JUDGMENT OF THE COURT (Third Chamber)

11 March 2010 *

In Case C-384/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale amministrativo regionale del Lazio (Italy), made by decision of 3 July 2008, received at the Court on 27 August 2008, in the proceedings

Attanasio Group Srl

v

Comune di Carbognano,

intervening party:

Felgas Petroli Srl,

* Language of the case: Italian.

THE COURT (Third Chamber),

composed of J.N. Cunha Rodrigues, President of the Second Chamber, acting as President of the Third Chamber, P. Lindh, A. Rosas, A. Ó Caoimh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: J. Mazák,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Italian Government, by G. Palmieri, acting as Agent, and by M. Russo, avvocato dello Stato,

— the Czech Government, by M. Smolek, acting as Agent,

— the Commission of the European Communities, by E. Traversa and C. Cattabriga, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 43 EC, 48 EC, 49 EC and 56 EC and also 'the principles of freedom of competition and non-discrimination enshrined in the [EC] Treaty'.

2 The reference has been made in the course of proceedings between Attanasio Group Srl ('Attanasio') and the Comune di Carbognano (Municipality of Carbognano) regarding the grant of a construction permit for a service station to a third party, Felgas Petroli Srl ('Felgas Petroli').

National legal context

3 The fuel distribution system in Italy was reformed by Legislative Decree No 32 of 11 February 1998 on rationalising the fuel distribution system, in accordance with Article 4(4)(c) of Law No 59 of 15 March 1997 (GURI No 53 of 5 March 1998, p. 4), as subsequently amended and supplemented on several occasions ('Legislative Decree No 32/1998').

4 In accordance with Article 2 of the Legislative Decree, the construction and operation of service stations is subject to administrative authorisation. Authorisation is granted by the municipality in the territory in which those activities are carried out, subject to

verification of the conformity of the stations with the provisions of the land use plan, tax legislation, legislation relating to health, environment and road safety, provisions for the protection of historic and artistic assets and the guidance plans of the Italian regions.

5 Article 19 of Law No 57 of 5 March 2001 on the opening-up and the regulation of markets (GURI No 66 of 20 March 2001, p. 4, 'Law No 57/2001') prescribes the adoption of a national plan to ensure the quality and efficiency of service, the freezing of prices and the rationalisation of the fuel distribution system, and containing guidelines on the modernisation of the fuel distribution system ('the national plan'). In accordance with that plan, adopted by Ministerial Decree of 31 October 2001 approving the national plan containing guidelines on the modernisation of the fuel distribution system (GURI No 279 of 30 November 2001, p. 37, 'the Ministerial Decree of 31 October 2001'), the regions, in the exercise of the planning powers conferred on them, draw up regional plans in which they determine in particular the criteria for the opening of new sales outlets. According to the written observations submitted by the Commission of the European Communities, at the time of the events that gave rise to the dispute in the main proceedings, minimum compulsory distances between service stations were amongst those criteria.

6 In that context, the Regione Lazio (Lazio Region) adopted Regional Law No 8/2001 (*Bollettino Ufficiale della Regione Lazio* of 10 April 2001). Pursuant to Article 13 of that law, the municipalities, in exercising the power granted to them to define criteria, requirements and specifications with regard to the zones where service stations may be built as well as the provisions applying to them, must take account of various criteria including, at the material time in the main proceedings, compliance with minimum distances between different service stations. In respect of, in particular, service stations on provincial roads, Article 13 requires a minimum distance of 3 kilometres.

7 Shortly after the order for reference was issued but before it was lodged at the Court, the Italian legislature adopted Law No 133 of 6 August 2008, converting into law Legislative Decree No 112 of 25 June 2008 laying down urgent measures for economic development, simplification, competitiveness, the stabilisation of public finances, and fiscal balance (Ordinary Supplement to GURI No 195 of 21 August 2008, 'Law No 133/2008'). Article 83a(17) of that law provides:

'In order to ensure full compliance with Community legislation on the protection of competition and to ensure the uniform proper functioning of the market, the development and operation of a service station may not be made subject to the closure of existing service stations or the compliance with requirements, for commercial purposes, relating to a quota, minimum distances between service stations and between service stations and businesses or very small retail areas, or which impose restrictions or duties on the provision, in the same service station or in the same zone, of complementary products and activities.'

