Costa vs Enel*. Some of the actors in Meroni went on to have prominent roles in the new Court's leadership. Table 4 summarises the main actors. More detailed information on their background and profiles are provided below.

Table 4: Summary of main actors of the Meroni case

Actor	Role	Observations	Impact on EU jurisprudence
Meroni	Applicant	Most active private undertaking in front of the CJEU	low
Arturo Cottrau	Lawyer of the applicant	Most active euro-litigant in the early years	low
Giulio Pasetti	Agent of the High Authority	Active HA's and Commission's legal agent	low
Antonio Trabucchi	Advisory agent of the High Authority	As CJEU judge he will be key actor of constitutional turn of the CJEU (Van Gend en Loos) and then AG in important cases	high
Karl Roemer	Advocate General	Longest serving AG. Will issue opinions in important cases (Nold, Dassaonville, Defrenne)	high
Jacques Rueff	Juge Rapporteur	Well-known French economist, important influence in focusing the Court on competition and internal market	medium
The judges of the ECSC Court	The Court	Rather low-profile Court with an economic focus and an heterogenous composition	medium

Meroni: The steel companies Meroni & Co Industrie Metallurgiche were two medium-size steel companies active on the Italian market.

[53] Meroni (n 1) 152

- **Meroni** was perhaps the most active private litigant before the CJEU in the early days of the ECSC, but also later on in the 1960s. According to data gathered by Vauchez and Marchand, it was among the ten major actors before the CJEU during the period 1954-1978.[54]
- Similarly, **Arturo Cottrau**, Meroni's lawyer, was one of the most active euro-litigants until 1963. He specialised in ECSC pricing and represented several Italian coal and steel companies in over sixty proceedings before the Court of Justice.[55] *Meroni* was one of his first cases and by far the most important.

The High Authority: The High Authority was represented by its agent Giulio Pasetti. Starting from the rejoinder, Pasetti was assisted by Professor Alberto Trabucchi. This fact is relevant especially considering the change in the High Authority defence strategy between the response and the rejoinder. Trabucchi may have had a role in shifting the arguments of the High Authority towards a 'less risky' position than the one originally adopted by the High Authority.

- **Giulio Pasetti** was a High Authority official and was an agent for the High Authority in several Court cases during the 1950s and 1960s. He was a former student of Prof. Trabucchi and he invited Trabucchi to plead in front of the Court for the High Authority.[56] Together Pasetti and Trabucchi also edited a European Law Book "*Codice delle Comunità europee*"[57].
- **Antonio Trabucchi** was a renowned private law Professor (Padoua University). Following several cases before the ECSC Court, organised by his former student and agent of the High Authority's legal service Pasetti, Trabucchi was nominated to become a judge of the CJEU. Despite his modest expertise in EC law and his private law focus, his appointment was supported by the Italian government, thanks to his brother Giuseppe Trabucchi, who, at the time of Antonio's appointment, was Finance Minister, and to the foreign affairs Minister Antonio Segni, who was also a private law lawyer. Trabucchi served as a judge from 1962 and Advocate General between 1973 and 1976.[58] Although his appointment initially received a lukewarm welcome because of his comparative lack of expertise in European law,[59] he had an influential role on the Court throughout his career. He joined the bench right at the moment of the Court's ideological shift towards a proto-federal agenda. In the landmark judgment of *Van Gend en Loos* he was instrumental in pushing for a constitutional interpretation of the Treaties.[60] Subsequently, he was Juge Rapporteur in *Walt Wilhelm* and Advocate General in important cases, such as *Nold*, *Dassonville* and *Defrenne*. In *Meroni*, his specialisation in private law arguably pushed him to recognise the importance of the legal protection of private companies in

---

[54] Christele Marchand and Antoine Vauchez, 'Lawyers as Europe's Middlemen: A Sociology of Litigants Pleading to the European Court of Justice' in Jay Rowell and Michel Mangenot (eds), *A political sociology of the European Union: Reassessing constructivism* 74 (2010).

[55] ibid 75, 78.

[56] Fritz (n 13) 326.

[57] Giulio Pasetti and Alberto Trabucchi, *Codice Delle Comunità Europee* (1962).

[58] Fritz (n 13) 325–329.

[59] ibid 64.

[60] Trabucchi's role in the Van Gen den Loos "new legal order" is studied by M. Rasmussen in detail. Morten Rasmussen, 'Law Meets History. Interpreting the Van Gend En Loos Judgment' in Fernanda Nicola and Bill Davies (eds), *EU law stories contextual and critical histories of European jurisprudence* (2017); Bill Davies and Morten Rasmussen, 'From International Law to a European Rechtsgemeinschaft: Towards a New History of European Law, 1950-1979' in Johnny Laursen (ed.), *The institutions and dynamics of the European Community, 1973-83* (2015).

the internal market and thus to shift the position of the High Authority towards a more sensitive line of reasoning.[61]

