OPINION OF ADVOCATE GENERAL LÉGER

delivered on 7 March 1996 *

1. Reference has been made to the Court by the Corte Suprema di Cassazione (the Italian Supreme Court of Cassation) for a preliminary ruling in four cases concerning the application of the special import arrangements in respect of young male bovine animals for fattening. The Italian court is essentially seeking a ruling, first, on the interpretation of certain provisions of Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt [1] and of Commission Regulation (EEC) No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening, [2] as amended by Commission Regulation (EEC) No 1384/77 of 27 June 1977, [3] and, second, on the validity of Commission Regulation (EEC) No 1121/87 of 23 April 1987 amending Regulations (EEC) No 612/77 and No 1136/79 as regards the release of the security for certain special import arrangements in the beef and veal sector. [4]

The relevant provisions of Community law

A — *The market in beef and veal*

2. Article 13 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal, [5] as amended by Article 3 of Council Regulation (EEC) No 425/77 of 14 February 1977, [6] sets out the terms of a special arrangement whereby the import levy normally applicable to young male bovine animals intended for fattening may be totally or partially suspended.

3. The rules for the application of such arrangements are laid down in Regulation No 612/77. Under Article 1 of that regulation, entitlement to total or partial suspension of the import levy is subject to completion of two essential formalities. The importer must first produce a written declaration, at the time of importation, that the young bovine animals are intended for fattening in the importing Member State for a period of 120 days from the day on which they were put into free circulation and, second, lodge a security in the sum of the amount of the levy suspended. [7] The same article also provides that that security may not be released in whole or in part unless proof is furnished by the importer to the competent authorities of the importing Member State that the young bovine animal has not been slaughtered before the expiry of the period of 120 days, unless it was necessary to slaughter it for certain strictly

* Original language: French.

1 — OJ 1979 L 179, p. 31.

2 — OJ 1977 L 77, p. 18.

3 — OJ 1977 L 157, p. 16.

4 — OJ 1987 L 109, p. 12.

5 — OJ, English Special Edition 1968 (I), p. 187.

6 — OJ 1977 L 61, p. 1.

7 — Article 1(1)(a) and (b).

defined reasons. [8] Lastly, Article 1(4) of Regulation No 612/77 provides that such proof must be furnished within 180 days from the day on which the animal is put into free circulation, otherwise the security will be forfeit and retained as a levy.

4. Regulation No 1384/77 amends the rules for the application of the special arrangements in certain respects. Under Article 7(1) of that regulation, the importer is also required to inform the competent authorities in the importing Member State, within one month following the date of importation, of the production unit or units where the young bovine animals are intended to be fattened.

5. That regulation also makes release of the security subject to an additional formality. Proof must be furnished by the importer that the young bovine animal has in fact been fattened in the production unit or units indicated to the competent authorities. [9]

6. The Community legislature tempered the rigour of the system by adopting Regulation No 1121/87. Although it was published after the events in the main proceedings occurred, the regulation applies to the facts of the case pursuant to the second paragraph of Article 3, which provides that: '[Regulation No 1121/87] shall apply to securities lodged on or after [23 April 1987] and, at the request of the party concerned, to securities lodged before [23 April 1987] which have not yet been definitively released or forfeited'.

B — *Incurring of customs debt*

7. The moment when the customs debt is incurred, the moment when it is extinguished and the moment at which payment of the amount of the customs debt may be demanded by the competent authorities were harmonized by Directive 79/623.

8. Article 2(d) of that directive provides that:

'A customs debt on importation shall be incurred by:

[...]

(d) the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs regime

8 — Ibid., paragraph 3.
9 — Article 7(2).

under which they are placed, or non-compliance with a condition to which the grant of the regime is subject, unless the competent authorities are satisfied that these failures have no significant effect on the correct operation of the temporary storage procedure or customs regime in question.'

9. That directive was replaced, after the events in the main proceedings occurred, by Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt, [10] which incorporates and supplements the provisions of the directive.

Facts and procedure in the proceedings before the national courts

10. Between 1982 and 1985, three Italian agricultural holdings, Cooperativa Agricola Zootecnica S. Antonio (Case C-246/94), Cooperativa Lomellina di Cerealicoltori Srl (Cases C-247/94 and C-248/94) and Azienda Agricola Cavicchi Bruno e Fratelli, with Cassa di Risparmio di Trieste SpA acting as guarantor (Case C-249/94), imported consignments of young male bovine animals into Italy from Eastern Europe for fattening.