8 Article 83a(18) states that 'the provisions of paragraph (17) are general principles on the protection of competition and essential levels of services within the meaning of Article 117 of the Constitution.'

9 In accordance with the last subparagraph of Article 1(2) of Law No 131 of 5 June 2003 adapting the law of the Republic to Constitutional Law No 3 of 18 October 2001 (GURI No 132 of 10 June 2003, p. 5):

'The regional legal provisions relating to matters of the exclusive legislative competence of the State, in effect on the date of entry into force of the current law, shall continue to apply until the entry into force of national provisions on these matters ...'

The main proceedings and the question referred for preliminary ruling

10 Attanasio, established in Viterbe (Italy), made an application to the Municipality of Caprarola for a permit to construct a service station selling fuel, lubricants and liquefied petroleum gas (LPG) at the side of the 'Massarella' provincial road. In the course of the administrative procedure it became apparent that the Municipality of Carbognano had in the meantime granted Felgas Petroli a permit to establish a service station a short distance from the site which was the subject of Attanasio's application.

11 Pursuant to Article 13 of Regional Law No 8/2001, the issue of a construction permit to Felgas Petroli by the Municipality of Carbognano therefore precluded the Municipality of Caprarola from granting Attanasio's application.

12 It is apparent from the order for reference that Attanasio subsequently brought an action before the national court against the grant of a permit to Felgas Petroli and submitted an application for an interim order suspending the effects of that permit.

13 The national court takes the view that the relevant rules, in particular Article 13 of Regional Law No 8/2001, but also Legislative Decree No 32/1998, Law No 57/2001 and the Ministerial Decree of 31 October 2001, 'may infringe the provisions of the Treaty on compliance with the principles of competition, freedom of establishment and freedom to provide services'.

14 According to that court, if it were established that the national and regional provisions which preclude Attanasio's construction of a service station are incompatible with Community law, those provisions would have to be disapplied. Accordingly, the application in the main proceedings would have to be declared inadmissible on the ground that Attanasio had no interest in bringing proceedings.

15 Under these circumstances, the Tribunale amministrativo regionale del Lazio decided to stay proceedings and to refer the following question to the Court:

'Are the Italian regional and national provisions laying down mandatory minimum distances between roadside service stations and, in particular, Article 13 of the Regional Law [No 8/2001], which applies to the case before this Court and is material for the decision in these proceedings, as well as the national framework legislation (Legislative Decree No 32/1998 …, Law No 57/2001 and the Ministerial Decree of 31 October 2001), in so far as they allow, or in any event have not prevented provision being made, in the exercise of the regulatory powers of the Italian State, for minimum distances between service stations under Article 13, compatible with Community law, in particular Articles [43 EC, 48 EC, 49 EC and 56 EC] and the Community principles of freedom of competition and non-discrimination enshrined in that treaty …?'

Consideration of the question referred for a preliminary ruling

Preliminary considerations

16 In view of the wording of the question referred, it should be recalled at the outset that under Article 267 TFEU the Court has no jurisdiction to rule either on the interpretation of provisions of national laws or regulations or on their conformity with Community law (see, in particular, Case C-107/98 *Teckal* [1999] ECR I-8121, paragraph 33; Joined Cases C-19/01, C-50/01 and C-84/01 *Barsotti and Others* [2004] ECR I-2005, paragraph 30; and Case C-237/04 *Enirisorse* [2006] ECR I-2843, paragraph 24 and the case-law cited).

17 However, the Court has repeatedly held that it has jurisdiction to give the national court full guidance on the interpretation of European Union law ('EU law') in order to enable it to determine the issue of compatibility for the purposes of the case before it (see, inter alia, Case 188/86 *Lefèvre* [1987] ECR 2963, paragraph 6; Case C-292/92 *Hünermund and Others* [1993] ECR I-6787, paragraph 8; and *Enirisorse*, paragraph 24).

18 Accordingly, if questions have been improperly formulated or go beyond the scope of the powers conferred on the Court by Article 267 TFEU, the Court is free to extract from all the factors provided by the national court and, in particular, from the statement of grounds in the order for reference, the elements of EU law requiring an interpretation having regard to the subject-matter of the dispute (see, to that effect, inter alia, Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, paragraph 26; Case C-105/96 *Codiesel* [1997] ECR I-3465, paragraph 13; and Case C-536/03 *António Jorge* [2005] ECR I-4463, paragraph 16).