The Court was presided by M. Pilotti (IT) and composed of the judges A. van Kleffens (NL), L. Delvaux (BE), P. J. S. Serrarens (NL), O. Riese (DE), J. Rueff (FR), and Ch. L. Hammes (LU). **Jacques Rueff** was the Juge Rapporteur (see below) and the German **Karl Roemer** was Advocate General (see below). This was the very first Court of Justice. It was a *sui generis* Court with regard to its composition and heterogeneity. Only Pilotti, Hammes and Riese were renowned judges in their home countries. The rest of the Court was composed of lawyers who had been active in politics (Delvaux), public officials (Van Kleffens) trade unions (Serrarens), and even an economist (Rueff).[62] Overall, this heterogenous group of judges and the activities of the ECSC have led scholars to consider the first Court of Justice as a 'specialised economic Court', that limited itself mainly to trade litigation.[63] Starting its activities right after the failure of the *European Defence Community*, the time was rather unfavourable for making high supranational leaps. The Court mostly dealt with commercial and economic issues linked to the coal and steel market, generally proposing a literal interpretation of the Treaties. According to Vauchez and Fritz, these early judgments were rather 'unspectacular' and the technical nature of the Court's composition and activities made it unfit to pronounce grand legal principles.[64] As noted above, this rather negative view of the ECSC Court's jurisprudence seems not to take account of *Meroni*, where important and innovative legal principles were formulated.

- **Jacques Rueff** was judge at the Court of Justice for 10 years from 1952 to 1962. He was a renowned economist with liberal views. Before joining the bench, he was a professor, worked at the Secretariat of the Society of Nations, was Vice-Governor of the Banque de France, and covered important advisory positions for the French Government before and after the war. In 1958, at the beginning of his second mandate at the Court, Rueff was appointed by French President De Gaulle to preside over a committee of experts to implement an economic recovery plan.[65] He wrote several books on monetary stability and political economy. Because of his professional experience and economic expertise, Rueff was very influential in theorising the expansion of the internal market and in promoting monetary and financial stability.[66]

Rueff was appointed Juge Rapporteur in the *Meroni* case arguably because of his economic expertise. His interpretation of the case influenced the Court (see above section 5.II.ii). In particular, concerns about fair competition may have played a role in directing the focus on the Brussels agencies and on the judicial protection of enterprises, whereas the attention to efficient bureaucratic structures probably underpinned the Court's stance on power delegation.

- **Karl Roemer:** One of the longest-serving Advocates-General, the German lawyer Karl Roemer served in this position from 1953 to 1973. He started his career as a banker, and he was called to administer several banks in the occupied territories in France during the

[61] This also emerges when reading Trabucchi's intervention in Meroni's oral hearing that can be consulted at the historical archives of the European Commission in Brussels. Trabucchi reiterates there the importance of judicial protection of undertakings and the responsibilities of the High Authority in controlling the Brussels agencies. See Historical Archives of the European Commission (n 30).

[62] Fritz (n 13) 33–43.

[63] Vauchez (n 13) 76.

[64] Fritz (n 13) 140; Vauchez (n 13) 76–77.

[65] Fritz (n 13) 302–309.

[66] Christopher S Chivvis, *The Monetary Conservative: Jacques Rueff and Twentieth-Century Free Market Thought* (2010); Frédéric Teulon and Bruno Fischer, 'L'analyse libérale des crises financières: un hommage à Jacques Rueff', 189 Vie sciences de l'entreprise 46 (2011).

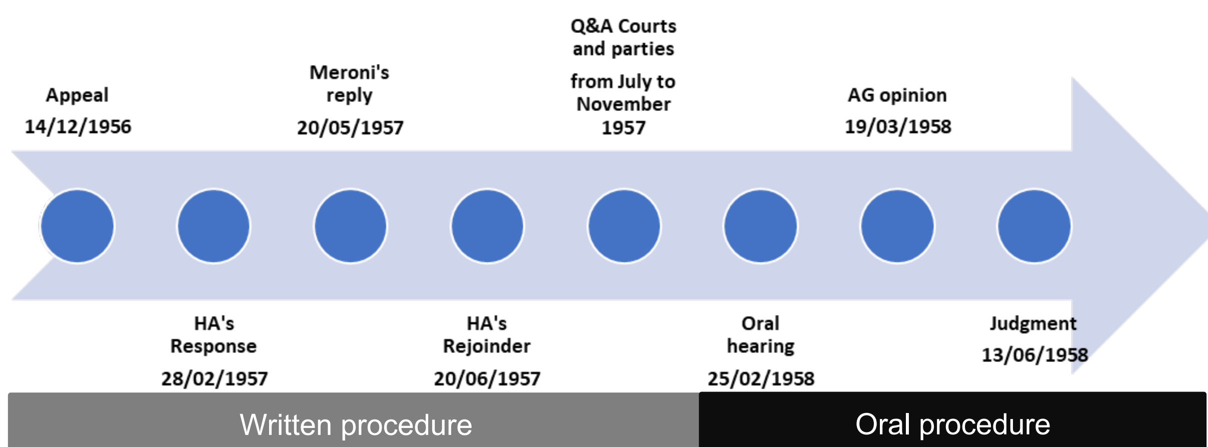
war. From 1953 to 1958 he submitted 11 opinions to the Court, which were almost always followed. Also in *Meroni*, his observations about judicial protection and concerns about delegations of power that would not uphold the legal guarantees established by the Treaties were adopted by the Court'. Later, when the ECSC Court became the CJEU of the European Communities, Roemer was AG in important cases, such as *Van Gend en Loos*, *Plaumann* and *Continental Can,* albeit not always with the same success rate. Indeed, he was known for a rather cautious approach to the Court's new narrative about the constitutional legal order.[67]