11. For various reasons, the agricultural holdings failed to fulfil the obligation, laid down in the Community import arrangements in respect of young male bovine animals, to inform the competent Italian customs authorities of the location of the fattening unit within one month from the date of importation. Cooperativa Agricola Zootecnica S. Antonio was several days late in informing the competent customs authorities; Azienda Agricola Cavicchi did not inform them at all; while Cooperativa Lomellina di Cerealicoltori produced the information within the prescribed period but sent it to the local authorities in the district where the fattening unit was located. Moreover, it appears from the order for reference in the last case [11] that that particular cooperative also failed to produce a declaration certifying that the bovine animals intended for fattening were still alive 120 days after the date on which they were imported.

12. Considering that, in view of this failure to fulfil their obligations, the holdings in question were no longer entitled to suspension of the import levy, the Italian customs authorities demanded payment of the relevant customs duties and claimed that the securities lodged at the time of importation should be forfeited in their entirety.

13. The three holdings in question brought separate actions against the Amministrazione delle Finanze dello Stato (State Finance

10 — OJ 1987 L 201, p. 15.

11 — Page 3, paragraph 5, of the French version.

Administration) before the Tribunale (District Court), Trieste, claiming that its demands were unlawful under Community law. The Tribunale dismissed the claims of Cooperativa Lomellina di Cerealicoltori and Azienda Agricola Cavicchi and upheld those of Cooperativa Agricola Zootecnica S. Antonio in part.

14. Separate appeals were then brought by the three holdings before the Corte d'Appello (Court of Appeal), Trieste, which by judgment of 23 February 1990 confirmed the Tribunale's ruling in the case of Cooperativa Agricola Zootecnica S. Antonio. It considered that Directive 79/623 was subordinate to and predated a higher rule of law, namely Regulation No 1121/87, and was consequently not applicable. However, in the case of the appeals brought by Cooperativa Lomellina di Cerealicoltori and Azienda Agricola Cavicchi, it considered in its judgments of 6 June 1992 and 19 January 1993 that failure to comply with the obligations laid down in Regulation No 612/77, as amended by Regulation No 1384/77, had had no significant effect on the correct operation of the customs regime governing the importation of bovine animals. It accordingly held that Article 2(d) of Directive 79/623 was directly applicable in Italy, despite the fact that it had not been transposed into Italian law, and it therefore reversed the judgments handed down by the court of first instance in those two cases.

15. Cooperativa Agricola Zootecnica S. Antonio and the Amministrazione delle Finanze dello Stato applied to the Corte Suprema di Cassazione for a review of the judgments of the Corte d'Appello, Trieste, seeking to have them set aside.

16. The Amministrazione delle Finanze dello Stato contends that Article 1 of Regulation No 612/77, as amended by Regulation No 1384/77, and Article 2 of Directive 79/623 have been infringed and misapplied. It also considers that Article 2(d) of Directive 79/623 (not transposed into Italian law) is not directly applicable. Even if it were, the Amministrazione delle Finanze contends that the correct operation of the customs regime established by the Community for the importation of young male bovine animals intended for fattening requires fulfilment of the obligation that the Corte d'Appello itself considered had not been complied with, namely the obligation to inform the competent authority of the location of the fattening unit within the prescribed period, this being essential for the purposes of the requisite inspection.

17. Cooperativa Agricola Zootecnica S. Antonio, for its part, claims that Articles 173, 189 and 177 of the EC Treaty have been infringed. It claims that the Corte d'Appello misapplied Regulation No 1121/87, since the delay in communicating the location of the fattening unit had no effect on the correct operation of the customs regime in question, that under the terms of Article 2(d) of Directive 79/623 no customs debt was therefore incurred, and that Regulation No 1121/87 is invalid.

The questions submitted by the national court

18. The Corte Suprema di Cassazione, First Civil Chamber, doubtful as to the correct interpretation of the Community legislation at issue and the validity of one of the Community regulations, stayed the proceedings and referred the following three questions to the Court for a preliminary ruling in Case C-246/94:

'The first question of interpretation seeks to establish whether Article 2(d) of Directive 79/623/EEC of 25 June 1979 (which has not been transposed into Italian law) meets the necessary criteria for direct applicability and for conferring rights on individuals which they can rely upon against the Italian State.