19 It is therefore for the Court, in the present case, to restrict its analysis to the provisions of EU law and provide an interpretation of them which will be of use to the national court, which has the task of determining the compatibility of the provisions of national law with that law (see, by way of analogy, inter alia, Case C-380/05 *Centro Europa 7* [2008] ECR I-349, paragraph 51). To that end, it is for the Court to reformulate the question referred to it (see, by way of analogy, inter alia, Case C-210/04 *FCE Bank* [2006] ECR I-2803, paragraph 21).

20 In that regard, in so far as the question submitted seeks an interpretation of what the national court describes as 'the Community principles of freedom of competition and non-discrimination', that question, pursuant to the case-law referred to in paragraph 18 above, should be understood as seeking an interpretation (i) of the competition rules contained in Part Three, Title VI, Chapter 1, of the Treaty, which comprises

Articles 81 EC to 89 EC, and (ii) of Article 12 EC, which prohibits, within the scope of the Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality.

21 Accordingly, the question submitted must be understood as asking whether EU law, especially Articles 12 EC, 43 EC, 48 EC, 49 EC and 56 EC as well as Articles 81 EC to 89 EC, are to be interpreted as precluding provisions of domestic law, such as those at issue in the main proceedings, which lay down mandatory minimum distances between roadside service stations.

Jurisdiction of the Court and the admissibility of the reference for a preliminary ruling

22 According the documents submitted to the Court, and as the national court itself essentially points out, all the facts in the main proceedings are confined within a single Member State. As a preliminary point, it is therefore necessary to ascertain whether the Court has jurisdiction in the present case to give a ruling on the provisions of the Treaty listed in the national court's question, namely Articles 43 EC, 48 EC, 49 EC and 56 EC (see, by way of analogy, *Centro Europa 7*, paragraph 64).

23 National legislation such as that at issue in the main proceedings which, as worded, applies to Italian nationals and to nationals of other Member States alike is, generally, capable of falling within the scope of the provisions on the fundamental freedoms established by the Treaty only to the extent that it applies to situations connected with intra-Community trade (see Case C-448/98 *Guimont* [2000] ECR I-10663,

paragraph 21; Case C-6/01 *Anomar and Others* [2003] ECR I-8621, paragraph 39 and the case-law cited; and *Centro Europa 7*, paragraph 65).

24 However, in the present case it is far from inconceivable that companies established in Member States other than the Republic of Italy have been or are interested in selling motor fuel in the Republic of Italy.

25 Next, in principle it is for the national courts alone to determine, in the light of the particular features of each case, both the need to refer a question for a preliminary ruling in order to give their judgment and the relevance of that question as referred to the Court (*Guimont*, paragraph 22). A reference for a preliminary ruling from a national court may be rejected by the Court only if it is quite obvious that the interpretation of EU law sought by that court is unrelated to the actual nature of the case or the subject-matter of the main proceedings (Case C-281/98 *Angonese* [2000] ECR I-4139, paragraph 18, and *Anomar and Others*, paragraph 40).

26 In its written observations, the Italian Government argued that, following the adoption of Article 83a(17) of Law No 133/2008, Article 13 of Regional Law No 8/2001 no longer applies, since it is incompatible with Article 83a(17), which is of a higher rank within the Italian domestic legal system. Consequently, in that government's view, Article 13 should not be applied in the administrative procedure concerning Attanasio's application.

27 In such circumstances, it was possible that, just as with the hypothesis put forward in the order for reference and set out in paragraph 14 of the current judgment, according to which Article 13 is incompatible with EU law, Attanasio had no legal interest in bringing the main proceedings.

28 For this reason, on 17 September 2009, in accordance with Article 104(5) of the Rules of Procedure, the Court asked the national court whether, in view in particular of the arguments set out in the order for reference concerning Attanasio's possible lack of legal interest in bringing the main proceedings, the changes made to the relevant Italian legislation by Article 83a(17) and (18) of Law No 133/2008, read in conjunction with the last subparagraph of Article 1(2) of Law No 131/2003 of 5 June 2003, had an effect on the interest in obtaining a preliminary ruling in the present case. It must be borne in mind in that regard that the Court's function in preliminary rulings is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see, to that effect, inter alia, Case 149/82 *Robards* [1983] ECR 171, paragraph 19; Case C-412/93 *Leclerc-Siplec* v *TF1 Publicité and M6 Publicité* [1995] ECR I-179, paragraph 12; and Case C-189/08 *Zuid-Chemie* [2009] ECR I-6917, paragraph 36).

