In Case 82/71

Reference to the Court of Justice under Article 177 of the EEC Treaty by the Pretore of the district of Bari for a preliminary ruling in the action pending before that court between

PUBBLICO MINISTERO DELLA REPUBBLICA ITALIANA

and

SOCIETÀ AGRICOLA INDUSTRIA LATTE (SAIL)

on the interpretation of Articles 37 and 90 of the EEC Treaty, Article 22 of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products and of Article 2 of Regulation (EEC) No 2622/69 of the Council of 21 December 1969 amending Regulation (EEC) No 804/68, in relation to the Italian legislation on the distribution and sale of drinking milk,

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Monaco and P. Pescatore (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

In Italy, Article 27 of Royal Decree No 994 of 9 May 1929 on health control for milk intended for drinking gave to individual communes or groups of communes the power to create special establishments, milk centres, in order to centralize milk intended for local consumption with the object of subjecting it to the necessary controls and to pasteurization or any other treatment recognized as appropriate to ensure purity and wholesomeness.
Article 28 of the same decree provides that in communes where there is a centre it is prohibited to sell other milk except

that which may be consumed 'untreated' and which has been prepared in accordance with certain rules contained in that decree.

Nevertheless, when the quantity of milk treated in the centre is insufficient for local consumption, milk may be imported from elsewhere, on condition that it is pasteurized or that it has been subjected to sufficient treatment in establishments approved for this purpose by the competent health authority.

Article 1 of Law No 851 of 16 June 1938 on the establishment and operation of milk centres specifies that these may be created in individual communes or groups of communes in which there is a recorded daily consumption of drinking milk of at least 100 hectolitres and that the object of the centres is to collect the milk intended for direct local consumption, ensure its natural qualities, subject it to a treatment to ensure that it is wholesome and package it for sale to the market in such a manner as to prevent any adulteration or contamination.

Article 11 of Law No 851 provides that in communes or groups of communes which have been authorized to establish a milk centre, the Prefect shall by decree determine the boundary of the production area reserved to the centre according to the needs of the population.

The centres must purchase the quantities of milk which they require from all the producers in that area.

According to Article 13 of Law No 851, the Prefect shall also lay down the boundary of the urban area in which it is prohibited, with some exceptions, to import and sell milk which does not come from the centre.

Article 16 provides especially for penalties for the infringement of this prohibition.

On 17 April 1971 two officials from the health authority of the commune of Bari reported an employee of the SAIL undertaking for having delivered certain quantities of milk, in particular pasteurized homogenized whole milk from the production plant of the SAIL undertaking situated at Gioia del Colle, to a dairy situated within the boundary of the 'prohibited' urban area of Bari.

During the criminal proceedings brought before the Pretore of the Bari district, the legal representative of the SAIL undertaking claimed that Law No 851 which is the legal basis of the offence with which it was charged is contrary, on the one hand, to the provisions of the EEC Treaty concerning quantitative restrictions, discrimination regarding the conditions under which goods are procured and marketed and restrictions on competition and, on the other hand, to the Community regulations on the common organization of the markets in milk.

By an order of 3 July 1971 the Pretore decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the interpretation of several provisions of Community law.

In his order he states in particular that the Treaty contains rules which, to the extent to which they are directly applicable, are such as to take precedence over earlier national rules which are incompatible with them and that the proper administration of justice requires in the present instance that, without awaiting the exhaustion of methods of appeal under national law, the Court of Justice should be asked for the interpretation of certain of those Community rules.

Although the Court may not within the framework of such a procedure for a preliminary ruling give judgment upon the compatibility of rules of national law with Community law, it is desirable to know whether certain of the provisions of the latter confer upon those subject to Italian law individual rights which they pay plead before their courts in opposition to national legislation laying down restrictions on the sale and distribution of drinking milk.

In consequence the Pretore of the Bari district decided to put to the Court the following questions:

(a) Must Article 37 of the EEC Treaty be interpreted as meaning that national monopolies which cause discrimination between nationals of the Member States with regard to conditions under which goods are procured and marketed include the milk centres to which the

Italian Republic guarantees exclusive rights of importation and sale of drinking milk in the areas reserved to them (zone di pertinenza)?

(b) Must Article 37 of the EEC Treaty be interpreted as meaning that the bodies through which a Member State supervizes or appreciably influences imports between the Member States include the milk centres existing in the Italian Republic?

(c) Does the expiry of the period laid down in Article 22(2) of Regulation (EEC) No 804/68 of 27 June 1968 and extended by Article 2 of Regulation (EEC) No 2622/69 of 21 December 1969 involve a prohibition on restrictions on the importation and sale of milk in view of Articles 5 and 37 of the Treaty?

(d) Do the provisions of Article 90(2) of the Treaty preclude the duty to abolish the restrictions in question?

(e) Have the provisions laid down in Article 37, particularly those in the first paragraph thereof, created direct and immediate rights in the Member States which individuals may assert before a court, as from 31 December 1969 (or at least as from 31 July 1970) (or does this direct effect follow from Article 22 of Regulation (EEC) No 804/68 and Article 2 of Regulation (EEC) No 2622/69)?

The order making the reference was entered at the Court Registry on 20 September 1971.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 29 November 1971 by the SAIL undertaking, on 3 December by the Council of the Communities on 4 December by the Commission of the Communities and on 13 December by the Government of the Italian Republic.

By an order of 20 January 1972 the President of the Court appointed Mr Karl Roemer as Advocate-General in the place of the late Mr A. Dutheillet de Lamothe.

The Court, after hearing the report of the Judge-Rapporteur and the views of the Advocate-General, decided to open the oral procedure without any preparatory inquiry.

The SAIL undertaking, the Government of the Italian Republic, the Council of the Communities and the Commission of the Communities presented oral argument at the hearing on 1 February 1972.

The Advocate-General delivered his opinion at the hearing on 23 February 1972.

For the procedure before the Court the SAIL undertaking was represented by Nicola Catalano, Advocate at the Rome Bar, the Government of the Italian Republic by Adolfo Maresca, Minister Plenipotentiary, assisted for the purposes of the written procedure by Pietro Peronacci and for the oral procedure by Giorgio Zagari, both Sostitute at the Avvocatura Generale delle Stato, the Council of the Communities by Daniel Vignes, Adviser, assisted by Antonio Sacchettini, Assistant Adviser in the Legal Service, and the Commission of the Communities by its Legal Adviser, Mrs Wilma Dona-Viscardini.

