THE COURT

in answer to the questions referred to it by the President of the Tribunale di Torino by order of that court dated 6 April 1971, hereby rules:

Since 1 January 1962, the date on which the first stage of the transitional period came to an end, Article 16 of the Treaty has produced direct effects in the legal relations between the Member States and those persons subject to their jurisdiction and has conferred on the latter rights which the national courts must protect.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 26 October 1971.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 5 OCTOBER 1971[1]

Mr President,
Members of the Court,

As we know from other cases, under Article 37 of Law No 1089 of 1 June 1939, Italy levies a progressive tax on the export of articles of an artistic, historic, archaeological or ethnographic interest. The Commission of the European Communities considers that the levy of this tax is not in accordance with Article 16 of the EEC Treaty, whereby 'Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest' (that is, in view of Article 8 of the EEC Treaty, with effect from 1 January 1962). The Commission therefore instituted against the Italian Republic formal proceedings under Article 169 of the EEC Treaty for a declaration that this State was failing to fulfil one of its obligations under the Treaty (Case 7/68, *Commission* v *Italian Republic*, [1968] ECR 423). In these proceedings the Court upheld the Commission's view. In its judgment of 10 December 1968 it affirmed the conclusions put forward by this body and declared that 'the Italian Republic, by continuing to levy after 1 January 1962 the progressive tax laid down by Article 37 of the Law of 1 June 1939 No 1089 on the export to other Member States of the Community of articles of an artistic, historic, archaeological or ethnographic interest, has failed to fulfil its obligations under Article 16 of the Treaty establishing the European Economic Community'.

However, the provisions of the Law at issue, which adversely affect intra-Community trade, have still not been re-

1 — Translated from the German.

pealed. For this reason, the Court is at present seised of a fresh application (Case 48/71) for a declaration of non-fulfilment of a Treaty obligation on the ground that the Italian Republic has not complied with the judgment in Case 7/68 and it has therefore failed to fulfil its obligations under Article 171 of the Treaty.

The provisions of the Law in question were applied to Eunomia, a limited partnership which is the plaintiff in the main action. On 4 March 1970 it exported to the Federal Republic of Germany a painting valued at Lit. 500 000 and was required under this Law to pay an export tax of Lit. 108 750. As it considered the levy of this tax to be unlawful under the EEC Treaty, it commenced proceedings before the Tribunale di Torino 'for a summary judgment' against the Italian Ministry of Education for the refund, under Article 2033 of the Civil Code, of the sums paid by way of this tax. In support of this claim Eunomia refers to the case-law of this Court and submits in particular that Article 16 of the EEC Treaty, which is infringed by the provisions of the Italian Law in question, contains a clear and precise prohibition and allows the Member States no discretion. It claims that since 1 January 1962 this Article has produced direct effect in the Member States and is directly applicable, with the result that the rights which it confers on individuals must be protected by the national court. Since this question is one of the interpretation of Community law the President of the Tribunale di Torino accepted the plaintiff's suggestion and on 6 April 1971 stayed the proceedings and referred the following questions to you for a preliminary ruling:

(1) Does the provision in Article 16 of the Treaty of Rome constitute a legal rule which is immediately applicable and which has produced direct effects within the Italian State as from 1 January 1962?

(2) If so, has this legal rule since that date created against the Italian State for all those subject to the jurisdiction of that State individual rights which Italian courts must protect?

These questions call for a joint reply and you should have no difficulty in giving it in the light of the concurring views of the Commission and the plaintiff in the main action, who were the only parties to make written and oral submission to the Court.

In fact there already exists an extensive case-law which the Court has built up on the problem of the direct applicability of provisions of the Treaty. It is to this that the parties have referred in their observations before you and it is to this alone reference need be made in the present case.

The first judgment of importance in this respect is that given on 5 February 1963 in Case 26/62 (*NV Algemene Transport- en Expeditie Onderneming van Gend and Loos* v *Netherlands Inland Revenue Administration* [1963] ECR 12). In that case the Court emphasized the principle that 'the Community constitutes a new legal order of international law . . . the subjects of which comprise not only Member States but also their nationals'. It maintained that Community law also confers rights on individuals not only where the Treaty expressly provides therefor, but also on the basis of clearly-defined obligations imposed by the Treaty on individuals as well as on the Member States and the Community institutions. As regards Article 12 of the EEC Treaty, the provision in question in that case, (whereby 'Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other'), the Court declared that that Article laid down 'a clear and unconditional prohibition', an obligation which was 'not qualified by any reservation on

the part of States which would make its implementation conditional upon a positive legislative measure enacted under national law', a rule whose implementation 'does not require any legislative intervention on the part of the States'.

The Court therefore concluded that this provision must be interpreted 'as producing direct effects and creating individual rights which national courts must protect'.