29 By order dated 3 December 2009, lodged at the Court Registry on 22 January 2010, the national court confirmed that, in principle, the changes referred to above mean, among other things, that Article 13 of Regional Law No 8/2001 can no longer be applied. However, that court maintained its request for a preliminary ruling. It stated that Law No 133/2008 is designed only to have legal effects from the date of its entry into force. Furthermore, the possible introduction by Attanasio of a new application in accordance with the amended Italian legislation could meet with as yet unidentifiable obstacles, which render uncertain the protection of the substantive right invoked in the main proceedings.

30 In such circumstances, it is not obvious that the interpretation of EU law sought by the national court is unnecessary in order for it to resolve the dispute before it.

31 It follows that the question submitted is admissible in so far as it refers to Articles 43 EC, 48 EC, 49 EC and 56 EC, which, by laying down specific non-discrimination rules in the areas of freedom of establishment, freedom to provide services and free movement of capital, are the specific expression in those areas of the general prohibition of discrimination on grounds of nationality laid down in Article 12 EC.

32 On the other hand, in so far as the question referred by the national court, as reformulated in paragraph 21 of this judgment, seeks an interpretation of Articles 81 EC to 89 EC, it should be recalled that the need to provide an interpretation of EU law which will be of use to the national court requires that the national court define the factual and legal context of its questions or, at the very least, that it explain the factual circumstances on which those questions are based (see *Centro Europa 7*, paragraph 57 and the case-law cited). Those requirements are of particular importance in the area of competition, where the factual and legal situations are often complex (see to that effect, inter alia, Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 7; Case C-238/05 *Asnef-Equifax and Administración del Estado* [2006] ECR I-11125, paragraph 23; and Case C-250/06 *United Pan-Europe Communications Belgium and Others* [2007] ECR I-11135, paragraph 20).

33 In the present case, the order for reference does not provide the Court with the factual and legal information necessary for it to determine the conditions under which State measures such as those at issue in the main proceedings might fall within the scope of the Treaty provisions on competition. In particular, that order does not provide any indication regarding the precise rules of competition which it seeks to have interpreted nor does it provide an explanation of the connection it sees between those rules and the case in the main proceedings or its subject-matter.

34 In such circumstances, to the extent that the question submitted seeks an interpretation of Articles 81 EC to 89 EC, it must be declared inadmissible.

35 Accordingly, the question submitted, as reformulated in paragraph 21 of this judgment, falls to be examined only with regard to articles 12 EC, 43 EC, 48 EC, 49 EC and 56 EC.

Substance

36 The operation of roadside service stations falls within the concept of 'establishment' within the meaning of the Treaty. That is a very broad concept which allows EU nationals to participate, on a stable and continuous basis, in the economic life of a Member State other than their State of origin and to profit therefrom (see to that effect, in particular Case 2/74 *Reyners* [1974] ECR 631, paragraph 21; Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 25; and Case C 451/05 *ELISA* [2007] ECR I-8251, paragraph 63).

37 It should be noted that Article 12 EC is intended to apply independently only to situations governed by EU law for which the Treaty lays down no specific prohibition of discrimination. In the field of freedom of establishment, the principle of the prohibition of discrimination is given specific expression in Article 43 EC (see, in particular, to that effect, Case C-193/94 *Skanavi and Chryssanthakopoulos* [1996] ECR I-929, paragraphs 20 and 21; Case C-251/98 *Baars* [2000] ECR I-2787, paragraphs 23 and 24; and Case C-105/07 *Lammers & Van Cleeff* [2008] ECR I-173, paragraph 14).

38 Accordingly, in the present case it is not necessary to interpret Article 12 EC.

39 Furthermore, in accordance with the first paragraph of Article 50 EC, the provisions of the Treaty concerning freedom to supply services apply only if those relating to

the right of establishment do not apply. Therefore Article 49 EC is also not relevant in the present proceedings. The construction of roadside service stations by the legal persons referred to in Article 48 EC necessarily implies that they have access to the territory of the host Member State with a view to a stable and continuous participation in the economic life of that State, in particular by the setting up of agencies, branches or subsidiaries (see, by way of analogy, *Gebhard*, paragraphs 22 to 26, and Case C-171/02 *Commission* v *Portugal* [2004] ECR I-5645, paragraphs 24 and 25).