II — Observations submitted to the Court

The written and oral observations submitted to the Court may be summarized as follows:

The SAIL undertaking, the legal representative of which is charged in the main proceedings, points out that the finding of a conflict between a national rule and a Community rule presupposes that the national court has interpreted the former and that the latter has been interpreted by the Court of Justice.

(a) In the present case, with regard to the EEC Treaty, it is essentially the interpretation of Article 37, considered in relation to the provisions concerning quantitative restrictions and measures having equivalent effect (Article 30 *et seq.*), dominant positions (Article 86) and public under-

takings (Article 90), which is necessary for the solution of the dispute in the main proceedings.

With regard to Article 37, it should be stated that:

— the monopoly enjoyed by the milk centres in Italy is of a commercial character;

— this monopoly itself creates the discrimination, the abolition of which is prescribed by Article 37;

— the product which is the subject of the monopoly is amenable to competition and trade between Member States;

— it is of real importance in that trade (the 44 centres put on sale 19 000 hectolitres of pasteurized milk daily).

The discrimination resulting from the monopoly of the centres is twofold: Italian or foreign producers situated outside the areas reserved to the centres are prohibited from selling drinking milk in those areas; producers situated in the areas reserved to the centres have not, unlike other producers, the opportunity of marketing their products.

Although Article 37 of the EEC Treaty does not require the abolition of all national monopolies of a commercial character the purpose of their 'adjustment' is to prevent the possibility of a reoccurrence, at the end of the transitional period, of discrimination which may stem from certain special powers which those monopolies have in particular with regard to the importation and marketing of certain products. In the present case the reservation of wide areas of the Italian market for the produce of certain national undertakings constitutes discrimination to the detriment of the producers of the other Member States. Monopolies which, like that of the Italian milk centres, constitute an end in themselves because their sole purpose and their sole effect is to prevent trade under normal conditions of competition and to ensure the maintenance of the discrimination which Article 37 requires must finally be abolished, are fundamentally incompatible with that provision. The only remedy lies in the abolition of the legal monopoly enjoyed by the Italian milk centres or, at least, in the non-application of the rule which legalizes it.

Since an agricultural product is involved, paragraph (4) of Article 37 does not lead to a different conclusion. That provision in no way makes an exception, for agricultural products, to the strict duty progressively to adjust all commercial State monopolies so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured and marketed exists. Without questioning the duty of the Member States to abolish the prohibited discrimination, it merely advises them, when the monopoly has rules which are designed to make it easier to dispose of agricultural products or abtain for them the best return, to make provision, in favour only of the producers concerned, for equivalent safeguards for their employment and standard of living. Article 37(4), as a special rule concerning agricultural products, must take precedence over Article 38 which provides for the establishment of a common agricultural policy: that follows in particular from the limitation until 31 December 1969, the date of the expiry of the transitional period, of the authorization granted by Article 22(2) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (OJ English Special Edition 1968(I), p. 176) to the Italian Republic for the retention of the system of milk centres and from the justification given by Regulation (EEC) No 2622/69 of the Council of 21 December 1969 amending Regulation (EEC) No 804/68 (OJ English Special Edition 1969 (II), p. 615) for the extension of that period until 31 March 1970.

Moreover, to the extent to which the Court has jurisdiction to decide upon the question whether the milk centres constitute a national organization of the market, it should be stated that the sales monopoly from which they benefit and

which is inseparable from the discrimination prohibited by the Treaty and not indispensable to the sale of the milk produced in the areas which are reserved to them, has certainly no longer been lawful since 1 January 1970.

In any case, Article 37(4) refers to the special provisions of the Treaty on agricultural policy. The common organization of the market in milk and milk products was established by Regulation (EEC) No 804/68 of the Council and it involves the abolition at the internal frontiers of the Community of any obstacle to the free movement of the goods in question.

The alleged purpose of the monopoly of the centres, health and hygiene, cannot be accepted either. It was dismissed, within the framework of his powers of interpretation of national law, by the Pretore di Bari. As for Community law it should be stated that although Article 36 of the Treaty justifies prohibitions or restrictions on imports on grounds of protection of health, it lays down however that these must not—as is the case in the present instance—constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Lastly, the centres cannot be regarded as undertakings entrusted with the operation of services of general economic interest within the meaning of Article 90(2) of the Treaty. In any case, the abolition of their monopoly of procuring and marketing does not frustate the performance of their tasks under a system of free competition.

The infringement of Article 37 of the Treaty following from the retention after the expiry of the transitional period of the monopoly granted to the milk centres is concomitant with the infringement of Articles 5 and 90(1).

The incompatibility, even potential, of the monopoly of the Italian milk centres with Article 37 of the Treaty is indivisible. Its illegality may be invoked not only by nationals of the other Member States but also to the same extent and with the same effect by nationals of the State in which such a rule or such a system exists contrary to the Treaty; if this were not so, the prohibition on any discriminatien on grounds of nationality laid down by Article 7 of the Treaty would be paradoxically reversed and consequently disregarded.

It follows from the case-law of the Court of Justice that the prohibition laid down by Article 37 of the Treaty has been immediately and directly applicable since 1 January 1970. The violation of that prohibition infringes rights which the Community system grants to every citizen of the Member States and which the national courts are required to safeguard.

(b) As for the interpretation of Community regulations in respect of the common organization of the markets in milk, the following should be noted:

The last subparagraph of Article 22(2) of Regulation (EEC) No 804/68 authorized the Italian Republic to retain until 31 December 1969, the date marking the end of the transitional period and therefore the final time-limit for the application of the prohibition laid down by Article 37 of the Treaty, 'the measures regulating the supply of drinking milk to certain areas', that is to say, the system of milk centres.

That time-limit was extended until 31 March 1970 by Article 2 of Regulation (EEC) No 2622/69 of the Council; the legality of this extension appears arguable in view of Article 37 of the Treaty.

On 3 July 1971 Regulation (EEC) No 1411/71 of the Council of 29 June 1971 laying down additional rules on the common organization of the market in milk and milk products for products falling within tariff heading No 04.01 of the Common Customs Tariff was published (OJ English Special Edition 1971 (II), p. 412). Because of its date the Pretore di Bari could not take account of this regulation in his order for reference. The Court cannot, however, disregard it in relation to the questions of interpretation which are put to it. Article 9(2) of Regulation (EEC) No 1411/71 authorizes the Italian Republic to maintain as from 31 March 1972 (according to the second paragraph of Article 10) and until 31 March 1973 the provisions applying on 31 March 1970 to the milk centres.

