OPINION OF ADVOCATE GENERAL JACOBS
delivered on 30 September 1992 *

My Lords,

1. Joined Cases C-71/91 and C-178/91 are references for preliminary rulings made, respectively, by the Tribunale di Genova and the Tribunale di Milano. The references have been made in order that the national courts can decide whether certain Italian legislative provisions, imposing charges in respect of company registrations, are compatible with Community law, and in particular with Articles 10 and 12(1) 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, hereafter 'the directive').

2. The same provisions of Italian law are also at issue in Case C-176/91, in which the Commission brings infringement proceedings under Article 169 of the Treaty. Those proceedings were commenced by a letter of formal notice dated 29 January 1990, which alleged breach of the prohibition on taxes in respect of registration of a company contained in Article 10(c) of the directive. Having received no reply to that letter, the Commission issued a reasoned opinion on 5 November 1990, again alleging breach of Article 10(c) of the directive, and inviting Italy to take the necessary steps to conform to the opinion within two months of notification of the latter. In its reply to the Commission's reasoned opinion, the Italian Government stated that no such steps were necessary, in view of the fact that the charges in question had been modified by an amendment to the relevant legislation in 1988. The Italian Government contended, furthermore, that the charges in question did not fall within the scope of the prohibition contained in Article 10(c), or, alternatively, that the charges came within the derogation from that prohibition contained in Article 12(1)(e) of the directive. The Commission remained unsatisfied by the Italian Government's explanation of why its provisions required no further amendment, and accordingly brought the present action by means of an application lodged at the Court on 5 July 1991.

3. The legislative provisions covered by the Commission's application which, in response to a written question of the Court, were identified by the Commission as still in force at the time of the expiry of the period laid down in its reasoned opinion, are the following:

(1) Article 3(18) and (19) of Decree Law No 853 of 19 December 1984, as reenacted with modifications by Law No 17 of 17 February 1985, and

(2) Article 36(8) of Decree Law No 69 of 2 March 1989, as reenacted with modifications by Law No 154 of 27 April 1989.

* Original language: English.

In what follows, I shall refer to those provisions as the 'contested provisions'. As we shall see in more detail below, the provisions impose a charge in Italy on the first registration of a company on the official register, as well as imposing an annual charge on the maintenance of such a registration.

4. The questions referred in the two references for a preliminary ruling are as follows:

In Case C-71/91:

(1) Are 'duties paid by way of fees or dues' within the meaning of Article 12(1)(c) [sic] of Council Directive 69/355/EEC [sic] of 17 July 1969 to be construed as meaning solely charges made for optional services performed individually by public authorities in the specific interests of the person requesting them, or do they cover the broader concept of charges generally imposed for services performed in the public interest?

(2) Do the administrative acts performed by the State in order to 'maintain the appropriate machinery for making public all documents relating to the conduct of companies' acquire *by virtue of Community law* the nature of a service performed individually and giving rise to a claim for payment of a pecuniary charge in accordance with Article 12(1)(c) of the said directive and, if so, is Article 12(1)(c) of that directive compatible with national legislation which makes a company within the meaning of Article 3 thereof liable for the payment of charges which are not quantified on the basis of the cost of the service?

(3) Is Article 12(2) of the directive compatible with certain provisions of national law (Articles 36(8) and (8 bis) of Law No 154 of 27 April 1989) which impose on public limited companies [società per azioni] falling under Article 3 of the directive annual charges which are not quantified on the basis of the cost of the service and which are higher than the charges applied within the territory of the State to private limited capital companies [società di capitali a responsabilità limitata] in respect of like transactions?

(4) Should the annual State fee for entering a company in the companies' register, imposed by Article 36(8) of Law No 154 of 27 April 1989, be viewed as a tax prohibited under Article 10 of the directive?

It is clear that the reference, in questions (1) and (2), to Article 12(1)(c) of the directive should be a reference to Article 12(1)(e), and that the reference to Directive 69/355/EEC is intended to be a reference to Directive 69/335/EEC.

5. In Case C-178/91, the following questions have been referred:

(1) Are 'duties paid by way of fees or dues' referred to in Article 12(1)(e) of Directive 69/335/EEC of 17 July 1969 to be construed as meaning solely the charges made for services (optional or mandatory) performed by the public administration specifically for the person requesting them, or do the said 'duties paid by way of fees or dues' include charges made for services performed in the public interest?