40 Furthermore, even if the legislation at issue in the main proceedings were to have restrictive effects on free movement of capital, it follows from the case-law that those effects would be the unavoidable consequence of an obstacle to freedom of establishment and would not therefore justify an independent examination of that legislation from the point of view of Article 56 EC (see, by way of analogy, Case C-196/04 *Cadbury Schweppes and Cadbury Schweppes Overseas* [2006] ECR I-7995, paragraph 33; Case C-231/05 *Oy AA* [2007] ECR I-6373, paragraph 24; and Case C-284/06 *Burda* [2008] ECR I-4571, paragraph 74).

41 It follows from the foregoing that the present question, as reformulated in paragraph 21 of this judgement, must be answered solely in the light of the provisions of the Treaty on freedom of establishment.

42 Freedom of establishment, which Article 43 EC grants to Union nationals and which includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, under the same conditions laid down for its own nationals by the law of the Member State where such establishment is effected, entails, in accordance with Article 48 EC, for companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Union, the right to exercise their

activity in the Member State concerned through a subsidiary, branch or agency (see, inter alia, Case C-307/97 *Saint-Gobain ZN* [1999] ECR I-6161, paragraph 35; *Cadbury Schweppes and Cadbury Schweppes Overseas*, paragraph 41; and Case C-524/04 *Test Claimants in the Thin Cap Group Litigation* [2007] ECR I-2107, paragraph 36).

43 According to settled case-law, Article 43 EC precludes any national measure which, even if applicable without discrimination on grounds of nationality, is liable to hinder or render less attractive the exercise by Union nationals of the freedom of establishment that is guaranteed by the Treaty (see, to that effect, inter alia, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32; *Gebhard*, paragraph 37; Case C-442/02 *CaixaBank France* [2004] ECR I-8961, paragraph 11; and Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 33 and the case-law cited).

44 The Court has held in particular that such restrictive effects may arise where, on account of national legislation, a company may be deterred from setting up subsidiary bodies, such as permanent establishments, in other Member States and from carrying on its activities through such bodies (see, to that effect, inter alia, Case C-446/03 *Marks & Spencer* [2005] ECR I-10837, paragraphs 32 and 33; Case C-471/04 *Keller Holding* [2006] ECR I-2107, paragraph 35; and Case C-293/06 *Deutsche Shell* [2008] ECR I-1129, paragraph 29).

45 Accordingly, a rule such as that at issue in the main proceedings, which makes the opening of new roadside service stations subject to the compliance with minimum distances between service stations, constitutes a restriction within the meaning of Article 43 EC. Such a rule, which applies only to new service stations and not to service stations already in existence before the entry into force of the rule, makes access to the activity of fuel distribution subject to conditions and, by being more advantageous to operators who are already present on the Italian market, is liable to

deter, or even prevent, access to the Italian market by operators from other Member States (also see, by way of analogy, *CaixaBank France*, paragraphs 11 to 14, and Case C-518/06 *Commission* v *Italy* [2009] ECR I-3491, paragraphs 62 to 64, 70 and 71).

46 In such circumstances, it should be examined to what extent the restriction at issue in the main proceedings can be permitted by virtue of one of the reasons set out in Article 46 EC or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest.

47 The national court has identified road safety, health and environmental protection, as well as the rationalisation of services provided to the users, as being relevant with regard to the legislation at issue in the main proceedings.

48 In its written observations, the Italian Government refrains from making submissions intended to justify that legislation and merely argues, as is clear from paragraph 26 of the present judgment, that the rule is no longer applicable.

49 Article 46(1) EC allows inter alia restrictions on the freedom of establishment that are justified on grounds of public health (see, to that effect, *Hartlauer*, paragraph 46).

50 In addition, the Court's case-law has identified a number of overriding reasons in the public interest capable of justifying restrictions on the fundamental freedoms

guaranteed by the Treaty. Reasons already recognised by the Court include the objectives of road safety (see, inter alia, Case C-55/93 *van Schaik* [1994] ECR I-4837, paragraph 19, and Case C-54/05 *Commission* v *Finland* [2007] ECR I-2473, paragraph 40 and the case-law cited), environmental protection (see, inter alia, Case 302/86 *Commission* v *Denmark* [1988] ECR 4607, paragraph 9, and Case C-309/02 *Radlberger Getränkegesellschaft and S. Spitz* [2004] ECR I-11763, paragraph 75) and consumer protection (see, inter alia, Case 220/83 *Commission* v *France* [1986] ECR 3663, paragraph 20; *CaixaBank France*, paragraph 21, and Case C-393/05 *Commission* v *Austria* [2007] ECR I-10195, paragraph 52 and the case-law cited).

