JUDGMENT OF THE COURT
15 September 1998 *

In Joined Cases C-279/96, C-280/96 and C-281/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between

Ansaldo Energia SpA

and

Amministrazione delle Finanze dello Stato,

and between

Amministrazione delle Finanze dello Stato

and

Marine Insurance Consultants Srl,

* Language of the case: Italian.

and between

GMB Srl and Others

and

Amministrazione delle Finanze dello Stato,

on the interpretation of Community law concerning recovery of sums unduly paid,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, H. Ragnemalm, M. Wathelet and R. Schintgen (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, D. A. O. Edward, J.-P. Puissochet (Rapporteur), L. Sevón and K. M. Ioannou, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Ansaldo Energia SpA, by Maria Costanza, of the Milan Bar, and by Paolo Centore, of the Genoa Bar,

— Marine Insurance Consultants Srl, by Kristian Kielland and Valentino Bassetto, of the Genoa Bar,

— GMB Srl and Others, by Giuseppe Conte and Giuseppe Giacomini, of the Genoa Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Department at the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato,

— the French Government, by Catherine de Salins, Deputy Head of Directorate in the Legal Directorate, Ministry of Foreign Affairs, and Gautier Mignot, Secretary for Foreign Affairs in the same department, acting as Agents,

— the United Kingdom Government, by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, and Nicholas Paines, Barrister,

— the Commission of the European Communities, by Enrico Traversa, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Ansaldo Energia SpA, Marine Insurance Consultants Srl, GMB Srl and Others, the Italian Government, the French Government, the United Kingdom Government and the Commission at the hearing on 3 February 1998,

after hearing the Opinion of the Advocate General at the sitting on 26 March 1998

gives the following

Judgment

1 By three orders in similar terms of 27 June and 19 July 1996, received at the Court Registry on 21 August 1996, the Tribunale di Genova (District Court, Genoa) referred to the Court of Justice for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Community law concerning recovery of sums unduly paid.

2 Those questions were raised in proceedings between the Italian Finance Administration and Ansaldo Energia SpA (hereinafter 'Ansaldo Energia'), Marine Insurance Consultants Srl (hereinafter 'Marine Insurance Consultants') and GMB Srl and 11 other public or private limited companies (hereinafter 'GMB and Others') concerning the *tassa di concessione governativa* (administrative charge) for entering companies on the register of companies (hereinafter 'the registration charge').

3 The registration charge was introduced by Decree No 641 of the President of the Republic of 26 October 1972 (GURI No 292 of 11 November 1972, Supplement No 3, hereinafter 'Decree No 641/72'). It has, in so far as it applies to the registration of documents recording the incorporation of companies, been the subject of successive amendments regarding its amount and periodicity.

4 The amount of the registration charge was first substantially increased by Decree-Law No 853 of 19 December 1984 (GURI No 347 of 19 December 1984), converted into law by Law No 17 of 17 February 1985 (GURI No 41*bis* of 17 February 1985), which also provided that from then on the charge would be payable not only upon registration of the document incorporating the company but also on 30 June of each calendar year thereafter. The amount of the charge was then further altered in 1988

and 1989. In 1989 it amounted to LIT 12 million for public limited companies and partnerships limited by shares, LIT 3.5 million for private limited companies and LIT 500 000 for other companies.

5 In its judgment in Joined Cases C-71/91 and C-178/91 *Ponente Carni and Cispadana Construzioni* [1993] ECR I-1915 (hereinafter '*Ponente Carni*'), concerning the registration charge, the Court held that Article 10 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412) was to be interpreted as prohibiting, subject to the derogating provisions of Article 12, an annual charge due in respect of the registration of capital companies even though the product of that charge contributed to financing the department responsible for keeping the register of companies. The Court also held that Article 12 of Directive 69/335 was to be interpreted as meaning that duties paid by way of fees or dues referred to in Article 12(1)(e) might constitute payment collected by way of consideration for transactions required by law in the public interest such as, for example, the registration of capital companies. The amount of such duties, which might vary according to the legal form taken by the company, was to be calculated on the basis of the cost of the transaction, which might be assessed on a flat-rate basis.

6 Following that judgment, the registration charge was reduced to LIT 500 000 for all companies by Decree-Law No 331 of 30 August 1993 (GURI No 203 of 30 August 1993), converted into Law No 427 of 29 October 1993 (GURI No 255 of 29 October 1993), and it ceased to be payable annually.