(2) Must the pecuniary charge allowed by Article 12(1)(e) of Directive 69/335/EEC of 17 July 1969 — in respect of 'duties paid by way of fees or dues' — be proportional to the actual cost of the service provided (as held on several occasions by the Court of Justice, albeit in cases concerning another matter, namely customs, in relation to costs for a service which was not optional but mandatory: see for example the judgment of 12 July 1977 in Case 89/76 *Commission* v *Netherlands* [1977] ECR 1355, para. 16; and subsequent judgments, most recently that of 21 March 1991 in Case C-209/89 *Commission* v *Italy*) or may the actual cost of the service be completely disregarded?

(3) Must Article 10 and Article 12(1)(e) of Directive 69/335/EEC be interpreted as precluding the introduction and/or maintenance of national legislation — of the type introduced by the Italian legislature in the form of Article 3(19) of Decree Law No 853 of 19 December 1984 (converted into Law No 17 of 17 February 1985) and amended by Article 36(8) of Decree Law No 69 of 2 March 1989, converted into Law No 154 of 27 April 1989 — which requires the annual payment of a fee which is not quantified or quantifiable on the basis of the cost of the service provided and, moreover, is of an amount considerably higher than that charged to other capital companies and other undertakings for the same service (for example, for a private limited company [società a responsabilità limitata] the tax is 3.5 million; for other types of companies it is LIT 500 000)?

6. In what follows I shall first consider what ruling should be made in Case C-176/91, that is to say in the direct action brought by the Commission. It will then be apparent what answers are to be given to the questions referred for a preliminary ruling in Cases C-71/91 and C-178/91.

Case C-176/91

7. Before describing the contested provisions in greater detail, it may be helpful briefly to set out the relevant provisions of Community law.

8. The directive has the aim of promoting the free movement of capital by harmonizing the taxation payable on the contribution of capital to companies and firms, and by

abolishing the stamp duty on securities as well as other indirect taxes with the same characteristics as capital duty or the stamp duty on securities. Article 3 of the directive specifies the companies and firms in respect of which capital duty is payable, which are referred to in the directive as 'capital companies', and Article 4 specifies the transactions which may attract the duty. By Article 7 of the directive, which was most recently amended by Article 1(2) of Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23), Member States must either exempt such transactions from capital duty, or charge duty at a single rate not exceeding 1 per cent.

9. As the directive states in its eighth recital:

'... the retention of other indirect taxes with the same characteristics as ... capital duty or the stamp duty on securities might frustrate the purpose of the measures provided for in this Directive and those taxes should therefore be abolished'.

Article 10 of the directive accordingly provides as follows:

'Apart from capital duty, Member States shall not charge, with regard to companies, firms, associations or legal persons operating for profit, any taxes whatsoever:

...

(c) in respect of registration or any other formality required before the commencement of business to which a company, firm, association or legal person operating for profit may be subject by reason of its legal form.'

However, by Article 12(1):

'Notwithstanding Articles 10 and 11, Member States may charge:

...

(e) duties paid by way of fees or dues;

...'.

10. The purpose of the prohibition contained in Article 10(c) of the directive is in my view clear. The harmonization of the maximum rates of capital duty established by Article 7 would be deprived of its full effect if Member States remained free to impose charges in circumstances similar to those which attract capital duty pursuant to Article 4 of the directive. By virtue of Article 4(1), the following transactions, in particular, may be subject to capital duty:

'(a) the formation of a capital company;

(b) the conversion into a capital company of a company, firm, association or legal person which is not a capital company;

(c) an increase in the capital of a capital company by contribution of assets of any kind;

...'.

It is clear that if, in those circumstances, charges were payable in addition to the capital duty levied, the harmonization of the maximum rate of duty provided by Article 7 of the directive would be impaired. There is however no point in creating a capital company, and endowing it with capital, unless those legal formalities are completed which will enable the company lawfully to trade. The imposition of a charge on the completion of those formalities, and in particular upon the registration of the company on the official register, is accordingly prohibited by Article 10(c) of the directive. Article 12(1)(e) permits, none the less, certain duties to be charged in respect of registration. The charges permitted by Article 12(1)(e) are those having the nature of 'fees or dues' (or, in the French version of the directive, 'des droits ayant un caractère rémunératoire').