51 However, it should be borne in mind that, according to settled case-law, irrespective of the existence of a legitimate objective under EU law, a restriction on the fundamental freedoms enshrined in the Treaty may be justified only if the relevant measure is appropriate to ensuring the attainment of the objective in question and does not go beyond what is necessary to attain that objective (see, to that effect, Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 43; Case C-527/06 *Renneberg* [2008] ECR I-7735, paragraph 81; Joined Cases C-155/08 and C-157/08 *X and Passenheim-van Schoot* [2009] ECR I-5093, paragraph 47; and Case C-169/08 *Presidente del Consiglio dei Ministri* [2009] ECR I-10821, paragraph 42). Furthermore, national legislation is appropriate to ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner (see, in particular, *Hartlauer*, paragraph 55, and *Presidente del Consiglio dei Ministri*, paragraph 42).

52 Specifically, as regards, first, the objectives of road safety and the protection of health and the environment, the legislation at issue in the main proceedings does not appear, subject to verification to be carried out where appropriate by the national court, to comply with the requirements set out in the preceding paragraph.

53 As the national court itself points out, that rule only applies in the case of the construction of new service stations. Hence, it does not apply to pre-existing service stations, which would require, for example, that the pre-existing service stations be progressively relocated in order to comply with the prescribed minimum distances. As the national court observes, this casts doubt on the consistency of the rule at issue in the main proceedings in relation to the abovementioned objectives.

54 In addition, even accepting that minimum distances between roadside service stations rules are an appropriate means of attaining the objectives of road safety and protection of health and the environment, it is apparent from the national court's own findings that those objectives are apt to be more appropriately attained by taking into account the specific situation of each proposed service station, in the course of the controls that the municipalities must carry out, in any event, in the case of applications for permission to open a new service station. As stated in paragraph 4 of this judgment, such controls involve, inter alia, the conformity of the service station with the provisions of the land use plan and legislation relating to health, the environment and road safety. In those circumstances, as the national court itself notes, the introduction of minimum distances appears to go beyond what is necessary to attain the objectives pursued.

55 Secondly, with regard to the objective mentioned in the order for reference of the 'rationalisation of the service provided to users', it must be recalled that reasons of a purely economic nature cannot constitute overriding reasons in the public interest justifying a restriction of a fundamental freedom guaranteed by the Treaty (see Case C-109/04 *Kranemann* [2005] ECR I-2421, paragraph 34 and the case-law cited).

56 Moreover, even assuming that that objective could, to the extent that it falls within the scope of consumer protection, be regarded as an overriding reason in the public interest and not a reason of a purely economic nature, it is difficult to see how legislation such as that at issue in the main proceedings can be appropriate to protect consumers or be beneficial to them. On the contrary, as the national court observed in essence, by hindering the market access of new operators, such legislation appears instead to favour the position of operators already present on Italian territory, without consumers obtaining any real benefits. In any event, it appears that the legislation goes beyond what is necessary to attain any objective of consumer protection, this being a matter which, if need be, is for the national court to verify.

57 In the light of the foregoing, the answer to the question referred is that Article 43 EC, read in conjunction with Article 48 EC, is to be interpreted as meaning that domestic provisions such as those at issue in the main proceedings, which lay down mandatory minimum distances between roadside service stations, constitute a restriction on the freedom of establishment enshrined in the Treaty. In circumstances such as those in the main proceedings, that restriction does not appear to be justified by the objectives of road safety, protection of health and the environment, or the rationalisation of the service provided to users, these being matters for the national court to verify.

Costs

58 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 43 EC, read in conjunction with Article 48 EC, is to be interpreted as meaning that domestic provisions such as those at issue in the main proceedings, which lay down mandatory minimum distances between roadside service stations, constitute a restriction on the freedom of establishment enshrined in the EC Treaty. In circumstances such as those in the main proceedings, that restriction does not appear to be justified by the objectives of road safety, protection of health and the environment, or the rationalisation of the service provided to users, these being matters for the national court to verify.

[Signatures]