7 According to the orders for reference, Ansaldo Energia and GMB and Others brought proceedings before the Tribunale di Genova to secure from the Italian Finance Administration repayment of the sums which they had paid until 1992 in respect of the annual registration charge, plus interest at the legally prescribed rate. For its part, the Finance Administration asked the Tribunale to withdraw or annul the order of its President requiring it to allow a similar claim by Marine Insurance Consultants.

8 The Italian Finance Administration contended that the charge in question was in the nature of fees or dues and was therefore compatible with Directive 69/335. In the alternative, it relied on Article 13 of Decree No 641/72, according to which '[t]he taxpayer may request repayment of charges wrongly paid within a period of three years reckoned from the date of payment, failing which his action shall be barred ...'. It also contended that it was appropriate to apply, pursuant to Article 3 of Decree-Law No 307/94 of 25 March 1994 (GURI No 119 of 24 May 1994), converted into law by Law No 457 of 22 July 1994 (GURI No 171 of 23 July 1994), the interest rate of 3% per half-year in arrears which was applicable to all repayment obligations attaching to the State. According to that provision, '[a]s from the date of entry into force of this decree, the Minister of Finance shall be authorised to determine, by order, the rate of interest to be applied to fiscal debts payable by and to the State, having regard to developments on the monetary and financial market; the provisions referred to by Article 13 of Decree-Law No 557 of 30 December 1993, converted, after amendment, into Law No 133 of 26 February 1994, shall remain unchanged'.

9 In its three orders for reference, the Tribunale di Genova observes that the incompatibility of the registration charge with Articles 10 and 12 of Directive 69/335 emerges clearly from *Ponente Carni*. Furthermore, in judgment No 3458 of 23 February 1996, the Corte Suprema di Cassazione confirmed that the charge in question was not in the nature of fees or dues within the meaning of Article 12 of the directive. In the same judgment the Corte Suprema di Cassazione also held that the registration charge fell within the scope of Article 13 of Decree No 641/72.

10 However, the Tribunale di Genova entertains doubts as to the compatibility of those conditions of repayment with the case-law of the Court on the refunding of charges levied in breach of Community law, in particular its judgment in Case C-208/90 *Emmott* [1991] ECR I-4269.

11 The national court also queries the compatibility with Community law of national provisions which prescribe, for all obligations of repayment incumbent upon the State, an interest rate of 3% per half-year, as from the commencement of proceedings, if it is recognised that the administration acted in good faith. It observes that,

according to the provisions of the Civil Code governing the recovery of sums paid but not due, the legally prescribed rate is 10% per annum and the interest accrues as from the date on which proceedings were commenced if the person who received the payment acted in good faith.

12 The Tribunale di Genova therefore stayed proceedings pending a preliminary ruling from the Court of Justice on the following two questions:

'(1) Is national legislation which sets, in respect of the initiation of proceedings to safeguard a right arising under Community law, a time-limit which starts to run before the correct and complete transposition into national law of the directive conferring that right compatible with Community law?

(2) Is it compatible with Community law to provide a party whose rights are recognised as having been infringed, and to whom repayment of the sums claimed is granted, with a remedial procedure under which the rules as to quantum differ from, and compare unfavourably with, those laid down in respect of actions for repayment between private individuals, and are substantially determined by a measure enacted by the same State authority as that which infringed the injured party's rights by failing to fulfil its obligations?'

The first question

13 By its first question, the national court seeks essentially to ascertain whether Community law prohibits a Member State from resisting actions for repayment of charges levied in breach of a directive by relying on a time-limit under national law which is reckoned from the date of payment of the charges in question even though, at that date, the directive concerned had not yet been properly transposed into national law.

14 The three Governments which have submitted observations consider, in contrast to the plaintiffs, that this question should be answered in the negative. In their view, Member States are entitled to rely on a national time-limit like the one at issue provided that it applies without distinction to actions based on Community law and to those based on national law and does not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989 and Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043). According to those Governments, the judgment in *Emmott*, cited above, must be confined to its own particular facts, as indeed the Court confirmed in its judgments in Case C-338/91 *Steenhorst-Neerings* [1993] ECR I-5475 and Case C-410/92 *Johnson* v *Chief Adjudication Officer* [1994] ECR I-5483.

15 Initially, the Commission maintained that *Steenhorst-Neerings* and *Johnson*, cited above, concerned social benefits that had been improperly withheld and were not therefore relevant to this case. It thus considered that the ratio of *Emmott* should be followed in proceedings for repayment of charges levied in breach of Community law, otherwise a defaulting Member State might be allowed to profit from its own non-compliance. However, at the hearing the Commission abandoned that thesis, acknowledging that it had been undermined by the judgment in Case C-188/95 *Fantask and Others* [1997] ECR I-6783.