5.4 Procedure & case management

The *Meroni* judgment was handed down at the end of the experience of the Court of the ECSC, which, shortly thereafter became the unified Court of the European Communities. It is worth noticing that the early days of the ECSC Court were marked by a low workload in terms of cases handled, yet also by a sort of pioneering spirit. As described by V. Fritz, the Court's location in Luxembourg was still provisional and the Court needed several years to adapt and settle in, also in terms of procedures, having adopted its internal rules of procedure in 1953.[68]

In spite of this, *Meroni's* case management and its timeline appear to be rather straightforward. Overall, the case lasted less than two years and advanced regularly through the different procedural stages. Figure 1 shows the progression of the case. The written procedure lasted one year, whereas four months elapsed between the oral hearing and the judgment.

Figure 1: Timeline of Meroni



In terms of procedure, three main elements are worth further consideration, and they concern the parallel handling of *Meroni I* and *Meroni II*; the clarifications repeatedly asked by the Court to the parties; and the association of an external advisor to the High Authority's defence.

First, as I mentioned above, the two cases*, Meroni* I and *Meroni II* were not joined. However, they are very similar. The main difference is a submission in case 9/56 which is not present in case 10/56. This is due to the fact that in 10/56 the Brussels agencies did not proceed to any

[67] Antoine Vauchez, 'The Evolution of European Law into a "Constitutional" Legal Order', EUI Working Paper RSCAS 10/2008 (2008).

[68] Fritz (n 13) 2 and 54–55.

lump-sum assessment and therefore the arguments about the right of the agencies to proceed to an assessment on their own only features in case 9/56.

The procedures for the two cases run in parallel. The dates of submissions, correspondence and hearings are the same. The oral arguments were submitted jointly. The AG and the JR both issued one single report on the two cases highlighting the differences. The AG considers extensively the additional submission of the case 9/56 regarding the assessment of the Fund in its own authority. Yet the difference between the two Court's judgements is negligible. Accordingly, the two *dossiers de procédure* are almost identical, both in terms of documents and content of the submissions. However, a comparison between the two is useful in order to shed some light on the documents' redacted or missing pages. In particular, we can assume that some of the redacted materials from 9/56 contained the preliminary report (*rapport préalable*) for the instruction that is mentioned in the dossier 10/56 and we can find in the latter some pages missing from Meroni's answers to the questions of the Court in 9/56.

Secondly, during the proceedings the Court asked the parties some specific questions. Finding the answers insufficient, it subsequently asked for additional clarifications. The *dossiers* contain both the questions and the answers of the parties. The Court asked Meroni questions regarding the calculations and the sums contested; It asked the High Authority to specify how the calculation of the contribution rate was performed. In case 9/56 the Court also asked the High Authority to provide the legal norms according to which the Brussels agencies proceeded to an assessment on their own authority. These questions and answers can help to gauge the interest of the Court and the leads it intended to follow.[69] In addition, the Q&A provided the parties with two further opportunities to submit or reinforce their arguments with additional evidence.

Finally, an interesting procedural aspect which has to do more with the High Authority than with the Court itself is the association of Prof. Trabucchi as an external agent to the High Authority's defence. Trabucchi was indeed asked to intervene in the case in the summer 1957. According to several sources, this was a usual habit for the European executive in its early days. Marchand and Vauchez note that initially EC legal advisors had little authority, especially compared to their national counterparts and often looked for external support from equally influential national law practitioners'.[70] Thus, Trabucchi had pleaded 11 times for the European institutions between 1956 and 1960.[71] This procedural aspect is important, because, as I have argued extensively, Trabucchi was instrumental to the shifting approach of the defence of the High Authority towards a strategy that was more in line with judicial protection. However, the Court preferred to focus on the first line of defence of the High Authority, thus making Trabucchi's arguments an example of a 'path not taken' by the Court's judgment.

---

[69] As an example, in case 9/56 the answer of the High Authority is important to determine on what legal basis the agencies were acting. As the HA answers that it was a decision of the same Fund that allowed to proceed to an estimate, the Court accordingly rules that this was not a sufficient legal basis, because: *"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." Case 9/56 Meroni* (n 1), *150.*

[70] Marchand and Vauchez (n 54) 79.

[71] ibid 85, footnote 10.

5.5 Use of evidence and legal sources

5.5.1 Evidence

It must be noted that the nature of the contention is primarily of a technical nature, as shown by the large amount of technical evidence present in the *dossier* (see table 1). Accordingly, most arguments of the parties deal with technical estimations and methods of calculations. They concern the need to clarify how the equalisation rate and the average prices of ferrous scrap have been determined by the Brussels agencies and whether their actions were legitimate. The whole litigation is about these technical data. The importance of these data is also confirmed by the fact that the Court asked to be provided with extra information on calculations and criteria during the proceedings (See dossier DOC 1 and 2 Q&A).