11. It may also be noted that an obligation on Member States to maintain a register of companies arises under Council Directive 68/151/EEC of 9 March 1968 (OJ, English Special Edition 1968 (I), p. 41), the First Company Law Directive. Article 1 of that directive specifies the companies covered by the directive, and Article 2 lays down certain disclosure requirements for those companies. Article 3 provides as follows:

'1. In each Member State a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed in pursuance of Article 2 shall be kept in the file or entered in the register; the subject-matter of the entries in the register must in every case appear in the file.

3. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable by application in writing at a price not exceeding the administrative cost thereof. ...

...'.

Clearly, those requirements could not be met in respect of the companies specified in Article 1, unless all those companies were required by national law to be registered in the appropriate register.

The contested provisions

12. In its application, the Commission argues that the contested provisions impose charges falling within Article 10(c) of the directive, without being saved by the derogation contained in Article 12(1)(e). The Italian Government contends, on the other hand, that the charges in question fall outside the scope of Article 10(c), or, alternatively, that they can in any case be regarded as 'duties paid by way of fees or dues' within the

meaning of Article 12(1)(e). In order to evaluate those arguments, it is first necessary to examine the contested provisions in greater detail. It is to be noted that the account of the relevant provisions of Italian law contained in the Commission's application is not contested by the Italian Government.

13. It may first be observed that there is in Italy as yet no central register of companies. Instead, companies are entered on registers kept by the registrar of the court (*tribunale*) of the relevant district. The registration of a company on the appropriate register is a formality required by Italian law before the company can acquire legal personality and commence business. It appears however that once a company has been registered, that registration continues in effect notwithstanding the non-payment of any charges due in respect of registration; any doubt as to whether the registration would automatically lapse, on non-payment of the annual charge, was removed by Article 8(6) of Decree Law No 173 of 30 May 1988. An application for registration may, on the other hand, be refused on the ground of non-payment of the charges due in respect of first registration (see for example Case 265/91 *Boero*, currently pending before the Court), and a company which fails to pay the charges subsequent to registration is liable to a fine of up to six times the amount of the charges payable. Article 2194 of the Italian Civil Code provides furthermore for pecuniary sanctions against the carrying on of a business by means of an unregistered company.

14. There can therefore be no doubt that the payment of the annual registration charge is a condition required by Italian law of any company wishing to continue trading by remaining on the register, just as the payment of the charge on first registration is a condition of the company commencing business.

15. The charges to which the Commission objects were originally introduced by Presidential Decree No 641 of 26 October 1972, entitled 'Disciplina delle tasse sulle concessioni governative' ('Regulation of charges on government licences'). The table annexed to that decree remains relevant as defining the acts of registration which are subject to the charges, although the levels of the charges have been augmented by subsequent legislation. The acts which are defined as being subject to the 'charge on government licences' include the following:

(a) formation of the company;

(b) increase in its capital;

(c) extension of its life;

(d) alteration of its objects;

(e) merger of companies.

The amount of the duty was originally fixed at LIT 20 000, but was augmented by subsequent decrees. Decree Law No 853 of 19 December 1984, in particular, made a substantial increase in the levels of the duty, imposing a charge of LIT 5 000 000 on the

registration of the formation of a public limited company or 'società per azione' (SpA), LIT 1 000 000 for a private limited company or 'società a responsabilità limitata' (Srl), and LIT 100 000 for other kinds of company, including the limited partnership or 'società in accomandita per azioni' (Sapa). Article 3(19) of Decree Law No 853 provided furthermore that the charge for company registration is due, not only in respect of the first registration of the company, but also on 30 June of every subsequent year for as long as the company remains on the register. The latter provision is still in force and is among the measures contested by the Commission.

16. In its application, the Commission objects to the charges levied in both of the circumstances I have just mentioned, namely (1) the charge on first registration of a company, and (2) the annual charge on the maintenance of the company on the register. The Commission's application does not however relate to the other heads specified in the 1972 decree (namely (b) — (e) in paragraph 15 above).