That provision cannot have a retroactive effect. It follows therefrom that in any case there is no doubt of the incompatibility of the system of the centres with regard to the period between 1 April 1970 and 31 March 1972 during which the matter occurred which gave rise to the main action.

Furthermore, Article 9(2) of Regulation (EEC) No 1411/71 may be interpreted as authorizing the maintenance of the centres, but not the re-establishment of their legal monopoly of sale, that being, since the end of the transitional period, finally incompatible with fundamental rules of the Treaty; an analogous interpretation may be given to Article 2 of Regulation (EEC) No 2622/69. That interpretation removes all doubt as to the validity of the rules laid down by the Council; it alone can justify the fresh authorization granted several months after the expiry of the previous extension and the provisional maintenance of the current structure of the centres, which, once the legal monopoly of sale was abolished, was no longer in flagrant and absolute opposition to a requirement of the Treaty. On the other hand Article 9(2) of Regulation (EEC) No 1411/71 cannot be acknowledged to have had uninterrupted retroactive scope as from 31 December 1969, so that from 1 January 1970 to 31 March 1973 the monopoly granted in Italy to the milk centres was made lawful. According to that interpretation, the provision in question is without validity because it is vitiated by infringement of the Treaty (Article 37), by infringement of essential procedural requirements (failure to consult the Parliament anew before the extension beyond the time-limit accepted by the latter of the period for the adjustment of the centres), by infringement of the general principles of law (that a legal rule is not retroactive, especially when it may lead to penalties), by misuse of powers (the use by the Council of its legislative powers to legalize the infringement by a Member State of a requirement of the Treaty and the infringement of individual rights) and by misuse of procedure.

(c) In conclusion the SAIL undertaking suggests that the Court should reply as follows to the questions which have been referred to it:

— the sales monopoly granted to the milk centres in Italy by Law No 851 of 16 June 1938 causes by the very fact of its existence discrimination regarding the conditions under which goods are produced and marketed which are finally and irrevocably prohibited as from 1 January 1970 under Article 37 or if necessary any other provision of the Treaty, and neither Article 2 of Regulation (EEC) No 2622/69 nor Article 9(2) of Regulation (EEC) No 1411/71 can prevent this.

— the provisions of Article 37 are applicable to the milk centres managed in Italy directly or indirectly by certain local authorities and neither Article 36 nor Article 90(2) of the Treaty can prevent this.

— the retention of the monopoly of the Italian milk centres is also incompatible with Article 22(2) of Regulation (EEC) No 804/68 and with Article 189 of the Treaty.

— Article 2 of Regulation (EEC) No 2622/69 and Article 9(2) of Regulation (EEC) No 1411/71 must be interpreted as meaning that they do not authorize the retention of that monopoly after 31 December 1969; otherwise, these provisions are not valid.

— the prohibition referred to in Article 37 became immediately and directly applicable in the Member State as from 1 January 1970 and the infringement of that prohibition (or in any case incompatibility therewith) gives all the citizens of the Member States rights which the national courts are required to safeguard.

The *Government of the Italian Republic* points out that, since it has been asked for a preliminary ruling in application of Article 177 of the EEC Treaty, the Court must give judgment only on the abstract

interpretation of Community rules and not on their interpretation by reference to this or that national legal rule, nor, which would be the consequence thereof, on the compatibility of the national rule with a Community rule; such a confusion between the legal channels of Article 177 on the one hand and of Article 169 on the other would call into question the Community legal system. It follows from this that the application by the Pretore di Bari is inadmissible as regards the first four questions which it puts.

As for the fifth question, it is difficult to determine the exact content and the scope thereof because of its obscure and imprecise drafting. To the extent to which it, like the other questions, seeks an implied judgment by the Court that the milk centres constitute a monopoly and that the relevant national law is in contradiction with the EEC Treaty, it too is inadmissible.

As for the substance of the case, it must be stated in view of the questions referred to the Court first that there is in Italy a national organization of the market in milk, and secondly that Community law has accepted, particularly in Articles 38(2), 42 and 45 of the Treaty and in the regulations of the Council on the common organization of the market in milk, the principle that national organizations of agricultural markets remain valid in all respects as long as they are not replaced by European organizations. There is at present no common organization of the market in drinking milk, since supplementary measures relating to the products within heading 04.01 of the Common Customs Tariff have not yet been laid down. It follows from this that the rules of the Treaty relating to the elimination of quantitiative restrictions between the Member States are no obstacle to the retention of the Italian organization of the market in milk and, more especially, of the measures governing the supply of certain areas with drinking milk.

Furthermore the Italian rules concerning drinking milk in no way establish a monopoly within the meaning of Article 37 of the EEC Treaty: on the one hand the quantities of whole milk delivered by the centres to only part of the population, compared to the volume of total consumption of the various types of milk throughout the national territory, cannot be described as a 'national' monopoly; on the other, the objectives relating to hygiene and of a social nature entrusted to the centres prevent these from being of a 'commercial character'.

It should also be recalled that the achievement of a single market in milk and milk products involves the abolition of obstacles to the free movement of the goods in question at the internal frontiers of the Community. The Italian rules on the establishment and operation of the milk centres deal only with the internal trade of one State. They do not constitute an obstacle to the freedom of trade between the various Member States and do not cause discrimination between the nationals of those States.

In any event restrictions on trade are made lawful, on the basis of Article 36 of the Treaty, by the objective of the protection of health which is pursued by the centres.

To the extent to which the centres may be regarded as undertakings entrusted with the operation of services of general economic interest, the rules of the Treaty are only applicable to them, in accordance with Article 90(2), in so far as that application does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

As for Regulations (EEC) Nos 804/68 and 2622/69, it must be stated that their provisions authorizing the retention of the system of Italian milk centres do not constitute true legal rules. They only state a situation following from the Treaty itself, that is to say, the retention of a national organization of the agricultural market so long as a common organization has not been set up for the same product. The period laid down by these provisions in fact fixes for the Council of the Communities, a period, furthermore, purely indicative, for the establishment of a common organization of the markets in drinking milk. Any duty which the Italian Republic may have to adjust the national system of distribution and sale of that

product is linked to the establishment of such an organization. The Community has not yet established a common organization of the market in drinking milk.