Despite the large amount of space that the discussion of technical evidence takes up in the proceedings, the Court's judgment made limited use of it and focused mainly on the legal relation between the High Authority and the Brussels agencies. The Court did not make a ruling as to whether the calculations were right, whether the reference criteria were discriminatory or whether data were communicated in a timely manner. Whereas the AG considered some of the evidence submitted by the parties when assessing the technical nature of the fixing of the rate of contribution (in particular it quotes the formula used to calculate the rate),[72] the Court only examined the legal provisions of Decision 14/55 to conclude that the delegation implied the exercise of discretionary powers.[73] In addition, Meroni's submissions extensively argued that the estimations and reference prices determined by the Brussels agencies were wrong and claimed that this had resulted in discrimination against small undertakings. This controversy is mentioned in the judgment *en passant*. The Court observed that 'it is not possible to examine whether the applicant's allegations are well founded in view of the inadequacy of the reasons stated…' and that 'for the purposes of the present application that examination is not necessary'.[74]

The fact that technical issues mentioned in the proceedings barely feature into the judgement is arguably due to the interest of the Court in the legal core that underpins the litigation. Hence, as the Court shifted the matter of contention from the facts to the principles, it did not deem it necessary to extensively consider the data available. The judgment is not about this; It is about the legal protection of the undertakings and the legitimacy of the delegation of certain powers to a non-Community body.

5.5.2 Legal sources

The abundance, and importance, of evidence resonates with the technical focus of the activities of the ECSC Court, which was mainly composed of members selected on the basis of their economic and technical competences (economists, trade unionists or high-level officials specialised on economic matters. (See section on 'actors' above for more details.)[75] Accordingly, the legal sources cited in *Meroni* are mostly limited to the Paris Treaty and legislation that derived from it. However, rather than confining itself to a literal interpretation of the Treaties, as several authors have argued the ECSC Court used to do,[76] the Court applied a teleological interpretation. It linked the delegation of power of Article 53 to the objectives set

---

[72] Case 9/56 *Meroni*, Opinion of the AG (n 6) 193.

[73] Case 9/56 *Meroni* (n 1) 152–154.

[74] ibid 146.

[75] Vauchez (n 13) 76–77.

[76] Fritz (n 13) 140.

out in Article 3 and from there derived the principle of institutional balance as well as a doctrine of limited power delegation. In this respect it is also interesting to note the interpretation brought forward by the Court (and the AG) of Article 36 of the ECSC Treaty to support Meroni's standing to challenge a general decision of the High Authority and to declare the action admissible (see Arguments and Legal Reasoning).

In addition to Community law, reference was occasionally made during the proceedings to domestic law. AG Roemer built his interpretation of the legal framework for power delegation on domestic economic law, arguing that in a State founded on the rule of law, legal protection must attach to the delegated authority.[77] Moreover, the parties often referred to Italian doctrine or jurisprudence. This is not surprising as the applicant was an Italian company and the High Authority was defended by two Italians agents. The impact of such references on the judgement and the case in general was negligible. Yet it confirms that domestic law was generally important in the early years of the Court's activity. A. Cohen has noted that the early European judges were prominently domestic law experts rather than international law experts, and that this is reflected in the 'internalistic' conception of the Community legal order.[78] It should not be forgotten that Trabucchi himself was primarily a private law lawyer and Giulio Pasetti, the High Authority's agent, had been his student (see for more information section on actors).

6. Concluding reflections on the added value of the *dossier*

The *Meroni doctrine* remains one of the most controversial developments in the jurisprudence of the Court of Justice for its institutional implications and its impact on the EU legal system. The analysis of the materials contained in the *dossier de procédure* can help us to look behind the scenes to understand what motivated the parties and the Court, thus offering an innovative perspective on the judgment. As noted by F. Di Donato 'what constitutes a judicial fact depends not only on the norms that qualifies the event in legal terms, but also on the perspectives and on the roles played by the actors concerned and by the community to which they belong, as well as by the context within which the facts take shape'.[79] Reconstructing *Meroni's* 'story' appears even more important as it is an old and very technical case, the context of which has been largely lost over time. The CJEU *dossier de procédure* provides the first tools to understand the judgment and the value of the law as interconnected to its context and not as a detached legal principle.

The report so far has attempted to highlight the distinctive elements of the *dossier*, shedding new light on the litigation strategies of the parties and on the judgement itself. As a conclusion, I would like to stress four main observations that have emerged from the analysis.

First, it cannot go unnoticed that at a first screening of the documents the litigation and the arguments of the parties are not about delegation, nor about institutional balance – the two things for which the judgment is mostly known. These issues are brought into the dispute incidentally, mostly because of the High Authority's defence strategy, which insisted on the impossibility of reviewing the decisions of the Brussels agencies. The issue of delegation was then picked up by the AG and the Court at a later stage. Mostly, power delegation was linked to the need to uphold the legal guarantees of the undertakings, which would be deprived of their rights if the interpretation of the High Authority had been accepted. The analysis of the

---

[77] Case 9/56 *Meroni*, Opinion of the AG (n 6) 190.

