ORDER OF THE COURT
30 June 1997 *

In Case C-66/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal Cível da Comarca de Lisboa for a preliminary ruling in the proceedings pending before that court between

Banco de Fomento e Exterior SA

and

Amândio Maurício Martins Pechim,

Maria da Luz Lima Barros Raposo Pechim,

Confecções Têxteis de Vouzela, Ld.ª (CTV)

on the interpretation of Articles 59, 90 and 92 of the EC Treaty,

* Language of the case: Portuguese.

THE COURT,

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

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By order of 29 January 1997, received at the Court on 17 February 1997, the Tribunal Cível da Comarca de Lisboa (Local Civil Court, Lisbon) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty five questions on the interpretation of Articles 59, 90 and 92 thereof.

2 That order was made in proceedings before the Tribunal Cível da Comarca de Lisboa which have already resulted in five identical questions being referred to the Court for a preliminary ruling. Those questions were the subject-matter of the order of the Court of 13 March 1996 in Case C-326/95 *Banco de Fomento e Exterior* v *Pechim and Others* [1996] ECR I-1385.

3 The main proceedings were brought by Banco de Fomento e Exterior SA ('BFE') to enforce a debt against Mr and Mrs Pechim and Confecções Têxteis de Vouzela, Ld.ª.

4 In Case C-326/95, the defendants in the main proceedings maintained that the procedure followed by BFE was irregular on the ground that Decree-Law No 41957 of 13 November 1958 (*Diário do Governo*, Second Semester 1958, p. 558; 'the Decree-Law'), which confers numerous advantages on BFE, in particular the power to proceed to recover debts in accordance with the enforcement procedure provided for in fiscal matters and, to that end, to treat as enforceable the certificate of the debt extracted from the bank's books, was incompatible with the Community rules on freedom to provide services and on competition law. They had proposed, therefore, that the national court should refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must BFE be regarded as an "undertaking" and in particular "a public undertaking" within the meaning of Articles 90 and 92 of the Treaty of Rome?

2. May the advantages which BFE enjoys over its competitors be considered to be "State aid" within the meaning of Article 92 of the Treaty of Rome?

3. Must such advantages be taken to be restrictions on the freedom to provide services within the Community, within the meaning of Article 59 of the Treaty of Rome?

4. Do Articles 59, 90(1), and 92(1) of the Treaty of Rome have direct effect and may they be relied upon by a party which is the subject of enforcement proceedings in the present case?

5. Do the rules contained in the Treaty of Rome take precedence over and negate any conflicting provisions of national law?'

5 In its first order for reference, the national court decided to stay proceedings pending consideration of the questions which the defendants in the main proceedings had suggested should be referred to the Court for a preliminary ruling.

6 The Court of Justice pointed out in its order in Case C-326/95 that, under the second paragraph of Article 177 of the Treaty, where such a question is raised before a court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

7 It is settled case-law that in order to reach an interpretation of Community law which will be of use to the national court, it is essential that the national court define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, in particular, the judgment in Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo and Others* v *Circostel* [1993] ECR I-393, paragraph 6, and the orders in Case C-157/92 *Pretore di Genova* v *Banchero* [1993] ECR I-1085, paragraph 4, in Case C-378/93 *La Pyramide* [1994] ECR I-3999, paragraph 14, and in Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 12).

8 The Court added that the information provided in orders for reference not only enables the Court usefully to reply but also gives the Governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 20 of the EC Statute of the Court. It pointed out that it is the Court's duty to ensure that the opportunity to submit observations is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the orders for reference are notified to the interested parties (judgment in Joined Cases 141/81, 142/81 and 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6, and order in *Saddik*, cited above, paragraph 13).

9 The Court has indeed acknowledged that the requirement for the national court to define the factual and legislative context of the questions it is asking is less pressing where the questions relate to specific technical points and enable the Court to give a useful reply even where the national court has not given an exhaustive description of the legal and factual situation (Case C-316/93 *Vaneetveld* [1994] ECR I-763, paragraph 13).

10 In the order in Case C-326/95, however, the Court found that not to be the case in the matter before it because the order for reference did not contain any information which met the abovementioned requirements.

11 It observed that the order for reference contained no indication by the national court of the factual and legal situation in the case before it or of the reasons why it considered that the answers to the questions specified by the defendants in the main proceedings were necessary in order to settle the dispute. The factual and legislative context could have been established only by analysing the submissions of the parties to the main proceedings.

12 In the present order for reference, the national court first sets out the pleas relied on by the defendants in the main proceedings, in particular: (1) that the Decree-Law invoked by BFE is no longer in force; (2) that BFE may not rely on the enforcement procedure provided for in fiscal matters in order to recover any debts owed to it by the defendants in the main proceedings; (3) that, even if the Decree-Law were to be regarded as still in force, reliance by BFE on the enforcement procedure provided for in fiscal matters in order to recover the debt would constitute

an infringement of the Community rules on freedom to provide services and on competition law; and finally (4) that it is apparent from BFE's articles of association that it has not been given any tasks in the public interest, but simply means enabling it to operate in the banking market under the same conditions as a commercial bank.

13 The national court states in relation to that final plea that, according to the defendants in the main proceedings, BFE nevertheless benefits from a series of advantages which enable it to enjoy a special position on the Portuguese and European banking markets, in particular exemptions from taxes and duties, special credit privileges, access to information from official sources, simplified procedures for setting up branches, use of the enforcement arrangements applicable to the recovery of fiscal debts (exempting it from various procedural payments and costs), recognition of the enforceability of documents issued by it, tax advantages to facilitate the obtaining of funds, and use of the public system of expropriation for its own purposes. They conclude that the national court cannot, by virtue of Articles 90(1), 92(1) and 59 of the Treaty, apply the Decree-Law (in particular Articles 2, 3, 22, 40, 42, 43, 44 and 45 thereof).

14 The national court then notes BFE's submission that the advantages conferred by the Decree-Law are consistent with Portuguese law which 'allows and protects unequal treatment of similar, but not identical, situations' and do not infringe the EC Treaty.

15 The national court observes, finally, that the facts are not in dispute and that it remains only to apply the 'applicable legislation' to those facts.

16 It must be stated that the present order for reference still does not contain sufficient information to meet the requirements set out above and that, like the previous one, it merely reproduces the questions suggested by the defendants in the main proceedings.

17 The national court does not rule on the question raised by the defendants in the main proceedings as to whether the Decree-Law is still in force, in particular as regards the special procedure for debt recovery; nor, by simply referring to the 'applicable legislation', does it indicate sufficiently clearly the legislative context of the questions which it asks.

18 With regard to the first two questions referred for a preliminary ruling, the national court has not stated the particular features of BFE's operations, the task assigned to it and the form in which it was set up. Nor has it provided information relating to the advantage accorded to BFE enabling it to recover debts in accordance with the enforcement procedure provided for in fiscal matters; in particular, it has not stated whether such an advantage has been granted solely to BFE.

19 It must therefore be held, pursuant to Article 92 of the Rules of Procedure, that the questions referred to the Court for a preliminary ruling are manifestly inadmissible.

Costs

20 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

hereby orders:

The request for a preliminary ruling submitted by the Tribunal Cível da Comarca de Lisboa is inadmissible.

Luxembourg, 30 June 1997.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President