The second question of interpretation arises only if the first question is answered in the affirmative. It seeks to establish whether the provision in question also applies where there has been a delay in communicating the location of the production unit where the bovine animals are intended to be fattened, that is to say, where Regulation No 612/77, as amended by Article 7 of Regulation No 1384/77, has been infringed. It is necessary, therefore, to interpret the provisions of that regulation establishing special import arrangements in order to ascertain whether the delay in question had a significant effect on the correct operation of that regime.

If the preceding question is answered in the negative and the provision in question is not considered to be applicable in the present case, the third question becomes relevant, namely, whether Regulation No 1121/87 of 23 April 1987 is valid. It is necessary to establish whether or not the magnitude of the penalty fixed by Article 1(2) of that regulation (by which the whole of the security is to be forfeit following a delay of 50 days in communicating the required information) conflicts with the principle of proportionality — upheld by the Court of Justice in the past — with respect to the objective pursued.'

19. In Cases C-247/94, C-248/94 and C-249/94, the national court submitted two questions for a preliminary ruling on interpretation. These are essentially identical to the first two questions set out above but the wording of the second question differs slightly in Cases C-248/94 and C-249/94, seeking to ascertain whether '[...] the provision in question also applies where Regulation No 612/77 [...] has been infringed, as found by the Corte d'Appello, Trieste [...]'.

The answer to the questions submitted by the national court

20. The first two questions submitted by the Corte Suprema di Cassazione are closely linked and concern the interpretation of Directive 79/623 and Regulation No 612/77, as amended by Regulation No 1384/77. The national court is essentially asking the Court to determine whether the general rule contained in Article 2(d) of Directive 79/623 must be applied in any circumstances or whether the specific obligations contained in the specific legislation concerning the special import arrangements in respect of certain young male bovine animals for fattening take precedence, thus rendering the general legislation inoperative. The Court has never before been asked to rule on a question of this kind. The third question is submitted in the alternative and the Court is required to answer it only if it decides that Article 2(d) of Directive 79/623 applies to the cases at issue in the main proceedings. It concerns the validity of Article 1(2) of Regulation No 1121/87.

21. A number of Italian agricultural cooperatives had already applied to the Court, under the second paragraph of Article 173 and the second paragraph of Article 189 of the Treaty, for a declaration that Article 1(2) of Regulation No 1121/87 was invalid. [12] The Court noted that the provision in question applies '[...] to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract [...]' and concluded that 'it thus has general application within the meaning of the second paragraph of Article 189 of the Treaty and cannot be of individual concern to the applicants for the purposes of the second paragraph of Article 173 of the Treaty'. [13] The application was therefore dismissed as inadmissible. [14]

The first question

22. In its first question, the national court asks the Court how Article 2(d) of Directive 79/623 is to be interpreted. It requests the Court, in particular, to specify whether that provision meets the necessary criteria for direct applicability and for conferring rights on individuals, which they can rely upon against a Member State when it has not been transposed into the internal law of that State. Specifically, the Court is asked to state whether the rules of Community law on incurring customs debt apply in Italy and whether an individual could rely upon the rights conferred on him by those provisions against that State.

23. The directive has not been transposed into Italian law, [15] despite the fact that the period allowed for transposition under Article 12 expired on 1 January 1982. The directive was therefore in force at the time of the events reported in the four orders for reference.

12 — See Order in Case 191/87 *Covale and Others* v *Commission* [1988] ECR 515.

13 — Ibid., paragraph 10.

14 — Ibid., operative part of the order.

15 — See page 3 of the French version of the order for reference in Case C-248/94.

24. It has been established since the judgment in *Enka* [16] that '[...] where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the effectiveness of such an act would be weakened if individuals were prevented from relying on it before their national courts and if the latter were prevented from taking it into consideration as an element of Community law'. [17] That is especially so 'when the individual invokes a provision of a directive before a national court in order that the latter shall rule whether the competent national authorities, in exercising the choice which is left to them as to the form and the methods for implementing the directive, have kept within the limits of their discretion as set out in the directive'. [18] That case-law has been consistently followed and the Court has invariably recognized that individuals have rights on which they may rely against a Member State which has not adopted implementing measures within the prescribed period or has adopted measures which are incompatible with provisions of a directive that are sufficiently precise and unconditional.