16 According to settled case-law of the Court of Justice, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, however, that such rules are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (*Rewe*, paragraph 5, *Comet*, paragraphs 13 and 16, both cited above, and, more recently, Case C-312/93 *Peterbroeck* v *Belgian State* [1995] ECR I-4599, paragraph 12).

17 The Court has thus recognised that it is compatible with Community law to lay down reasonable limitation periods for bringing proceedings in the interests of legal certainty which protects both the taxpayer and the administration concerned (see *Rewe*, paragraph 5, and *Comet*, paragraphs 17 and 18; see also Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana* [1980] ECR 1205, paragraph 23; Case C-261/95 *Palmisani* v *INPS* [1997] ECR I-4025, paragraph 28, and Case C-90/94 *Haahr Petroleum* v *Åbenrå Havn and Others* [1997] ECR I-4085, paragraph 48).

18 As the Court has held in its judgments of today's date in Case C-231/96 *Edis* v *Ministero delle Finanze* [1998] ECR I-4951, paragraph 44, and Case C-260/96 *Ministero delle Finanze* v *Spac* [1998] ECR I-4997, paragraph 27, Community law does not in principle prohibit a Member State from making actions for repayment of charges levied in breach of Community law subject to a time-limit under national law of three years.

19 It is true that in paragraph 23 of *Emmott*, cited above, the Court held that, until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred on him by the provisions of a directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time.

20 However, as was confirmed by the Court in paragraph 26 of *Johnson*, cited above, it is clear from the judgment in *Steenhorst-Neerings*, cited above, that the solution adopted in *Emmott* was justified by the particular circumstances of that case, in which a time-bar had the result of depriving the plaintiff in the main proceedings of any opportunity whatever to rely on her right to equal treatment under a Community directive (see also *Haahr Petroleum*, cited above, paragraph 52, and Joined Cases C-114/95 and C-115/95 *Texaco and Olieselskabet Danmark* [1997] ECR I-4263, paragraph 48).

21 The Court thus held in *Fantask and Others*, cited above, that Community law does not prevent a Member State which has not properly transposed Directive 69/335

from resisting actions for repayment of duties levied in breach thereof by relying on a limitation period under national law of five years reckoned from the date on which those duties became payable (see also *Edis*, paragraph 47, and *Spac*, paragraph 30, both cited above).

22 Moreover, having regard to the documents before the Court and the arguments presented at the hearing, it does not appear that the conduct of the Italian authorities, in conjunction with the existence of the contested time-limit, had the effect in this case, as it did in *Emmott*, of depriving the plaintiff companies of any opportunity of enforcing their rights before the national courts.

23 The answer to the first question must therefore be that, in circumstances such as those of the main proceedings, Community law does not prevent a Member State from resisting actions for repayment of charges levied in breach of a directive by relying on a time-limit under national law which is reckoned from the date of payment of the charges in question, even if, at that date, the directive concerned had not yet been properly transposed into national law.

The second question

24 By its second question, the national court seeks essentially to ascertain whether Community law precludes, in the event of the repayment of taxes levied in breach thereof, payment of interest calculated by methods which are less favourable than those applicable under the ordinary rules governing actions for the recovery of sums paid but not due and which, moreover, were laid down by the national authority responsible for the infringement concerned.

25 The plaintiffs in the main proceedings and the Commission submit, on the basis of Case 106/77 *Amministrazione delle Finanze dello Stato* v *Simmenthal* [1978] ECR

629, that a Member State has no power to adopt a tax provision that is incompatible with Community law and that any such provision and any corresponding fiscal obligation must be regarded as non-existent. Accordingly, Community law precludes in this case the substitution, for the ten-year limitation period under ordinary law, of a time-limit of the kind imposed by Italian law, which presupposes the existence of a power to tax and of a revenue debt owed to the State. For the same reasons, interest should be determined in accordance with the detailed rules applicable under the Civil Code to actions for the recovery of sums unduly paid.

26 According to the three Governments which have submitted observations, however, a Member State is entitled, in fiscal matters, to lay down methods for calculating interest which differ from those applicable under the ordinary law, provided that those methods apply to the refund of charges levied in breach of Community law in the same way as to those levied in breach of national law. The French and United Kingdom Governments also consider that the fact that the applicable interest rate is a matter for the national authority responsible for the infringement of Community law committed by the Member State is immaterial in that regard. The Italian Government, for its part, contends that this part of the question is irrelevant since the competent minister did not avail himself of the power to determine the interest rate in question by decree and that the rate continues to be prescribed by law.