Regulation (EEC) No 1411/71 did not, moreover, extend that period. It repealed a transitional provision of Regulation (EEC) No 804/68 for which it substituted another transitional provision having immediate application.

The *Council of the Communities* points out that in the drawing up of the Community rules concerning the movement and sale of drinking milk, account had to be taken, on the one hand, of the fact that certain national rules concerning that product are in the nature of rules for the protection of public health and, on the other, of the existence, particularly in Italy, of national machinery for the organization of the market the abolition of which could be carried out only within the framework of a Community organization.

The basic text, Regulation (EEC) No 804/68 of the Council, regulates the problems of drinking milk only in part. Article 22(2) thereof may be analysed as follows:

— the implementation not later than 1 January 1970 of the Community system of drinking milk (milk and cream, fresh, not concentrated or sweetened, which come under tariff heading 04.01 of the Common Customs Tariff);

— the application until that date of transitional provisions;

— the authorization for the Member States to retain, until the implementation of those transitional provisions, quantitative restrictions and measures having equivalent effect;

— the authorization for the Federal Republic of Germany and the Italian Republic to maintain until 31 December 1969 certain special systems of distribution, in particular, for Italy, the measures regulating the supply of drinking milk to certain areas.

Thus the rules concerning the organization of the market in milk were divided into a basic regulation and a supplementary regulation for drinking milk. The Council, because of the size of the problems to be solved in respect of the drawing up of a definition of drinking milk was not able to adopt the transitional measures provided for by Regulation (EEC) No 804/68. Regulation (EEC) No 2622/69 of the Council was in particular postponed for three months, until 31 March 1970, the period during which Italy was able to maintain its national system for the distribution of drinking milk. The result of the difficulty in differentiating between the supplementary measures laid down for drinking milk by Article 22(2) of Regulation (EEC) No 804/68 from the health rules concerning the same product was that 31 December 1969, the date of expiry of the transitional period laid down by Article 8 of the Treaty, could not be adhered to and that it was not until 29 June 1971 that Regulation (EEC) No 1411/71 of the Council laying down additional rules on the common organization of the market in milk and milk products for products falling within tariff heading No 04.01 was enacted.

That regulation, with effect not later than 31 March 1972, repealed Article 22(2) of Regulation (EEC) No 804/68. Furthermore, it authorized the Italian Republic to retain until 31 March 1973 the system applicable to milk centres as it was applied on 31 March 1970. Nevertheless, the provisions of Regulation (EEC) No 1411/71 are intended to be implemented only at the time when, without prejudice to the requirements relating to the protection of public health, the general rules to be laid down by the Council on the conditions concerning quality, composition and sales of drinking milk are applicable and not later than 31 March 1972. Thus the Council has not yet at present regulated the movement of drinking milk. From the legal point of view, a distinction should be drawn between the situation thus created on 31 March 1970 and that following from the application of Regulation (EEC) No 1411/71.

(a) At the end of March 1970 there

expired the final period during which, according to Article 22(2) of Regulation (EEC) No 804/68 as amended by Article 2 of Regulation (EEC) No 2622/69, the Italian Republic could retain the measures governing the supply of drinking milk to certain areas. Since that period was not extended, the question arises whether the Italian system of milk centres should have ended because of Article 37 of the Treaty (to the extent to which the latter is applicable to them) and because of the expiry of the period laid down by the regulations of the Council.

A twofold approach is possible:

— Either the system in question amounts to machinery consisting of measures having an effect equivalent to quantitative restrictions coming under Articles 30 to 34 of the EEC Treaty or to a system of national monopolies coming under Article 37. In either case, the Council could not have required the abolition of the milk centres so long as the requirements of the protection of hygiene and public health which were at the basis of their establishment were not fulfilled in another manner. Since they are measures having an effect equivalent to quantitative restrictions, they are contrary to Article 36 of the Treaty; since they are monopolies within Article 37, their adjustment must be carried out in accordance with a time-table harmonized with that for the abolition of quantitative restrictions and, above all, it is also contrary to Article 36. From this point of view the expiry of the period laid down in Regulations Nos (EEC) 804/68 and 2622/69 is without effect.

— Or the system of milk centres considered in a purely agricultural framework amounts to a national organization of the market which consists of a body of machinery and legal devices on the basis of which the competent authorities endeavour to supervise and regulate the market. In this case it should be stated that the time-table for the abolition of obstacles to the free movement of agricultural products is not governed by exact dates, but is left to the discretion of the Council; that follows, as regards the setting up of the common policy, from Articles 40(2)(b), 43(3) and 37(4) and, as regards the optional nature of the expiry of the transitional period, from Articles 42, 44(6) and 45 of the EEC Treaty.

The Italian organization of the market in drinking milk may therefore be retained as long as it is not replaced by a common organization of the market and, since the rule that the common agricultural policy must be completely achieved before the end of the transitional period is not absolute, the total replacement of the national organizations by the Community organization is liable to be delayed beyond the transitional period, especially by virtue of health requirements.

(b) As for the situation resulting from the application of Regulation (EEC) No 1411/71, Article 9(2) of that regulation which authorizes the Italian Republic to maintain the provisions applying to the milk centres cannot be recognized as having retroactive effect so that there was no interval between the expiry of Regulation (EEC) No 2622/69 and the entry into force of Regulation (EEC) No 1411/71: on the one hand, such retroactive effect is not expressly provided for by the regulation and on the other the provisions of Regulation (EEC) No 1411/71 have not yet been implemented. Furthermore, the system of milk centres, since it was linked to considerations of the protection of public health, did not require for its continued existence the authorization of the Council. There is therefore no reason to confer retroactive effect on Article 9(2) of Regulation (EEC) No 1411/71.
The application of rules protecting public health fell in the first place to the Member States. It was only from the time when the Council announced its firm intention rapidly to adopt rules concerning the conditions of quality and sale of drinking milk and proposed to unify those necessary for the protection of public health that it was entitled, in consequence of the adoption of those rules, to provide for the abolition of the milk centres for the maintenance of which there was no longer

any justification. That is the object of Article 9(2): it granted them a period of one year as from the final date on which the regulations in question were made to transform themselves.
Thus, as regards Italy where the national organization of the market in drinking milk and the health rules were closely interwoven, the Council indiscriminately authorized their retention until March 1970. Later, it refrained from all action, leaving the Member State concerned the opportunity to take or to maintain the measures considered necessary for the protection of public health. Finally, in June 1971, it limited the retention of the milk centres to a period linked to that in which the Community regulations concerning the quality and the sale of drinking milk had to be made.