[78] Antonin Cohen, 'Dix personnages majestueux en longue robe amarante. La formation de la cour de justice des communautés européennes', 60 R*evue Francaise de Science Politique* 227 - 241 (2010).

[79] Flora Di Donato, *The Analysis of Legal Cases : A Narrative Approach* (2020) 1.

dossier would thus tend to confirm the views of those scholars who have identified judicial protection as the main concern of the case.[80]

Second, the analysis of the *dossier* shows that there is an inherent dynamism in the evolution of the case. The outcome of the case was not "necessary" nor "inevitable". In this sense, as noted by Davies and Nicola, *Meroni* shows that the EU law evolves in a contingent manner.[81] There was a constant reinterpretation of the arguments of the parties in the light of the Court's key concerns. One might say that the reasons for which the Court annulled the High Authority's decision had little to do with the original Meroni complaints. In this light the AG and the JR were instrumental in redirecting the attention of the Court to the legal core of the case: judicial protection and how to guarantee it when powers are delegated. Moreover, the issue of institutional balance does not feature anywhere but in the final judgment. This is an argument that the Court introduced on its own initiative. It was not a necessary or inevitable path. The Court did not have to pronounce itself on the matter. The AG had indeed reached similar conclusions regarding the illegality of the power delegation on the basis of the need to uphold legal guarantees of judicial protection, without introducing any positive rules about the type of delegation at stake. The last part of the judgement is therefore of the Court's own creation.

Third, the *dossier* points to a change in the defence strategy of the High Authority. The response was built upon the argument that the High Authority could not be made responsible for the deliberations of the Brussels agencies. It barely entered into the substance of the controversy. But in the rejoinder the High Authority dropped all references to the independence of the Brussels agencies and focused more on factual evidence (it produces over 40 pieces of evidence) and on the good functioning of the system. What happened between the response and the rejoinder? What led the High Authority to change its strategy so drastically? Meroni's reply may have unveiled the shortcomings of the High Authority's position with respect to judicial protection. However, something else happened: Trabucchi entered the picture. Obviously, these are only conjectures, but it is not unreasonable to conclude that the arrival of Trabucchi had something to do with the change. As the Court barely considered the arguments of the rejoinder and only focused on the initial defence strategy of the High Authority, this shift resulted in a 'path not taken' that could have led the Court to interpret the relationship between the High Authority and the Brussels agencies in a different manner.

Finally, the *dossier* is very useful in shedding light on the context of the dispute, in particular as regards the economic context and the background of the issues. Through the arguments of the parties we get a better grasp on the economic rationale, as well as the potential disruptions of a system that was put in place to help the economic operators in the internal market. The issue was therefore much more political that it might seem at first sight and how it is remembered over fifty years later. Under these circumstances, for the Court it was probably not foremost to determine whether in the specific case of Meroni the High Authority and the agencies provided appropriate justifications for its decisions, or whether the estimations and calculations were right or wrong. Rather, it was much more important to ensure that undertakings still preserved their legal rights in circumstances under which the High Authority had directed another entity to carry out tasks that were part of the High Authority's mandate. Otherwise the Court could have just ruled that the decisions had to be annulled because they were not adequately motivated. Instead it took the effort to review the full delegation process and to determine whether the delegated powers were of a discretionary nature or not. Ultimately, going back to the rationale of the litigation and its economic reasons helps to situate

[80] Chamon, 'EU Agencies: Does the Meroni Doctrine Make Sense?' (n 8); Jacqué (n 21).

[81] Fernanda Nicola and Bill Davies, *EU Law Stories Contextual and Critical Histories of European Jurisprudence* (2017) 3.

Meroni in its proper context. It tells us what the case was about before the shift that resulted in the *Meroni doctrine*.

To sum up, the analysis of the *dossier* does not reveal any shocking incoherence between the judgement and the procedural documents. It however highlights a deviation between the arguments of the parties and the arguments of the Court. It can therefore help to retrace how and on which basis the Court came to formulate the *Meroni doctrine*. This is even more significant if one considers that *Meroni* was formulated by an allegedly low-profile court that 'remained rather shy as regards the big legal principles'.[82] Although it did not go so far as to embrace a constitutional interpretation of the Treaties, the *Meroni* ruling stands out as an early example of the Court's creativity in dissecting important legal principles from the Treaties – a practice that would later characterise the revolutionary generation of *van Gend en Loos* and *Costa/ENEL*. However, *Meroni* cannot entirely be seen as a precursor of the later constitutional turn of the CJEU jurisprudence. On the one hand the focus on legal protection and the principle of institutional balance are cornerstones of the successive Court's jurisprudence and have contributed to the advancement of a progressive vision of EU law grounded in an alternative principle to the traditional separation of power to safeguard legal guarantees. On the other hand, the doctrine of limited-delegation reflects a rather conservative approach to the interpretation of power delegation and of the role of EU institutions, which relies upon a rather problematic and inflexible distinction between discretionary and clearly defined executive powers.

[82] Vauchez (n 13) 76.