17. The rates of duty with which the application is concerned are those which were in force at the expiry of the period of two months laid down in the Commission's reasoned opinion of 5 November 1990. It appears that these are, moreover, the rates which are currently applicable. The rates were laid down by Article 36 of Decree Law No 69 of 2 March 1989 and continue in force by virtue of Law No 154 of 27 April 1989; they amount, for an SpA, to LIT 12 000 000 upon first registration as well as for every subsequent year and, for an Srl, to LIT 3 500 000 in the same circumstances. Other capital companies are subject to a charge of LIT 500 000. The Commission observes that the amounts payable in respect of an SpA, having initially been set at a modest level, now correspond to more than 48 times the average of the sum due for comparable operations in the other Member States (namely ECU 162). According to the Commission's information, the sums paid in the other Member States range from ECU 725 (Denmark) and ECU 170 (France), the two highest, to ECU 16.7 in Portugal (the lowest) as compared with ECU 7 853.4 (for an SpA) and ECU 2 290 (for an Srl) in Italy.

18. As far as the registration of the other acts mentioned in the Presidential Decree of 26 October 1972 is concerned, it appears that the amount of duty payable has been increased from the original level of LIT 20 000 to a current level of LIT 98 000.

19. It is to be noted that the above charges due in respect of the registration of companies are paid in addition to, and independently of, a duty of 1% chargeable in respect of contributions of capital to the company. Thus, the contested charges are additional to the charge to capital duty arising under provisions implementing the directive, which apply, pursuant to Article 3(1)(a) of the directive, to companies of the form SpA as well as of the form Srl and Sapa. Furthermore, as the Italian Government confirmed in response to a written question put by the Court, registration dues of LIT 8 000 are also payable in respect of the first registration of a company, by virtue of Law No 900 of 24 December 1976 as amended by Law No 99 of 21 February 1989.

Compatibility with the directive

(1) 'taxes ... in respect of registration'

20. As the Commission points out, Article 10 of the directive prohibits, as regards all profit-making companies, firms, persons and associations, not only the charging of any taxes whatsoever, apart from capital duty, in respect of the transactions referred to in Article 4 of the directive (see Article 10(a)), but also the charging of any such taxes 'in respect of registration or any other formality required before the commencement of business' (Article 10(c)). The first step in the Commission's argument, therefore, is to say that the contested provisions impose a duty falling within the scope of the prohibition in Article 10(c).

21. That conclusion is, in my view, inescapable. It is true that the Italian provisions impose a charge not only in respect of the first registration of the company, a formality which is certainly required before the commencement of business, but also in respect of its subsequent maintenance on the register. If however a charge on first registration is prohibited by the directive, it is difficult to see how an annual charge payable in respect of the first and every subsequent year of registration could be any less prohibited; for otherwise a Member State could escape the prohibition contained in Article 10(c) simply by ensuring that the prohibited duty was charged repeatedly. Similarly, it seems to me that a charge would be prohibited even if it were imposed solely in respect of subsequent years of registration; for if a charge in respect of the registration required before the commencement of business of a company is prohibited, a charge imposed in subsequent years in respect of that same registration must equally be forbidden. Any other conclusion would lead to the absurd result that a prohibited charge became lawful as long as payment of it was deferred to a subsequent year. Thus, I cannot accept the Italian Government's argument, put forward in its defence, according to which the fact that the disputed charges accrue annually is sufficient to exclude them from the scope of Article 10(c).

22. In my view, therefore, the prohibition contained in Article 10(c) cannot be confined to charges which accrue before a company has actually commenced business. The provision is clearly intended to prevent the charging of any taxes, other than capital duty, in respect of the formality of registration, as well as the charging of any taxes in respect of other formalities which, like registration, are required as a condition of the company carrying on a trading activity. As we have seen, remaining on the register is as much a condition of a company continuing lawfully to trade as registration on first incorporation of the company. It follows that the expression 'required before the commencement of business', in Article 10(c), is not to be taken in an exclusively temporal sense; and it is to be noted that the French and Italian versions of the directive refer not to the 'commencement' of business, but simply to formalities which are prior to the '*exercise* of an activity' ('préalable à l'exercice d'une activité', 'preliminare all'esercizio di un'attività'), and similarly for the German version. I conclude therefore that the prohibition contained in

Article 10(c) of the directive must be taken to extend to charges accruing as a result of the satisfaction of any formal requirement, such as the maintenance in force of a company's registration, to which a company wishing to trade is subject by reason of its legal form.