(c) In any event it should be accepted, as regards the present case, that even if the system of Italian milk centres were abolished milk would not circulate freely in the Community. Difficulties concerning public health conditions and control would stand in its way since several Member States have very strict public health rules, difficulties regarding the determination of conditions of quality and sale and, lastly, difficulties presented by the price system, as several Member States practise a system of maximum prices for social reasons.
The *Commission of the Communities* points out first of all that the Pretore di Bari appears wrongly to accept that any conflict between provisions of national law and provisions of Community law may be settled by applying the principle of the priority of the most recent provision: Community law must in any case take precedence over national provisions, even if they are adopted later, and national courts must always, because of the preeminence of Community law, set aside the application of a national provision which is contrary to directly applicable Community provisions.
Furthermore, as they are expressed in the order making the reference the first three questions are intended to lead the Court to give judgment directly on the compatibility with the EEC Treaty of the Italian legislation on milk centres. Such is not, however, the purpose of Article 177 of the EEC Treaty. These questions must therefore be rephrased in order to elicit therefrom the problems of abstract interpretation bearing upon the present case. They may be worded as follows:

— Must Article 37 of the EEC Treaty be interpreted as meaning that national monopolies of a commercial character or the bodies through which a Member State supervises or appreciably influences intra-Community trade include the bodies to which a Member State grants and ensures the exclusive right of sale of a consumer product within the boundary of limited areas of the national territory and the management of which is entrusted to local public bodies?

— Does the exclusive right of sale granted to these organizations amount intrinsically to discrimination within the meaning of Article 37?

— In the case referred to by the second part of the last subparagraph of Article 22(2) of Regulation (EEC) No 804/68, does the expiry of the period laid down by that article and extended by Article 2 of Regulation (EEC) No 2622/69 involve the duty to abolish the measures contrary to the principles set out in Article 37 and in particular, if the second question is answered in the affirmative, the exclusive right of sale?

As for the interpretation of the rules relied upon, the Commission submits the following observations:

(a) As regards Article 37 of the EEC Treaty:

It follows from the case-law of the Court of Justice that in order to be within Article 37, national monopolies and similar bodies must on the one hand have as their object transactions concerning a commercial product capable of being the subject of competition and trade between the Member States and on the other take

an effective part in this trade. The emphasis is placed upon the nature of the product which is the subject of the economic activity of the national monopolies or similar bodies and on the actual effect which such activity may have on trade. Article 37 is applicable when the State, by means of a commercial activity of which it claims the monopoly which is exercised directly or granted or delegated to other legal persons, supervises or appreciably influences in law or in fact, imports or exports between Member States. An activity concerning trade in the product on the internal market alone of a Member State is capable of having an influence on trade and this may be influenced appreciably by an activity confined to one part alone of the national territory. It is necessary in each case to assess whether the economic activity concerned relates to a product capable by virtue of its nature and the technical or international requirements to which it is subject, of taking an effective part in imports or exports between nationals of the Member States. The concept of national monopoly includes on the one hand a 'State monopoly' and on the other a monopoly delegated or granted *de jure* to bodies other than the State itself but which carry out their activities under its supervision or the supervision of its local organizations; it includes not only monopolies which carry out their activities throughout the national territory but also those the activities of which concern only certain areas of that territory.

As for the question whether the exclusive right of sale of a product on the national market or on a part of the latter already intrinsically constitutes discrimination, it should be stated that Article 37 solely prohibits discrimination regarding the conditions under which goods are procured and marketed between the nationals of the Member States. Consequently, the exclusive right of a national monopoly of a commercial character to sell a particular product cannot be regarded as intrinsically constituting discrimination if the existence of that right, considered independently of the manner in which it is exercised, displays, as regards nationals of the Member State where that monopoly exists, the same effects as regards nationals of the other Member States. Such is the case when the exclusive right of sale concerns both imported products and national products. The difference between the treatment accorded by the Member State where the monopoly exists to its own nationals and the treatment which the other Member States apply to their own nationals cannot amount to discrimination, since the latter can only be the act of one and the same person.

Put into its context, that is to say, within the framework of the provisions of the Treaty devoted to the free movement of goods and, more especially, to the abolition of quantitative restrictions and measures having equivalent effect between the Member States, the sole object of the rules provided for in Article 37 for products sold by national monopolies is to ensure for these products conditions of movement analogous to those which result from the abolition of customs duties, quantitative restrictions and charges and measures having equivalent effect with regard to products, trade in which is not reserved to the State and which are the subject of free competition.

Because of the very fact that it is exercised by the State in the widest sense and although it does not intrinsically amount to actual discrimination, the exclusive right of sale of a product is liable in itself to cause discrimination within the meaning of Article 37. It is impossible, however, to conclude from this that as from the expiration of the transitional period national monopolies which continue to benefit from such an exclusive right are contrary to Article 37(1) of the Treaty: Article 37 envisages only the adjustment of national monopolies of a commercial character, not their abolition. Since an exclusive right constitutes the very meaning of a monopoly, the removal of that right would amount to the abolition of the monopoly.

Within the framework of the present case it is not necessary to enquire whether in practice it is still possible to reconcile the various requirements of Article 37, and in particular the need to free intra-Com-

munity trade on the one hand and the interests of the Member States in retaining certain useful instruments of their economic policy on the other. In fact the exclusion of all discrimination between the nationals of the Member States regarding the conditions under which goods are procured and marketed is not in any event possible where the exclusive right of sale is granted to a body which itself produces, processes or packages the product in question. A monopoly which combines production and trade intrinsically constitutes a preferential system in favour of national production. It is therefore intrinsically discriminatory.

In applying these criteria of interpretation to the Italian milk centres it must be held that the centres come within the wide definition of national monopolies of a commercial character which is contained in the second subparagraph of Article 37(1), that they are liable to have an appreciable influence on imports, in view of the large quantities of milk which they sell, and that in the present state of technical progress milk is liable to be the subject of international trade.

To require the centres to supply consumers with milk treated or packaged by other Community undertakings would remove their fundamental purpose which is not to distribute milk but to subject it to a certain treatment and to package it for sale to consumers.