27 As pointed out in paragraph 16 of this judgment, in the absence of Community legislation governing a matter, it is for the domestic legal system of each Member State to designate the national courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law. However, such rules must not be less favourable than those governing similar domestic actions (principle of equivalence) and they must not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness).

28 The Court has thus held that, in the absence of provisions of Community law regarding the reimbursement of charges improperly levied on the basis of Community regulations that have been declared invalid, it is for the national authorities to settle all ancillary questions relating to such reimbursement, such as the payment of interest, by applying their domestic rules regarding the rate of interest and the date from which interest must be calculated (Case 130/79 *Express Dairy Foods* v *Intervention Board for Agricultural Produce* [1980] ECR 1887, paragraphs 16 and 17; see also Case 26/74 *Roquette Frères* v *Commission* [1976] ECR 677, paragraphs 11 and 12).

29 It should also be noted that in two judgments of today's date (Case C-231/96 *Edis* v *Ministero delle Finanze*, paragraph 36, and Case C-260/96 *Ministero delle Finanze* v *Spac*, paragraph 20), the Court has held that detailed national rules governing repayment of sums paid but not due are in conformity with the principle of equivalence if they apply without distinction to actions alleging infringements of Community law and to those alleging infringements of national law, with respect to the same kind of charges or dues. That principle cannot, however, be interpreted as obliging a Member State to extend its most favourable rules governing recovery under national law to all actions for repayment of charges or dues levied in breach of Community law.

30 It follows that Community law does not preclude a Member State from laying down, with respect to interest, methods of calculation for repayment of charges improperly levied which are less favourable than those applicable to actions between private individuals for the recovery of sums paid but not due, provided that the methods in question apply without distinction to actions based on Community law and to those based on national law. In this case, it does not appear from the wording of the rule at issue that it applies only to actions of the latter kind.

31 By its second question, the national court also seeks to ascertain to what extent the foregoing interpretation might be affected by the fact that the methods for calculating interest were settled by the national authority responsible for the infringement of Community law which gave rise to the claims for repayment.

32 The national court refers in that regard to Article 3 of Decree-Law No 307/94, which authorises the Minister of Finance to determine, by specific decree, the interest rates to be applied to fiscal debts payable by and to the State, having regard to developments on the monetary and financial market.

33 According to settled case-law, the Court has no jurisdiction to give a ruling to the national court where the questions submitted do not relate to an interpretation of Community law that is objectively necessary for the decision to be given in the main proceedings (orders of 26 January 1990 in Case C-286/88 *Falciola* [1990] ECR I-191, paragraphs 9 and 10, and of 16 May 1994 in Case C-428/93 *Monin Automobiles* [1994] ECR I-1707, paragraphs 15 and 16).

34 It is clear from both the order for reference and the observations of the Italian Government and the Commission that the Minister of Finance has not yet exercised the power granted by Article 3 of Decree-Law No 307/94. As the Italian Government and the Commission have emphasised, the rate of interest applicable thus continues to be that determined by Decree-Law No 557 of 30 December 1993 (GURI No 305 of 30 December 1993), now converted into law, to which Article 3 of Decree-Law No 307/94 expressly refers.

35 In those circumstances, this part of the national court's second question concerns a hypothetical problem and there is no need to answer it.

36 The answer to the second question must therefore be that Community law does not preclude, in the event of the repayment of charges levied in breach thereof, payment of interest calculated by methods less favourable than those applicable under the ordinary rules governing actions for the recovery of sums paid but not due between private individuals, provided that those methods apply in the same way to such actions brought under Community law as to those brought under national law.

Costs

37 The costs incurred by the Italian, French and United Kingdom Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Tribunale di Genova by orders of 27 June and 19 July 1996, hereby rules:

1. **In circumstances such as those of the main proceedings, Community law does not prevent a Member State from resisting actions for repayment of charges levied in breach of a directive by relying on a time-limit under national law which is reckoned from the date of payment of the charges in question, even if, at that date, the directive concerned had not yet been properly transposed into national law.**

2. **Community law does not preclude, in the event of the repayment of charges levied in breach thereof, payment of interest calculated by methods less favourable than those applicable under the ordinary rules governing actions for the recovery of sums paid but not due between private individuals, pro-**

vided that those methods apply in the same way to such actions brought under Community law as to those brought under national law.

Rodríguez Iglesias Ragnemalm Wathelet

Schintgen Mancini Moitinho de Almeida

Kapteyn Edward Puissochet

Sevón Ioannou

Delivered in open court in Luxembourg on 15 September 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President