The second stage in the development of this case-law is represented by the judgment in Case 57/65 (Judgment of 16 June 1966, *Firma Alfons Lütticke GmbH* v *Hauptzollamt Saarlouis*, [1966] ECR 205), which was delivered in connexion with Article 95 of the EEC Treaty according to which no Member State 'shall impose directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products', and in particular as regards the rule contained in the third paragraph of Article 95 according to which 'Member States shall, not later than at the beginning of the second stage, repeal or amend any provisions existing when this Treaty enters into force which conflict with the preceding rules'. This clearly involved an obligation on the part of the Member States to take action and to adapt the national legislation. However, as the Member States were allowed no latitude as regards the date of such adaptation and as the third paragraph of Article 95 had to be applied by 31 December 1961 at the latest the Court, which considered that the first paragraph of Article 95 contained 'a clear and unconditional obligation', which is not subject to the taking of 'any measure by the Member States' was able to state that this Article constitutes a 'complete legally perfect' prohibition, which emerged into full force on the expiry of the period laid down in the third paragraph, and was capable of 'producing direct effects on the legal relationships between the Member States and persons subject to their jurisdiction'.

The same line was followed in the Judgment in Case 13/68 *SpA Salgoil* v *Italian Ministry for Foreign Trade*, [1968] ECR 453), which concerned Articles 31 and 32 of the EEC Treaty, the first of which prohibits the introduction of 'any new quantitative restrictions or measures having equivalent effect', while the second calls upon Member States to refrain 'in their trade with one another from making more restrictive the quotas and measures having equivalent effect existing at the date of the entry into force of this Treaty'. In this connexion (and in particular as regards Article 31 of the Treaty) the Court found that as from the notification of the lists of the products liberalized or, at the latest, from the expiry of the period allowed for notification, (even where the Member States had not fulfilled the obligation upon them) Article 31 contains a 'clear prohibition', that is, it involves a duty which is not 'accompanied by any reservation whereby its operation depends on a positive measure of national law or on an intervention by the institutions of the Community'. The Court therefore concluded that Article 31 lends itself 'perfectly ... to producing direct effects on the legal relationships between Member States and those persons subject to their jurisdiction' and creates (individual) 'rights which national courts must respect'. The Court only denied the attribute of direct effect to the final sentence of the second paragraph of Article 32 and to Article 33 on the ground that these texts provided for a gradual abolition during the transitional period, in other words, they provided for a duty to act, in the performance of which the Member States enjoyed a certain *discretion*. The application of these provisions was therefore too imprecise for them to be regarded as having direct effect.

Finally (although this survey of the case-law is not in any way exhaustive) I must refer to the judgment of this Court in Case 33/70 (Judgment of 17 December 1970, *SpA SACE* v *Ministry for Finance of the Italian Republic*, [1970] ECR 1213). Here again, the question related to a duty to act imposed by the Treaty, a duty which arose under Article 13 and which concerned the progressive abolition of those charges having an effect equivalent to customs duties on imports which are in force between Member States. This abolition was to take place during the transitional period, in accordance with a time-table laid down in the Commission's directives and, in that instance, had to take place by 1 July 1968 at the latest. In this connexion you confirmed that the directive in question in that case had fixed a time-limit for the performance of the duty arising under Article 13 and that, as from that date, there existed a clear and precise prohibition which is not subject to 'any reservation ... to subject its implementation to a positive act of national law or to an intervention by the institutions of the Community'. The Court stated, therefore, that it must be inferred that the provisions of the said Commission directive together with Articles 9 and 13(2) of the Treaty produce direct effects in the legal relations between the Member State to which the directive was addressed and those persons subject to its jurisdiction and that, as from 1 July 1968, they conferred rights on the latter 'which the national courts must protect'.

The solution to the present case may be deduced without any difficulty from this body of case-law. I find that Article 16, with which we are now dealing, speaks of customs duties on exports and charges having equivalent effect and thus uses identical terms to those used in Article 12. The time-limit for such abolition is fixed by the Treaty itself and cannot be said to derive from any measure of secondary Community law. There is nothing to indicate that any margin of discretion was left to the Member State. I can therefore state that, taken together with Article 9 according to which the Community is to be based upon a customs union which is to involve the prohibition 'between Member States of customs duties on imports and exports and of all charges having equivalent effect', Article 16 has involved, since 1 January 1962, a clear and precise prohibition which is not subject to any reservation or condition. The duties which derive therefrom for the Member States are, within the meaning of the case-law of the Court, complete and legally perfect. The provisions in question thus confer on individuals rights which the national courts must protect, although (as will be remembered from Case 13/68) it is for the national legal system to 'classify' these rights and to determine which court or tribunal has jurisdiction to give this protection.

As any other considerations appear to be superfluous, I propose a reply in this sense to the questions referred to the Court by the President of the Tribunal di Torino.