The maintenance of the exclusive right of sale of the milk centres therefore involves discrimination regarding the conditions under which goods are procured and marketed which Article 37 aims to exclude totally at the end of the transitional period.

(b) As regards Regulations (EEC) Nos 804/68 and 2622/69:

The performance of the duty which results from the first paragraph of Article 37 may however be hindered by safeguard clauses. Thus Article 43(3) and Article 45 of the Treaty establish by implication the principle that the Member States have the right to retain their national organizations of the market until these are replaced by one of the forms of common organization provided for by Article 40(2). A national monopoly in trade in an agricultural product must be regarded as a national organization of the market within the meaning of the Treaty if it ensures the sale of national products at stable and remunerative prices.

The recogniton of the right of the Member States to retain their national organizations pending the institution of a common organization necessarily implies the recognition of their right to retain all measures, including those which are contrary to the rules on the free movement of goods, which form an integral part of the national organization of the market.

It follows also from Article 45 that discrimination may also be maintained if its abolition is such as to compromise the functioning of the national organizations. With regard to national organizations of the market having the character of a national monopoly, there is therefore a contradiction between on the one hand Article 37 which requires their progressive adjustment, harmonized with the timetable for the abolition of quantitative restrictions, so as to ensure that when the transitional period has ended there will be no discrimination regarding the conditions under which goods are procured and marketed exists, and on the other Article 43(3) and Article 45 which, on the contrary, permit national organizations in general to maintain discrimination until the implementation of a common organization. This conflict is resolved by Article 38(2) which provides that the rules laid down for the establishment of the common market shall apply to agricultural products, save as otherwise provided in Articles 39 to 46. Article 43(3) and Article 45 therefore take precedence over Article 37; in respect of agricultural products subject to a commercial monopoly, they permit the retention of discriminatory measures which form an integral part of the national rules until the establishment of a common organization. This precedence of Article 43(3) and of Article 45 over Article 37 enabled monopolies displaying the characteristics of a national organization of the market to escape the requirement of

progressive adjustment laid down by paragraph (1) of Article 37. Further, it resulted in an amendment of the period laid down for the attainment of the final objective of Article 37: the latter is no longer linked to the expiration of the transitional period but to the substitution of the common organization of the market for national organizations.

Paragraph (4) of Article 37 is not incompatible with that conclusion, for it does not take precedence over the provisions of the Treaty concerning agriculture. It cannot be accepted that the derogations from the rules laid down for the establishment of the common market are applicable to all agricultural products subject to a national organization of the market, and not to those which are subject to a national monopoly. Article 38(2) does not, furthermore, exclude Article 37(4) from the rules from which derogation may be made in the agricultural sphere. In fact there is no conflict between Article 37(4) and the provisions on agriculture. Article 37(4) applies not to agricultural products properly so-called but to processed products. No doubt, according to Article 40(1) the common agricultural policy should have been established at the latest by the end of the transitional period. However, since the Community was not in a position to establish a common organization within that period, the expiry of the transitional period does not prevent the retention of national organizations of the market or of certain of their components.

The retention of measures which prevent the free movement of goods cannot however be accepted in the absence of an express authorization by the Community, since a common organization exists, even if it is incomplete.

It therefore fell to the Council, when the common organization of the market in milk and milk products was established by Regulation (EEC) No 804/68, to decide the future of the centres. In fact, at first it authorized the Italian Republic to retain measures governing the supply of drinking milk to certain areas until 31 December 1969 (the second half of the last subparagraph of Article 22(2) of Regulation (EEC) No 804/68). Later, stating that it was appropriate to abolish there measures in the course of the milk year, it extended the authorization until 31 March 1970 (Article 2 of Regulation (EEC) No 2622/69). The expiry of that period made absolute the duty imposed on the Italian Republic by Article 37(1) to abolish the measures which are contrary thereto and, in particular, the exclusive right of the centres to sell milk intended for consumption in the area which is reserved to them.

The centres in themselves are not contrary to Article 37, that is to say, as collection centres and establishments supplied with equipment for the treatment and packaging of milk, but certain particular features of their operation, in particular their exclusive right of sale, the duty to obtain supplies from local producers and the duty placed upon manufacturers to obtain supplies from the milk centres. These are the features which should have been abolished on 31 March 1970.

(c) As regards Article 90 of the EEC Treaty:

Article 90(2) exempts certain undertakings, especially undertakings entrusted with the operation of services of general economic interest, from the duty to conform to the rules contained in the Treaty, in particular the rules on competition if the application of the latter compromises the performance, in law or in fact, of the particular tasks assigned to them. That exemption however applies only in so far as the development of trade is not thereby affected to such an extent as would be contrary to the interests of the Community.

The definition of the concept of 'services of general economic interest' must take account of the various situations peculiar to each Member State. In general it can be accepted that an activity concerned with the distribution of consumer goods undoubtedly comes within this concept.

As for the question in what circumstances the application of the rules of the Treaty 'obstructs' the performance of the particular tasks of the undertaking, a reply can be given only on each particular case, taking account on the one hand of the

nature of the duties assigned to the undertaking and on the other of the relevant rules of the Treaty. Since it is an exceptional provision, Article 90(2) must in any case be interpreted restrictively.
The particular task of the Italian milk centres is more to guarantee the qualities of the milk which they distribute than to supply drinking milk to certain local areas. The performance of that task cannot be affected by the application of Article 37 of the Treaty.

(d) As regards Article 36 of the EEC Treaty:

Although the Pretore di Bari has not questioned the Court on the interpretation of Article 36, it is necessary to examine whether the latter cannot be invoked in the present case. In fact Article 36 permits the retention or the introduction of prohibitions or restrictions on imports justified on the grounds of the protection of health and life of humans. Since Article 37 only renders concrete the detailed rules for the application of Articles 30 to 34 of the Treaty to particular cases, the exception contained in Article 36 may also be invoked against the duties which follow from Article 37.
Since it is an exceptional provision, Article 36 can however justify only measures contrary to the principle of the free movement of goods which are genuinely and strictly necessary for the protection of the health or the life of humans.
In view of the current technical conditions for the treatment and packaging of drinking milk, the rules, restrictions and controls to which trade in milk and its importation are subject in Italy are in themselves sufficient to ensure hygiene and public health. It is therefore in no way necessary to reserve to the centres the exclusive right to sell drinking milk.