25. Thus, the Court has held that the essential prerequisite for a provision of a directive to have direct effect is that it should be unconditional and sufficiently precise. [19]

16 — Case 38/77 *Enka* v *Inspecteur der Invoerrechten en Accijnzen* [1977] ECR 2203.

17 — Paragraph 9.

18 — Ibid., paragraph 10.

19 — See the judgment in Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53, paragraph 25.

26. Let us now consider whether the provision of Directive 79/623 on incurring customs debt is unconditional and sufficiently precise.

27. Cooperativa Agricola Zootecnica S. Antonio claims that it is, while the Amministrazione delle Finanze dello Stato contends that it is not.

28. Allow me to remind you of the terms of Article 2(d) of the directive in question, which reads as follows:

'A customs debt on importation shall be incurred by:

[...]

(d) the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs regime under which they are placed, or non-compliance with a condition to which the grant of the regime is subject, unless the competent authorities are satisfied that these failures have no significant effect on the correct operation of the temporary storage procedure or customs regime in question'.

29. According to the Commission, that provision meets the Court's criteria for direct effect.

30. I believe the Commission's argument should be endorsed.

31. Directive 79/623 was adopted on the basis of Article 100 of the Treaty. The Community legislature was prompted to act by the finding that '[...] the thorough survey undertaken jointly with Member States has shown the need in certain fields to establish, by binding Community acts, measures essential for the introduction of customs rules which will ensure uniform application of the duties on the import and export of goods which are the subject of trade between the Community and third countries'. [20] The Community legislature's aim is defined as follows: '[...] it is therefore necessary to establish common rules for determining the moment when the customs debt is incurred, in order to ensure uniform application of the Community provisions in force on imports and exports'. [21]

32. The Italian Government claims that the phrase 'unless the competent authorities are satisfied' in Article 2(d) of Directive 79/623 is to be interpreted as meaning that the competent authorities have a wide measure of discretion as regards the conditions for implementing the system so established [22] and that the provision in question is therefore not sufficiently precise and unconditional to be directly applicable.

33. That argument cannot be accepted. The Community legislature stated that its aim was to ensure uniform and binding application of the provisions on customs debt. In particular, it stated that '[...] the moment when the customs debt is incurred on imports should be defined in terms of the conditions under which the goods liable to import duties are integrated into the economy of the Community'. [23]

34. Such a provision would have no practical effect if it were to be interpreted as conferring on Member States a wide measure of discretion in implementing the measure. This would certainly be the case if the competent national authorities were able to make the practical scope of the customs concession dependent on conditions or formalities other than those laid down by the Community

20 — Third recital in the preamble.

21 — Fifth recital in the preamble.

22 — See pages 5 and 6 of the French version of the Italian Government's observations.

23 — Seventh recital in the preamble.

legislature. The expression 'unless the competent authorities are satisfied' must therefore be interpreted as meaning that a trader may furnish the competent national authorities with proof that non-fulfilment of a customs formality or obligation has had no significant effect on the correct operation of the temporary storage procedure or customs regime in question and the Member State may not object that national measures that would in fact facilitate the application of a concession have not been adopted.

35. This interpretation is confirmed by the Court's judgment in *Esercizio Magazzini Generali*, [24] in which it had been asked for a ruling on the direct application of Article 4 of Directive 79/623, which provides that:

'By way of derogation from Article 2, no customs debt on importation shall be deemed to be incurred in respect of specific goods:

(a) where the person concerned proves to the satisfaction of the competent authorities that the non-fulfilment of the obligations which arise from:

— the provisions adopted in application of Article 2 of Directive 68/312/EEC, or

— keeping the goods in question in temporary storage, or

— the use of the customs regime under which the said goods have been placed,

results from the total destruction or irretrievable loss of the said goods by reason of the nature of the goods themselves or because of unforeseeable circumstances or *force majeure*'.