23. In an effort to escape such a conclusion, the Italian Government refers, with approval, to the arguments of the United Kingdom put forward in its written observations submitted to the Court in Case C-71/91. In those observations, as well as in its observations submitted in Case C-178/91, the United Kingdom suggests that an annual charge cannot be prohibited by the directive, because the directive is only concerned with taxes relating to the raising of capital, such as for instance occurs when a company is first registered and is consequently able to issue shares. In the view of the United Kingdom, no charge arising after commencement of business is covered by the directive unless the charge relates to a further raising of capital, by means of an increase in the capital of the company, or to changes in its residence or corporate structure, or, finally, if it constitutes what the United Kingdom refers to as a 'flagrant attempt to evade the provisions of the directive'.

24. As I have already mentioned, however, it does not seem to me that any distinction can sensibly be drawn between a charge required for the first registration of a company, and a subsequent annual charge which the company is required to pay as long as it remains on the register. In the normal case, a company completes the formal requirements for the commencement of business not only so that it can begin trading, but also in order that it can continue to trade in subsequent years. To draw a distinction between those two charges would indeed be to open the door to the evasion, flagrant or otherwise, of the prohibition contained in Article 10(c). As we have seen, such a distinction is not in any case supported by the wording of Article 10(c).

25. It is important, moreover, not to lose sight of the ultimate purpose of the directive, which is explained in its second recital as follows:

'... the indirect taxes on the raising of capital, in force in the Member States at the present time ... give rise to discrimination, double taxation and disparities which interfere with the free movement of capital and which, consequently, must be eliminated by harmonization'.

It is clear that an annual charge on the maintenance of the registration of a capital company will tend to interfere with the free movement of capital in exactly the same way as a charge on first registration, since, as I have already observed, a company is normally formed and registered with a view to continued trading over a period of years. Those contributing capital to the company will be aware of its continuing liability to the annual charge, and their willingness to contribute capital will be affected in exactly the same way by that liability as by a charge on first registration. Indeed, the raising of capital may well be more affected by an annual charge, which is a continuing burden on the company, than by a payment made once

only. It seems to me therefore that all attempts to draw a distinction between a single and an annual charge must necessarily fail.

(2) 'duties paid by way of fees or dues'

26. Even if a charge falls within the scope of the prohibition contained in Article 10(c) of the directive, it will of course be permitted if it falls within one of the limited number of exceptions provided by Article 12(1). In the present case, the only exception which is relevant is that contained in Article 12(1)(e). It remains therefore to consider the second step in the Commission's argument, according to which the charges levied by the contested provisions fall outside the scope of that derogation.

27. It will be recalled that by virtue of Article 12(1)(e), Member States may, notwithstanding Article 10(c), charge 'duties paid by way of fees or dues' in respect of the registration of a company. The Commission points out that the directive contains no definition of the concept of 'fees or dues', but suggests that assistance may be obtained, in interpreting that expression, from the Court's case-law on Articles 12, 13 and 16 of the Treaty. Thus, the Court has held that that prohibition of charges having equivalent effect to customs duties which is contained in those articles does not extend to a charge which is 'the consideration for a benefit provided in fact for the exporter representing an amount proportionate to the said benefit': see Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5 at paragraph 11 of the judgment. Such a charge must not however exceed the actual cost of the operations in respect of which it is levied, a condition which is only satisfied if there is a direct link between the basis for the assessment of the charge and the cost of the operations in question: see Case C-111/89 *Bakker Hillegom* [1990] ECR I-1735, at paragraphs 11 to 13 of the judgment. Furthermore charges may, in certain circumstances, also be compatible with Articles 12, 13 and 16 of the Treaty where they are made in respect of operations which are carried out, not in the interests of the producer, but pursuant to obligations imposed by Community law: see *Bauhuis*, at paragraph 31 of the judgment, and *Bakker Hillegom*, at paragraph 10.