(e) As regards the direct applicability of Article 37 of the EEC Treaty:

The Court has already held paragraph (2) of Article 37 to be directly applicable. On the basis of the criteria which it has evolved, paragraph (1) of Article 37 also became directly applicable, in principle, at the end of the transitional period.
Paragraph (2) of Article 37 differs from paragraph (1) only as regards the date on which the duty imposed on the Member States to avoid all discrimination between their nationals regarding the conditions under which goods are procured and marketed became absolute. The discretion vested in the States as to the methods and the time allowed for the progressive adjustment of national monopolies was limited to the transitional period, and the final obligation, that is to say, the exclusion of any discrimination at the end of the transitional period became clear, precise, unconditional and not subject to action by the Member States or Community institutions.
Nevertheless, since these are agricultural products subject to a national organization of the market in the nature of a commercial monopoly, the time-limit could in certain cases not coincide with the end of the transitional period. Therefore the period laid down by the Council within the framework of the rules on the common organization of the market for the products in question determines the date from which the provisions of Article 37(1) have, as regards their fundamental scope, direct effect. In the present case the provisions of Article 37(1) produced their effects with regard to individuals as from 31 March 1970.
The Council, it is true, once more authorized the Italian Republic by Regulation (EEC) No 1411/71 to retain the measures in question until 31 March 1973. In the opinion of the Commission the entry into force of the new regulation is irrelevant in the present case: there was an interval and the fresh authorization cannot, in accordance with the principle which must be fundamental in Community law, adversely affect rights acquired by individuals on the basis of a provision which at that moment produces direct effects in the legal system of the Member States.

(f) In conclusion, the Commission suggests that the various questions be given the following answers:

1. Article 37 of the EEC Treaty must be interpreted as meaning that national monopolies of a commercial character or the bodies through which a Member State supervises or appreciably influences trade between the Member States covers bodies

— to which a Member State grants and ensures the exclusive right to sell a consumer product within the boundary of limited areas of the national territory,

— the management of which is conducted and supervised by local public bodies,

— if the product in question may be the subject of trade and if the activities of those bodies as regards trade in that product may have an actual effect on intra-Community trade.

2. The exclusive right of sale may lead to discrimination between the nationals of the Member States regarding the conditions under which goods are procured and marketed if it is reserved to bodies which themselves have interests in the production, treatment or packaging of the product in question.

3. In the case mentioned in the second part of the last subparagraph of Article 22(2) of Regulation (EEC) No 804/68, the expiry of the period laid down by that article, as extended by Article 2 of Regulation (EEC) No 2622/69 included the duty to abolish measures contrary to the principles set out in Article 37(1).

4. Neither the provisions of Article 90(2) nor those of Article 36 of the EEC Treaty precluded that duty.

5. The provisions of Article 37(1) produced direct effects in the legal system of the Member States as regards their fundamental scope as from 1 January 1970. Nevertheless in the case which comes within the application of the second part of the last subparagraph of Article 22(2) of Regulation (EEC) No 804/68 those provisions did not produce a direct effect in the relationships between the State concerned and those subject to its jurisdiction, creating for the latter rights which the national courts must protect, until the expiry of the period laid down by Article 2 of Regulation (EEC) No 2622/69.

Grounds of judgment

1 By an order of 3 July 1971, received at the Court on 20 September 1971, the Pretore di Bari requested the Court, in accordance with Article 177 of the EEC Treaty, to give a preliminary ruling on the interpretation of certain provisions of the EEC Treaty, especially Articles 37 and 90, and on the interpretation of Regulation (EEC) No 804/68 of the Council of 27 June 1968 (OJ English Special Edition 1968 (I), p. 176) on the common organization of the market in milk and milk products and Regulation (EEC) No 2622/69 of the Council of 21 December 1969 (OJ English Special Edition 1969 (II), p. 615) amending the abovementioned regulation. This interpretation is requested in relation to the rules of the market in drinking milk and, more especially, in relation to the legal position of the milk centres set up under Italian legislation.

The jurisdiction of the Court

2 Objections have been raised both by the Government of the Italian Republic and the Commission because the Court is asked to rule directly on the legal position of the 'milk centres' in relation to the Treaty and thus to give a ruling upon the compatibility of that system with the provisions of Community law. The Government of the Italian Republic, in particular, considers that this manner of proceeding would lead to confusion between the legal procedures governed respectively by Articles 177 and 169 and that consequently the questions raised are inadmissible.

3 Although the Court has no jurisdiction within the framework of the application of Article 177 of the Treaty to decide upon the compatibility of a national provision with Community law, it may nevertheless extract from the wording of the questions formulated by the national court, having regard to the facts stated by the latter, those elements which come within the interpretation of Community law for the purpose of enabling that court to resolve the legal problem which it has before it.

4 The Government of the Italian Republic also regards the questions as inadmissible because it could be that the answers to be given by the Court would influence the application of the criminal law of a Member State.

5 Article 177, which is worded in general terms, draws no distinction according to the nature, criminal or otherwise, of the national proceedings within the framework of which the preliminary questions have been formulated. The effectiveness of Community law cannot vary according to the various branches of national law which it may affect. The Court therefore has jurisdiction to reply to the questions submitted.

The substance of the case

6 The national court has been requested to apply Italian criminal law to conduct described as a contravention of the legal provisions granting the 'milk centres' the exclusive right of supply and sale within certain geographical limits. In order to resolve that dispute, that court has on the one hand referred questions on the interpretation of Articles 37 and 90 of the Treaty and on the other requested the interpretation of certain provisions of Regulations (EEC) Nos 804/68 and 2622/69.

7 The Council and the Government of the Italian Republic consider that because of its special nature the system of 'milk centres' must be assessed not in the light of Articles 37 and 90, but within a purely agricultural framework, in so far as this

system constitutes a national organization of the market the maintenance of which must be ensured as long as it has not been superseded by a common organization of the market. In fact, according to Article 38(2) the general rules laid down for the establishment of the common market shall apply to agricultural products only in so far as the title in the Treaty concerning agriculture does not provide otherwise.

8 In view of this argument and of its possible consequences for the outcome of the main proceedings, it is necessary to consider in the first place the third question on the interpretation of Regulation (EEC) No 804/68 and Regulation (EEC) No 2622/69, adopted within the framework of the common agricultural policy. This question asks whether the expiry of the period laid down in Article 22(2) of Regulation (EEC) No 804/68 and extended by Article 2 of Regulation (EEC) No 2622/69 involves a duty to abolish measures which may be contrary to the principles of the Treaty, and in particular, to abolish the exclusive sales right reserved by a Member State in certain parts of its territory to producer organizations created by legislation.