Annex: Table of content of the *dossier* and list of documents

Dossier de procédure original: Meroni I -Historical Archives of the European Union - CJUE 0564 and 0565

Document N° - ECJ Reference	Type of document	Author	Date	N° of pages	*Dossier* Index
Written procedure					Vol. 1, p. 3
Doc 1 *(1363)*	Submission of complaint by MERONI & C. Industrie Metallurgiche S.p.a. (Meroni)	Meroni	14/12/1956	20	Vol. 1, p. 4
Annex 1	*Power of Attorney for Mr. Arturo Cottrau*			*2*	*Vol. 1, p. 24*
Annex 2	*Decision of the High Authority of 24 October 1956*			*2*	*Vol. 1, p. 27*
Annex 3	*Certificate of Aldo Meroni's powers as Meroni's CEO*			*1*	*Vol. 1, p. 29*
Annex 4	*Statute of Meroni*			*9*	*Vol. 1, p. 30*
Annex 5	*Certificate of inscription of Mr Cottrau to the Italian Bar*			*1*	*Vol. 1, p. 40*
Doc 2 (1377)	Transmission of the complaint to the HA	ECJ	17/12/1956	2	Vol. 1, p. 41
Doc 3 (1397)	Power of Attorney for Prof. Giulio Pasetti as Commission's agent	HA	9/01/1957	1	Vol. 1, p. 43
Doc 4 (1398)	Request for postponement of deadline to submit the response	HA	8/01/1957	1	Vol. 1, p. 44
Doc 5 (1403)	Order postponing the deadline to submit the response	ECJ	11/01/1957	1	Vol. 1, p. 45
Doc 6 (1407)	Transmission of Order for postponement to Meroni	ECJ	11/01/1957	1	Vol. 1, p. 46
Doc 7 (1408)	Transmission of Order for postponement to the HA	ECJ	11/01/1957	1	Vol. 1, p. 47
Doc 8 (1427)	Assignment of the case to the 1st chamber	ECJ	31/01/1957	1	Vol. 1, p. 48
Doc 9 (1433)	Appointment of Judge Rueff as Juge Rapporteur	ECJ	31/01/1957	1	Vol. 1, p. 49
Doc 10 (1444)	Declaration of domicile in Luxembourg	Meroni	04/02/1957	1	Vol. 1, p. 50

Doc 11 (1469)	Submission of response	HA	28/02/1957	13	Vol. 1, p. 54
Annex 1	*Letter of Meroni to the High Authority of 12/04/1956 (translation in French – original not available)*			*3*	*Vol. 1, p. 51*
Doc 12 (1473)	Order setting deadline for reply	ECJ	28/02/1957	1	Vol. 1, p. 67
Doc 13 (1477)	Transmission of order setting deadline for reply to Meroni (two copies)	ECJ	1/03/1957	2	Vol. 1, p. 68
Doc 14 (1478)	Transmission of order setting deadline for reply to the HA	ECJ	1/03/1957	1	Vol. 1, p. 70
Doc 15 (1529)	Request for postponement of the deadline for reply	Meroni	16/03/1957	1	Vol. 1, p. 71
Doc 16 (1536)	Agreement to postponement	HA	20/03/1957	1	Vol. 1, p. 72
Doc 17 (1547)	Order postponing the deadline for reply	ECJ	29/03/1957	1	Vol. 1, p. 73
Doc 18 (1551)	Transmission of order postponing the deadline for reply to Meroni	ECJ	29/03/1957	1	Vol. 1, p. 74
Doc 19 (1552)	Transmission of order postponing the deadline for reply to the HA	ECJ	29/03/1957	1	Vol. 1, p. 75
Doc 20 (1706)	Submission of reply	Meroni	20/05/1957	55	Vol. 1, p. 76
Annexes 1 to 22	*List of annexes and annexes, including:* • *Letters of the HA and Campsider to Meroni* • *Invoices from steel companies*			*30*	*Vol. 1, p. 132*
Doc 21 (1709)	Order setting the deadline for the rejoinder	ECJ	20/05/1957	1	Vol. 1, p. 162
Doc 22 (1712)	Transmission of order setting the deadline for the rejoinder to Meroni	ECJ	20/05/1957	1	Vol. 1, p. 163
Doc 23 (1715)	Transmission of order setting the deadline for the rejoinder to the HA	ECJ	20/05/1957	1	Vol. 1, p. 164