36. In that case, the Italian customs authorities had served an order on two undertakings, in accordance with the national legislation in force, requiring payment of a sum in respect of the customs duty and value added tax on goods stolen from the customs warehouse managed in the port of Catania by Esercizio Magazzini Generali, together with the statutory interest and costs. The two

24 — Joined Cases 186/82 and 187/82 *Ministero delle Finanze* v *Esercizio Magazzini Generali and Mellina Agosta* [1983] ECR 2951.

undertakings relied on the provisions of Community law which, in their view, provide for exemption from payment of customs duties and other charges when goods have been destroyed as a result of *force majeure* or unforeseeable circumstances. They claimed that the theft of the goods in storage was committed in circumstances which were such as to constitute a case of *force majeure* within the meaning of Community law, justifying exemption from duties.

37. The Court held, on the basis of Article 4 of Directive 79/623 which had not been transposed into Italian law, together with the ninth recital in the preamble to the directive, that the reasons for the extinction of the customs debt had to be based on the fact that the goods had not been used for the economic purpose which justified the application of import duties. In the case of theft, however, the Court assumed that the goods passed into the Community commercial circuit. It concluded that the loss of the goods for the purposes of the directive did not embrace the concept of theft, regardless of the circumstances in which it had been committed. In so ruling, the Court gave direct effect to Article 4 of Directive 79/623, and did not consider that the expression 'to the satisfaction of the competent authorities' meant that the provision was not sufficiently precise and unconditional. [25] It should not take a different view with regard to the interpretation of Article 2(d) of Directive 79/623.

25 — Ibid., paragraphs 11 to 14.

38. In answer to the first question submitted by the national court, I consider that Article 2(d) of Directive 79/623 meets the necessary criteria for direct applicability and for conferring rights on individuals, which they can rely upon against a Member State when it has not been transposed into the internal law of that State.

The second question

39. The second question submitted by the national court is an extension of the first, and seeks essentially to ascertain whether Article 2(d) of Directive 79/623 also applies in the highly specific cases on which it has been asked to rule, namely where a trader has failed to complete the formality laid down in Article 1(1)(d) of Regulation No 612/77, as amended by Article 7(1) of Regulation No 1384/77. In other words, can an importer of young male bovine animals for fattening, who has failed to fulfil his obligation to inform the competent national authorities of the location of the fattening unit within the prescribed period, rely on the provisions of Directive 79/623 and effectively claim that the customs debt has not been incurred, by furnishing proof that his failure to fulfil the obligation has had no effect on the operation of the customs regime in question, or must it be held that his failure to observe the time-limit had a significant effect on the correct operation of the special import arrangements in respect of certain young male bovine

animals for fattening? This is the first occasion on which the Court has been asked to rule on a question of this kind.

40. The Italian Government claims that failure to observe the time-limit at issue in the main proceedings has a significant effect on the operation of the special customs regime and that a customs debt on importation is automatically incurred. The specific rules on the release of the security for special import arrangements in the beef and veal sector are therefore applicable. It points out that the objective pursued by the Community legislature would have no practical effect if there was no penalty for failing to fulfil the additional obligation imposed by Regulation No 1384/77.

41. The Commission is less positive. It takes the view that a detailed assessment of the question whether failure to observe this formality had no significant effect on the correct operation of the customs regime in question should be made in each of the cases brought before the national court. Thus, according to the Commission, the traders in question have a right under Article 2(d) of Directive 79/623 to expect that the competent national authority, far from considering that a customs debt is incurred automatically as a result of their failure to observe the formality in question, will ascertain case by case whether or not it had a significant effect on the correct operation of the special customs regime and will take into account the seriousness of the infringement committed by the trader in question.

42. Cooperativa Agricola Zootecnica S. Antonio, for its part, claims that the infringement alleged against it had no effect on the operation of the customs regime in question and that furthermore the requirements contained in Article 1(1)(d) of Regulation No 612/77, as amended by Article 7(1) of Regulation No 1384/77 and by Article 1(2) of Regulation No 1121/87, are unlawful. [26]

43. I consider that, far from being inconsistent, Article 2(d) of Directive 79/623 and Article 1(1)(d) of Regulation No 612/77, as amended by Article 7(1) of Regulation No 1384/77, are complementary. Those two Community acts do not pursue the same aims. Directive 79/623 harmonizes the general rules on customs debt, [27] while Regulation No 612/77 sets out the particular provisions applicable to the special import arrangements in respect of certain young male bovine animals for fattening. Article 2(d) of Directive 79/623 lays down a general principle, namely, that in cases where failure to fulfil an obligation has no significant effect on the correct operation of the customs regime in question, no customs debt is incurred. The trader may furnish proof to that effect, unless the Community legislature decides otherwise. The answer to the second question depends essentially on the Community legislature's aim in imposing the particular obligation contained in Article 1(1)(d) of Regulation No 612/77, as amended.