28. Registration of a company in the official register is not of course a service which is performed solely in the interests of the company, although, as we have seen, the requirement that a company be so registered is imposed pursuant to Community law: see paragraph 11 above. However it is clear, in any case, from the express terms of Article 12(1)(e), that a charge paid by way of fee or due may be levied in respect of the registration of a company. It seems to me therefore that the scope of the derogation provided by Article 12(1)(e) is to be determined, in the first instance, in the light of the wording and purpose of the directive itself, rather than in the light of the Court's case-law on Articles 12, 13 and 16 of the Treaty.

29. It is no doubt true that in recognizing a limited exception, in respect of fees having a remuneratory character, to the prohibition of

charges having an equivalent effect to customs duties, the Court was guided by considerations similar to those which inspired the Community legislature in the case of Article 12(1)(e) of the directive. Thus, in both cases it was evidently thought that the prohibition in question should not extend to fees which could be justified as remuneration for services performed, whether that performance was at the request of the recipient of the service or pursuant to a requirement imposed by Community law. To that extent therefore, in assessing whether a particular charge is permitted by the directive, some assistance may be derived from the Court's jurisprudence on charges equivalent to customs duties, although that case-law should not be assumed to extend without qualification to charges covered by the directive.

30. In its defence, the Italian Government suggests that the 'fees or dues' referred to in Article 12(1)(e) of the directive include any fees or dues which are necessary to finance a public service related to capital companies. From its observations submitted in Cases C-71/91 and C-178/91, it appears that the Italian Government would include, in its definition of such a service, the entire system of information and publicity in respect of the acts required to be entered in the official register. At the hearing, the Italian Government again made it clear that the aim of the disputed charges was that of financing the entire machinery of disclosure of documents and particulars relating to capital companies, and pointed out that it was that objective which explained the annual nature of the charges. As the Italian Government concedes, such a system serves the public at large, to whom the information is made available, and not merely the companies whose acts are entered on the register. The keeping of a companies' register might also be thought to serve the needs of other branches of the public administration, for example the police, the prosecution service, and the Government departments responsible for company statistics and economic affairs.

31. Contrary to the view of the Italian Government, it does not seem to me that the category of 'fees or dues' permitted by Article 12(1)(e) of the directive can be so broad as to include all charges which finance the public services associated with the disclosure requirements of capital companies. As a derogation from a prohibition, contained in Article 10, designed to prevent the levying of charges having a similar effect to capital duty, Article 12(1)(e) is to be given a strict rather than a broad interpretation, particularly in view of the strong and unequivocal wording of Article 10, which is expressed to cover 'any taxes whatsoever' falling within the mentioned categories. Accordingly, the expression 'duties paid by way of fees or dues' is most naturally interpreted as extending only to charges having the character of remuneration for services rendered, whether the services are provided solely for the benefit of the recipient or pursuant to a legal requirement. Such a reading is confirmed, moreover, by the French version of the directive, which as we have seen refers to 'droits ayant un caractère rémunératoire'.

32. It follows that the only costs which can be taken into consideration, when the levels

of fees for company registrations are set, are the administrative costs of effecting the registrations in question. The other costs of the system, and in particular those involved in providing information to the public, must be financed by other means, for instance by means of a fee charged to the recipients of the information. It will be recalled that, by Article 3 of the First Company Law Directive, Member States are permitted to charge a fee, covering administrative costs, to members of the public requesting the information required to be disclosed under Article 2 of that directive. It appears, moreover, that such fees are indeed charged in Italy. Thus, according to the written observations submitted by Cispadana Costruzioni in Case C-178/91, fees are payable both for the inspection of a file on the register and for the obtaining of copies of registered documents, and additional fees are payable for the authentication of those copies — an assertion which was not disputed by the Italian Government at the hearing.

33. In its written observations submitted in Cases C-71/91 and C-178/91, the United Kingdom suggests that the directive cannot have been intended to circumscribe the funding by a Member State of its registration system or its system of companies administration, and that any fee levied for such a purpose must accordingly be permitted by Article 12(1)(e). As we have already seen, however, a charge levied for the purpose of funding the entire system of company registration, including the provision of services to the public, cannot be regarded as a fee or due within the meaning of Article 12(1)(e) of the directive, and must therefore be taken to be prohibited by Article 10(c). It does not seem to me at all surprising, furthermore, that the Member States' freedom of action should be thus limited, given that Article 10(c) is clearly intended to preclude the imposition of charges having similar effects to the taxes harmonized by the directive.