Doc 24 (1797)	Rejoinder of the High Authority	HA	20/06/1957	24	Vol. 1, p. 165
Annexes 1 to 40	*List of annexes and annexes, including:* • *Letters of Campsiders to Meroni* • *Graphs and tables on average prices and purchases of ferrous scrap*			*73*	*Vol. 1, p. 189*
Doc 25 (1800)	Transmission of rejoinder to Meroni	ECJ	20/06/1957	1	Vol. 1, p. 262
Doc 26 (1826)	Letter from the HA joining two additional letters to the annexes of the rejoinder (campsider letters)	HA	25/06/1957	3	Vol. 1, p. 263
Doc 27 (1827)	Transmission of the HA's communication to Meroni	ECJ	26/06/1957	1	Vol. 1, p. 266
Doc 28 (1862)	Power of Attorney for Prof. Alberto Trabucchi as agent of the HA assisting Prof. Pasetti	HA	15/07/1957	2	Vol. 1, p. 266
Doc 29 (1865)	Transmission of the Power of Attorney for Prof. Alberto Trabucchi to Meroni	ECJ	18/07/1957	1	Vol. 1, p. 267
Q&A					Vol. 2, p. 3
NB: Pages from 4 to 18 of the original file are not available for public consultation					
Doc 1 (1887)	Transmissions of questions by the Court to the parties to Meroni	ECJ	18/07/1957	2	Vol. 2, p. 5
Doc 2 (1888)	Transmissions of questions by the Court to the parties to the HA	ECJ	18/07/1957	2	Vol. 2, p. 7
Doc 3 (1894)	Request for postponement of deadline to submit answers to Court's questions	HA	26/07/1957	1	Vol. 2, p. 9
Doc 4 (1896)	Communication to the HA of postponed deadline for submitting the answers to the Court's questions	ECJ	26/07/1957	1	Vol. 2, p. 10
Doc 5 (1899)	Communication to Meroni of postponed deadline for submitting the answers to the Court's questions	ECJ	26/07/1957	1	Vol. 2, p. 11
Doc 6 (1903)	Submission of answers	Meroni	19/08/1957	13	Vol. 2, p. 12

	NB: some pages missing from file / See 10/56 for reference				
Doc 7 (1908)	Transmission of Meroni's answers to the HA	ECJ	21/08/1957	1	Vol. 2, p. 24
Doc 8 (1986)	Submission of answers	HA	30/09/1957	5	Vol. 2, p. 25
Doc 9 (1988)	Transmission of HA's answers to Meroni	ECJ	30/09/1957	1	Vol. 2, p. 30
Doc 10 (2017)	Request for specification from the Court to the parties (to Meroni)	ECJ	07/10/1957	1	Vol. 2, p. 31
Doc 11 (2018)	Request for specification from the Court to the parties (to HA)	ECJ	07/10/1957	1	Vol. 2, p. 32
Doc 12 (2088)	Submission of additional answers	HA	31/10/1957	9	Vol. 2, p. 33
Doc 13 (2093)	Transmission of HA's additional answers to Meroni	ECJ	04/11/1957	1	Vol. 2, p. 42
Doc 14 (2090)	Submission of additional answers	Meroni	04/11/1957	15	Vol. 2, p. 43
Annexes 1 to 6	*List of annexes and annexes including:* • *Estimation of due amount* • *Campsider's letter*			*8*	*Vol. 2, p. 58*
Doc 15 (2096)	Transmission of Meroni's additional answers to Meroni	ECJ	05/11/1957	1	Vol. 2, p. 59
Oral procedure					Vol. 2, p. 67
Doc 1 (2189)	Order setting date of the hearing	ECJ	11/12/1957	1	Vol. 2, p. 68
Doc 2 (2192)	Communication of Order setting the date of the hearing to Meroni	ECJ	12/12/1957	1	Vol. 2, p. 69
Doc 3 (2193)	Communication of Order setting the date of the hearing to the HA	ECJ	12/12/1957	1	Vol. 2, p. 70
Doc 4 (2210)	Order postponing the date of the hearing	ECJ	19/12/1957	1	Vol. 2, p. 71
Doc 5 (2219)	Communication of postponement of oral hearing to Meroni	ECJ	19/12/1957	1	Vol. 2, p. 72

Doc 6 (2295)	Order postponing the date of the hearing	ECJ	06/02/1958	1	Vol. 2, p. 73
Doc 7 (2299)	Communication of postponement of oral hearing to Meroni	ECJ	07/02/1958	1	Vol. 2, p. 74
Doc 8 (2298)	Communication of postponement of oral hearing to the HA	ECJ	07/02/1958	1	Vol. 2, p. 75
Minutes of the oral hearings of 25 February and 19 March 1958, including: • The statement of the parties • The report of the Juge Rapporteur • The Opinion of the Advocate General N.B: The pages from 92 to 147 of the original file are not available for public consultation					
Doc 9	Report of Juge Rapporteur Rueff (in French)	ECJ	25/02/1958	22	Vol. 2, p. 79
Doc 10	Opinion of the Advocate General Roemer	ECJ	19/03/1958	50	Vol. 2, p. 100
Doc 11 (2352)	Communication of date of public reading of AG's conclusions to Meroni	ECJ	06/03/1958	1	Vol. 2, p. 100
Doc 12 (2359)	Communication of date of public reading of AG's conclusions to the HA	ECJ	13/03/1958	1	Vol. 2, p. 101
Doc 13	Judgment by the Court	ECJ	13/06/1958	21	Vol. 2, p. 150
Doc 14 (2649)	Communication of date of judgment to Meroni	ECJ	03/06/1958	1	Vol. 2, p. 171
Doc 15 (2650)	Communication of date of judgment to the HA	ECJ	03/06/1958	1	Vol. 2, p. 172

**Note that the greyscale reflects the code of Table 1 page 12 providing a quantitative overview of the composition of the dossier*

Bibliography

Chamon M, 'EU Agencies: Does the Meroni Doctrine Make Sense?' (2010) 17 Maastricht Journal of European and Comparative Law 281