9 The meaning of the abovementioned provisions can be determined only within the framework of the general context of the regulations of which they form part.

10 (a) After Regulation No 13/64/EEC of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in milk and milk products had been issued, that organization was finally determined in its entirety by Regulation (EEC) No 804/68. Article 22(2) of the latter regulation provides nevertheless that the Community system of supplementary measures for products falling within heading 04.01 of the Common Customs Tariff—including in particular drinking milk—shall be adopted later, but in any case before the end of the transitional period. Under the fourth subparagraph of Article 22(2) the Italian Republic was authorized to retain until 31 December 1969 'the measures regulating the supply of drinking milk to certain areas'. It is plain that that provision referred to the system of 'milk centres'.

11 (b) Under Regulation (EEC) No 2622/69, the Council, taking the view that it did not seem appropriate to abolish, in the course of the milk year, the special national provisions of the Italian Republic, extended to 31 March 1970 the period laid down in the last subparagraph of Article 22(2) of Regulation (EEC) No 804/68.

12 (c) No action was taken by the Council by 31 March 1970 on a proposal to authorize the Italian Republic to retain the provisions in force regarding the milk centres temporarily for a further period until 31 March 1972 which was submitted by the Commission to the Council on 17 March 1970. (OJ C 43, 1970, p. 5).

13 (d) By Regulation (EEC) No 1411/71 of 29 June 1971 which was adopted after the events which are the subject of the proceedings pending before the national court and is therefore inapplicable to those events, the Council laid down additional rules on the common organization of the markets in products falling within tariff heading 04.01 of the Common Customs Tariff (OJ English Special Edition 1971 (II), p. 412). Under Article 4 of that regulation the implementation of that organization remains, however, subject to the subsequent formulation by the Council of certain provisions concerning the marketing of milk intended for human consumption. In the same regulation, the Council, taking into account the fact that Italy has under preparation measures aimed at altering the structure of the milk centres and not wishing to jeopardize that reform, authorized the Italian Republic by Article 9(2) to maintain until 31 March 1973 the provisions applying on 31 March 1970 to the milk centres.

14 It appears from all these provisions that as from the entry into force of Regulation (EEC) No 804/68 the market in milk and milk products has been the subject of a definitive organization, albeit still incomplete in certain respects. Thenceforth it was for the Community authority alone to decide upon the provisional maintenance of any national system of organization, intervention or supervision relating to the products in question. The Council, by limiting to 31 December 1969, the date of the expiry of the transitional period, the concession granted to the Italian Republic with regard to the 'milk centres', concluded that this system was incompatible with the fundamental principles of the organization of the market envisaged for the sector in question.

15 On the other hand by the terms in which it granted the Italian Republic an extension for three months of the period originally laid down by Regulation No 2622/69, the Council has shown that it only considered the authorization granted as a measure of an essentially temporary nature intended to make the abolition of the sales monopoly coincide with the end of the then current milk marketing season. Although it is possible to elicit from Regulation (EEC) No 1411/71 the intention of the Community legislature to grant Italy a certain additional period to enable the 'milk centres' to be re-structured, nevertheless at the time of the events submitted to the national court, the only provision in force concerning the system of these centres was Regulation (EEC) No 2622/69, Article 2 of which fixed 31 March 1970 as the end of the concessionary period granted. It follows from this that at the time of the events submitted for consideration by the national court, there was a specific provision of a regulation which implied the abolition of the exclusive right of sale granted to the 'milk centres' and, in consequence, the inapplicability of the national legislative provisions granting that exclusive right.

16 Under those circumstances the second subparagraph of Article 40(3) of the Treaty had to be applied in full at that time, from which it follows that whatever the

form chosen for the common organization of the agricultural markets, that organization must in any case be understood to exclude 'any discrimination between producers or consumers within the Community'.

17 In view of the answer given to the third question it does not appear necessary to consider the other questions submitted by the Pretore di Bari.

Costs

18 The costs incurred by the Commission and by the Council of the European Communities which submitted observations to the Court are not recoverable and as these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the SAIL undertaking, the Government of the Italian Republic, the Council and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 37, 38, 40 and 177;
Having regard to Regulation No 13/64 of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in milk and milk products, Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products, Regulation (EEC) No 2622/69 of the Council of 21 December 1969 amending Regulation (EEC) No 804/68 and Regulation (EEC) No 1411/71 of the Council of 29 June 1971 laying down additional rules on the common organization of the market in milk and milk products for products falling within tariff heading 04.01 of the Common Customs Tariff;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Pretore of the district of Bari by Order of 3 July 1971,

hereby rules:

The expiry of the period laid down in Article 22(2) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 and extended by Article 2 of Regulation (EEC) No 2622/69 of the Council of 21 December 1969, implied, at the time of the events submitted for consideration by the national court, the abolition of the exclusive sales right laid down within the framework of the 'system of collection and distribution areas for milk in the Italian Republic' referred to by the said provisions, and that consequently all provisions of national legislation granting that exclusive right were inapplicable.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 21 March 1972.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 23 FEBRUARY 1972[1]

Mr President,
Members of the Court,

The SAIL undertaking, an Italian company having its registered office at Bari, operates a dairy at Gioia del Colle. On 17 April 1971 it delivered through its licensee 'Perle', homogenized, pasteurized whole milk to a dairyman at Bari. These facts were established by the public health authorities and gave rise to criminal proceedings before the Pretore di Bari. In that respect I must discuss some aspects of Italian law, the following particulars of which must be known. Article 1 of Law No 851 of 16 June 1938 (Gazzetta Ufficiale, No 147) permits the establishment of milk centres in communes where the daily consumption of drinking milk is at least 100 hectolitres. These centres have the task of collecting the milk intended for direct local consumption, ensuring its purity, subjecting it to treatment to ensure that it is safe and packaging it for sale to consumers so as to prevent any adulteration. They are set up on the request of the communes concerned, by means of an authorization which the Prefect grants after agreement by the Ministry concerned. Originally it was intended that the communes would entrust the establishment and the management of these milk centres to corporate professional associations. Since the professional associations and the corporate economic system had however ceased to exist at the end of the Fascist era,

1 — Translated from the French version.