34. In the case of the charges presently at issue, it is clear that there is no direct link between the levels of the charges and the administrative costs involved in registering companies and maintaining them on the register. The absence of such a link is particularly evident in the case of the annual charges which accrue subsequent to first registration. The absence of any direct connection between fee levels and registration costs is also suggested by the striking disproportion between the charges levied in Italy and those imposed in respect of equivalent operations in other Member States. Contrary to suggestions made by the Italian Government at the hearing, it seems to me doubtful in the extreme whether such substantial differences in fee levels could be accounted for by the higher costs occasioned by a decentralised system of company registration, or by the relative inefficiency of the officials concerned (which was also mentioned as a possibility by the Italian Government). It is clear, in any case, that the Italian Government does not seek to justify its fee levels in terms of the costs occasioned by registration operations, since it openly admits that the charges are designed to finance the entire system of company disclosure, including in particular the provision of information to the public. However, even that claim was not substantiated by any concrete evidence produced by the Italian Government. Thus, there is not

even any evidence before the Court which would be sufficient to rebut the Commission's suggestion, made in paragraph 20 of its application, that the monies raised by the contested provisions are intended purely and simply as a source of revenue for the Italian Treasury.

35. There is accordingly no doubt in my opinion that, by maintaining in force the contested provisions, Italy is in breach of its obligations under Article 10(c) of the directive, and is hence in breach of its obligations under Article 189 of the Treaty.

Cases C-71/91 and C-178/91

36. The questions referred for a preliminary ruling in Cases C-71/91 and C-178/91 ask, in substance, whether national legislation of the kind contested in the direct action is compatible with Article 10(c) of the directive. As we have already seen, that question is in my view to be answered in the negative. The feature of the contested legislation which makes it incompatible with those provisions is the absence of any direct link between the amounts charged in respect of registration, on the one hand, and the costs of providing that service to the companies concerned, on the other.

37. Although the charges permitted by the directive must therefore be based upon the actual costs of carrying out the operations of registration, it is clear none the less that Member States are entitled to charge a standard, flat-rate registration fee. It is obviously in the interests of both the registered companies and the registration service itself for a standard fee to be laid down in advance, and the costs occasioned by registration are unlikely to vary substantially from company to company. Furthermore, a scale of charges for different categories of company might also be thought to be consistent with the aims of the directive, since a company with a higher capital value is less likely to be affected by a given level of fee, and the imposition of a higher charge on such a company would enable the burden to be reduced for smaller companies. From the information given in the Commission's application in Case C-176/91, it appears that several Member States do indeed apply a scale of charges which vary according to the capital value of the company concerned. It seems to me that such a system of charges is permissible in principle, as long as the total amount raised by way of registration charges does not significantly exceed the total costs occasioned by registrations.

38. I note, finally, that neither the Tribunale di Genova nor the Tribunale di Milano has referred any question on whether the relevant provisions of the directive have direct effect. It is clear however that the terms of Article 10(c) are sufficiently precise and unconditional to be relied upon as against any national provision imposing charges in respect of the registration of a company, other than charges which are 'fees or dues' within the meaning of Article 12(1)(e).

Conclusion

39. I am accordingly of the opinion that in Case C-176/91, the Court should:

(1) declare that the Italian Republic is in breach of its obligations under the EEC Treaty by imposing, contrary to Article 10(c) of Council Directive 69/335/EEC, charges in respect of the entry of a capital company on the official register, and in respect of the maintenance of that registration, which are not based upon the actual costs of entering and maintaining companies on the register;

(2) order the Italian Republic to pay the costs.

40. I am furthermore of the opinion that the questions referred by the Tribunale di Genova in Case C-71/91 and by the Tribunale di Milano in Case C-178/91 should be answered as follows:

Article 10(c) of Council Directive 69/335/EEC must be interpreted as prohibiting the imposition of charges in respect of the entry of a capital company on the official register or in respect of the maintenance of that registration, whether levied annually or on first registration of the company, unless those charges are based upon the actual costs of entering and maintaining companies on the register.