——, 'EU Agencies between *Meroni* and *Romano* or the Devil and the Deep Blue Sea' (2011) 48 Common Market Law Review 1055

——, 'The Empowerment of Agencies Under the Meroni Doctrine and Article 114 TFEU: Comment on United Kingdom v. Parliament and Council (Short-Selling) and the Proposed Single Resolution Mechanism', (2014) 39 *European Law Review, 380-403*

Chiti E, 'An Important Part of the EU's Institutional Machinery: Features, Problems and Perspectives of European Agencies' (2009) 46 Common Market Law Review 1395

Chivvis CS, *The Monetary Conservative: Jacques Rueff and Twentieth-Century Free Market Thought* (Northern Illinois University Press 2010)

Cohen A, 'Dix personnages majestueux en longue robe amarante. La formation de la cour de justice des communautés européennes' (2010) 60 Revue Francaise de Science Politique 227

Craig P, *EU Administrative Law* (Third edition, Oxford University Press 2018)

Davies B and Rasmussen M, 'From International Law to a European Rechtsgemeinschaft: Towards a New History of European Law, 1950-1979' in Johnny Laursen (ed), *The institutions and dynamics of the European Community, 1973-83* (Nomos Verlagsgesellschaft 2015)

Dehousse R, 'Misfits: EU Law and the Transformation of European Governance' (2002) 2 Jean Monnet Working Paper

Donato FD, *The Analysis of Legal Cases : A Narrative Approach* (Routledge 2020)

European Commission, 'Commmunication from the Commission: The Operating Framework for the European Regulatory Agencies COM(2002) 718 Final' (2002)

Fritz V, *Juges et Avocats Généraux de La Cour de Justice de l'Union Européenne (1952-1972) : Une Approche Biographique de l'histoire d'une Révolution Juridique* (Vittorio Klostermann 2018)

Griller S and Orator A, 'Everything under Control? The "Way Forward" for European Agencies in the Footsteps of the Meroni Doctrine' (2010) 35 European Law Review 3

Jacqué J-P, 'The Principle of Institutional Balance' (2004) 41 Common Market Law Review 383

Lenaerts K, 'Regulating the Regulatory Process: "Delegation of Powers" in the European Community' (1993) 18 European Law Review 23

Lintner P, 'De/Centralized Decision Making Under the European Resolution Framework: Does Meroni Hamper the Creation of a European Resolution Authority?' (2017) 18 European Business Organization Law Review 591

Majone G, 'Delegation of Regulatory Powers in a Mixed Polity' (2002) 8 European Law Journal 319

Marchand C and Vauchez A, 'Lawyers as Europe's Middlemen: A Sociology of Litigants Pleading to the European Court of Justice' in Jay Rowell and Michel Mangenot (eds), *A political sociology of the European Union : reassessing constructivism* (Manchester University Press 2010)

Nicola F and Davies B, *EU Law Stories Contextual and Critical Histories of European Jurisprudence* (Cambridge University Press 2017)

Pasetti G and Trabucchi A, *Codice Delle Comunita Europee.* (Giuffre 1962)

Rasmussen M, 'Law Meets History. Interpreting the Van Gend En Loos Judgment' in Fernanda Nicola and Bill Davies (eds), *EU law stories contextual and critical histories of European jurisprudence* (Cambridge University Press 2017)

Schütze R, '"Delegated" Legislation in the (new) European Union: A Constitutional Analysis", 2011) *The Modern Law Review*

Teulon F and Fischer B, 'L'analyse libérale des crises financières: un hommage à Jacques Rueff' (2011) N° 189 Vie sciences de l'entreprise 46

Vauchez A, 'The Evolution of European Law into a "Constitutional" Legal Order' (2008) EUI Working Paper RSCAS 10/2008 European University Institute

——, *L'Union Par Le Droit : L'invention d'un Programme Institutionnel Pour l'Europe* (Presses de la Fondation nationale des sciences politiques 2013)

Vos E, 'Reforming the European Commission: What Role to Play for EU Agencies?' (2000) 37 Common Market Law Review 1113

——, 'European Agencies and the Composite EU Executive' in Michelle Everson, Cosimo Monda and Ellen Vos (eds), *European agencies in between institutions and member states* (Aspen Publishers, 2014)

Vos E and Everson M, 'European Agencies: What About the Institutional Balance?' [2014] Maastricht Faculty of Law Working Paper n° 4

Case 10/56 Meroni & Co, Industrie Metallurgiche S.pA v High Authority [1958]

Case C- 9/56 Meroni & Co, Industrie Metallurgiche S.pA v High Authority [1958] ECLI:EU:C:1958:7

Case C-270/12, United Kingdom v European Parliament and Council of the European Union [2014]

Case C-301/02 P, Carmine Salvatore Tralli v ECB [2005]

Cases T-369/94 and 85/95 DIR International Film Srl and others v Commission [1998]

Joined Cases C-154 & 155/04, The Queen, on the application of Alliance for Natural Health and Others v Secretary of State for Health and National Assembly for Wales [2005]

Opinion of Advocate General Roemer in Case 9/56 Meroni v High Authority [1958]