26 — Observations of the plaintiff in the main proceedings, p. 2 of the French version.

27 — See point 31 above.

44. In my view, the Community legislature viewed the obligation imposed by Article 1(1)(d) of Regulation No 612/77, as amended, as a precondition for the correct operation of the customs regime in question.

45. Allow me to remind you of the wording of the provision in question:

'1. *No importer shall be entitled to total or partial suspension of the import levy* under Article 13(1) of Regulation (EEC) No 805/68 *unless he produces*:

[...]

(d) a written undertaking, given at the time of importation, to inform the competent authority in the importing Member State within one month following the date of importation, of the production unit or units where the young bovine animals are intended to be fattened.' [28]

28 — Article 1(1)(d) of Regulation No 612/77, as amended by Article 7(1) of Regulation No 1384/77.

46. *An analysis of the rules for the application* of the special customs regime shows that the formality provided for in Article 1(1)(d) of Regulation No 612/77 must be observed, otherwise the importer will not be entitled to total or partial suspension of the import levy on young male bovine animals for fattening. This in itself is an indication of the very special importance which the Community legislature attaches to observance of the formality in question.

47. *An analysis of the rules laid down for release of the security* provided for under that special regime reflects the same concern. Article 1(3) and (4) of Regulation No 612/77, as amended by Article 7(1) of Regulation No 1384/77, provides that:

'3. Except in cases of *force majeure*, the security shall not be released, in whole or in part, unless proof is furnished to the competent authorities of the importing Member State that the young bovine animal:

(a) has been fattened in the production unit or units indicated pursuant to paragraph 1(d);

(b) has not been slaughtered before the expiry of the period specified in Article 1(a); or

(c) has been slaughtered before the expiry of this period for health reasons or has died as a result of sickness or accident.

The security shall be released immediately after such proof has been furnished.

4. If the proof referred to in paragraph 3 is not furnished within 180 days from the day on which the animal is put into free circulation, the security shall be forfeit and retained as a levy.'

48. Release of the security is thus itself subject to observance of a number of formalities. If the formality provided for in Article 1(1)(d) of Regulation No 612/77 is not observed, the importer will not be entitled to suspension of the levy and the whole of the security he has lodged will be forfeit and retained as a levy.

49. The rigour of this system was tempered by Regulation No 1121/87,[29] which amended Article 1 of Regulation No 612/77, as already amended by Regulation No 1384/77.

50. Article 1(2) and (3) of Regulation No 1121/87 provides that:

'2. The following subparagraph is added to Article 1(3) [of Regulation No 612/77]:

"However, where the time-limit referred to in paragraph 1(d) has not been observed, the amount of the guarantee to be released shall be reduced by

— 15% and by

— 2% of the remaining amount for each day by which it has been exceeded".

The amounts not released shall be forfeit and retained as a levy.

29 — Also applicable to the cases at issue, see point 8 above.

3. The following subparagraph is added to Article 1(4) [of Regulation No 612/77]:

"However, if such proof has been established within the abovementioned 180 days but is produced within the 18 months following these 180 days, the amount forfeited, less 15% of the security amount, shall be repaid."'

51. An analysis of this new provision shows that the legislature attaches far more importance to fulfilment of the obligation laid down in Article 1(1)(d) of Regulation No 612/77 than to fulfilment of the obligation laid down in Article 1(4) of that regulation.

52. *An analysis of the rationale underlying that special arrangement* also shows that fulfilment of the obligation laid down in Article 1(d) of Regulation No 612/77 is regarded by the Community legislature as essential to the correct operation of the customs regime in question.

53. The Community legislature's objective in establishing this special regime is set out in the eighth recital in the preamble to Regulation No 805/68, which states that '[...] in order to have more animals for fattening in the Community and to increase the production of meat without increasing the number of cows and, consequently, milk production, it is advisable under certain market conditions to apply a special system to imports from third countries of certain categories of young bovine animals and calves for fattening in the Community'.

54. The special arrangements were adopted on 24 March 1977 by Regulation No 612/77. [30] However, in order to avoid abuses and ensure that the measures were not diverted from their objective, [31] the Community legislature established a system binding on the importer. He must produce a written declaration that the young bovine animals are intended for fattening for a period of 120 days from the day on which they were put into free circulation [32] and a security in the sum of the amount suspended of the levy applicable on the day of importation, [33] the security being released only if proof is furnished that the animal has not been slaughtered before the expiry of the period specified. [34]

55. As soon as the special arrangements were in place, the Community legislature realized that exceptional vigilance would be needed, in view of the risks of fraud and abuses liable to divert those arrangements from their true

30 — Second recital in the preamble.
31 — Second and third recitals in the preamble.
32 — Article 1(1)(a).
33 — Article 1(1)(b).
34 — Article 1(3).

economic objective. It therefore adopted Regulation No 1384/77, under which the importer's obligations were more clearly stipulated. [35] Under Article 7(1) of Regulation No 1384/77 amending Article 1(1) of Regulation No 612/77, the importer is required to communicate the location of the fattening unit within one month, otherwise he will not be entitled to benefit from the special customs regime provided for by Regulation No 612/77.

56. The Community legislature's objective is clearly set out in the second recital in the preamble to Regulation No 1384/77. It is to prevent the fraud and abuses to which the system is liable. The additional obligation placed on the importer is intended to enable the competent national authorities to organize inspections in a satisfactory manner and verify that the importer's declarations are correct, reliable and in keeping with Community requirements.

57. In the light of the wording and rationale of the special provisions, I am inclined to take the view that fulfilment of this additional obligation, and observance of the time-limit set for complying with it, are to be regarded as a *necessary* condition for the effective application of the supervisory measures required by the Community legislature and are consequently essential to the correct operation of that regime.

58. *Moreover*, speaking pragmatically, with the interests of the common agricultural policy in mind, I should like the Court to consider a further point in support of that view. The constraints to which the administrative authorities are inevitably subject in the course of their work make it essential for them to be given reasonable notice, to enable them to organize the tasks entrusted to the departments responsible for carrying out on-the-spot inspections in a satisfactory manner. I agree with the Italian Government that, if the authorities are not informed of the location of the fattening unit, it is impossible or extremely difficult for them to carry out the necessary checks to ensure that the young bovine animals that are imported *are in fact the animals* for which a declaration is subsequently produced certifying that they have been kept alive for 120 days.

59. *Lastly*, an analysis of the rationale behind Directive 79/623 [36] and of the wording of Article 2(d) thereof is consistent with the strict interpretation which I propose that the Court should adopt. In so far as the Community legislature has indicated, by means of special rules, that fulfilment of the obligation specifically laid down in Article 1(1)(d) of Regulation No 612/77 is essential to the correct operation of the customs regime in question, Article 2(d) *in fine* of Directive 79/623 is not applicable. Any other interpretation would deprive the special arrangements introduced by Regulation No 612/77, as amended, of their effectiveness.

35 — Second and third recitals in the preamble.

36 — See point 31 above.

60. I therefore propose that the Court's answer to the second question should be that failure, by an importer of young male bovine animals intended for fattening, to observe the formality provided for in Article 1(1)(d) of Regulation No 612/77, as amended by Article 7(1) of Regulation No 1384/77, has a significant effect on the correct operation of the customs regime in question, within the meaning of Article 2(d) of Directive 79/623.

61. The third question is consequently devoid of purpose and does not require an answer.

62. I therefore propose that the Court give the following answer to the questions submitted by the Corte Suprema di Cassazione:

(1) Article 2(d) of Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt meets the necessary criteria for direct applicability and for conferring rights on individuals, which they can rely upon against a Member State when it has not been transposed into the internal law of that State.

(2) Failure, by an importer of young male bovine animals intended for fattening, to observe the formality provided for in Article 1(1)(d) of Commission Regulation (EEC) No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening, as amended by Article 7(1) of Commission Regulation (EEC) No 1384/77 of 27 June 1977, has a significant effect on the correct operation of the customs regime in question, within the meaning of Article 2(d) of Directive 79/623.