ORDER OF THE COURT (Fourth Chamber)
25 February 2003 *

In Case C-445/01,

REFERENCE to the Court under Article 234 EC by the Tribunale di Biella (Italy) for a preliminary ruling in the proceedings pending before that court between

Roberto Simoncello,

Piera Boerio

and

Direzione Provinciale del Lavoro,

on the interpretation of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC) and Article 90 of the EC Treaty (now Article 86 EC),

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, A. La Pergola and S. von Bahr, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By order of 18 October 2001, received at the Court on 19 November 2001, the Tribunale di Biella referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC) and Article 90 of the EC Treaty (now Article 86 EC).

2 That question was raised in proceedings between Mr Simoncello and Ms Boerio, partners and legal representatives of Mergellina Snc, and the Direzione Provinciale del Lavoro (Provincial Labour Administration) concerning an administrative penalty imposed by the Direzione Provinciale del Lavoro on the ground that Mergellina Snc had hired workers without notifying the Sezione Circondariale per l'Impiego (District Employment Section) of that fact.

Legal background

3 The second paragraph of Article 9a of Law No 608 of 28 November 1996 (GURI No 281 of 30 November 1996, ordinary supplement No 209; 'Law No 608/1996') provides:

'Within five days of the date of hiring, effected in accordance with the first paragraph, the employer shall transmit to the Sezione Circondariale per l'Impiego a notification containing the name of the worker hired, the date of hiring, the type of contract, job title, salary, and legal status of the worker.'

4 The 13th paragraph of Article 10 of Legislative Decree No 469, of 23 December 1997 (GURI No 5 of 8 January 1998; 'Legislative Decree No 469/1997'), states:

'Law No 264 of 29 April 1949 and subsequent laws amending or supplementing it, do not apply to natural or legal persons authorised to undertake the placement of employees within the meaning of this article.'

The main proceedings and the question referred

5 The Tribunale di Biella states that Mergellina Snc hired workers without notifying the Sezione Circondariale per l'Impiego of that fact, as required under Article 9a of Law No 608/1996.

6 The applicants in the main proceedings argued before the national court that that provision cannot serve as the basis for the imposition of a penalty. The provision contravenes Community law inasmuch as it relates to the Italian system of placement of employees which the Court, in its judgment in Case C-55/96 *Job Centre* [1997] ECR I-7119), held to be in breach of Article 90 of the Treaty inasmuch as it established a State monopoly incompatible with the system of free competition.

7 The Tribunale di Biella states that Article 9a of Law No 608/1996 was not the provision at issue in the case that gave rise to the judgment in *Job Centre*, cited above. Moreover, it submits that the case at issue in the main proceedings does not concern a monopolistic system of prior authorisation by the Member State but a mere obligation to notify, failure to fulfil which results in the imposition of administrative penalties.

8 Nevertheless, it considers that the legislation laying down that obligation on pain of a penalty could be contrary to Community law, in particular to Articles 48, 52 and 90 of the Treaty, inasmuch as it gives the Italian Republic 'precedence' by enabling it to supervise the hiring of workers. However, the obligation may not necessarily be contrary to Community law since it does not place the Italian Republic in such a position at the time when the employee is hired and the purpose of the supervisory power is solely to prevent irregular employment relationships.

9 The national court states that Article 10 of Legislative Decree No 469/1997 does not impose such an obligation to notify on persons authorised to undertake the placement of employees, and that it is therefore by way of an exception to that rule that it empowers the public authorities to punish offences committed by persons who are not so authorised.

10 Taking the view that an interpretation of provisions of the Treaty was necessary in order to resolve the dispute before it, the Tribunale di Biella decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are the second paragraph of Article 9a of Law No 608, of 28 November 1996, in so far as it provides that an employer is required to notify the Sezione Circondariale per l'Impiego of the hiring of every worker, and Article 10 of Legislative Decree No 469 of 23 December 1997, in so far as it refers to Article 9a of Law No 608/1996 in cases where non-authorised parties have acted as intermediaries, consistent with the principles of Community law laid down by Articles 39 EC, 43 EC, and 86 EC (formerly Articles 48, 52 and 90 of the EC Treaty)?'

The question referred

Observations submitted to the Court

11 The applicants in the main proceedings submit that in *Job Centre* the Court held that the penalties at issue in the main proceedings were unlawful because they infringed Community competition rules. They also argue that, in Case C-258/98 *Carra and Others* [2000] ECR I-4217, the Court of Justice gave the national court guidance on the legislation preceding Legislative Decree No 469/1997. They point out that the main proceedings concern placements made in 1997 and 1998.

12 The applicants in the main proceedings argue that to establish that the system of penalties instituted by Article 9a of Law No 608/1996 is unlawful, reference need only be made to *Carra and Others*. However, they also examine the provisions of Legislative Decree No 469/1997 on the ground that it is those provisions which have kept the system of penalties in force. In that regard, the applicants in the main proceedings submit that the notifications required under Article 9a of Law No 608/1996 are now devoid of purpose since they were introduced in order to strengthen the State monopoly over employment placement offices, which must now be regarded as unlawful in the light of the judgments in *Job Centre* and *Carra and Others*. Inasmuch as the system of placement offices has been reformed and liberalised, all the penalties linked to the former State monopoly have ceased to be applicable because their substance and the legal interest that they protected no longer exist.

13 In addition, according to the applicants in the main proceedings, liberalisation is not complete if the employer is still required to notify the competent authority of the hiring of workers, since such a requirement makes it more difficult for private undertakings to engage in placement activities.

14 For its part, the Italian Government briefly sets out the historical development of the Italian rules regarding the placement of employees. Under Law No 264 of 29 April 1949 employers had an obligation to recruit workers through one of the public placement offices. Law No 608/1996 put an end to the system of placement of workers on the basis of prior authorisation by a public placement office. Article 9a of Law No 608/1996 laid down the principle of direct recruitment of workers by the employer, who is now required only to notify the competent placement office within five days of the hiring of a worker.

15 The Italian Government submits that Article 9a of Law No 608/1996 was informed by public policy considerations. The Italian legislature regarded the notification system established by that provision, which enables the adminis-

tration to keep under constant supervision the flow of employees and to acquire accurate information as to the fluctuations in supply and demand on the labour market, as essential to the use of instruments of employment policy, such as the entry and removal of data on lists provided for that purpose, and unemployment quotas and benefits. In the light of the foregoing, the Italian Government submits that doubts expressed by the national court as to compatibility of the national legislation at issue in the main proceedings with the Treaty provisions are unfounded.

16 The Commission takes the view that the question referred by the national court is inadmissible. It submits, first, that the national court does not state its reasons for seeking the interpretation of Articles 48, 52 and 90 of the Treaty. In particular, it has not provided an explanation, however brief, of the reasons for choosing those provisions nor explained the link between those provisions and the national legislation applicable to the case at issue in the main proceedings. Second, the Commission maintains that the Treaty provisions referred to in the order for reference do not seem to have any relation at all to the facts and the subject-matter of the dispute in the main proceedings, so that the Court is not obliged to rule on the question referred.

17 Even assuming that the question were nevertheless admissible, the Commission claims that the order for reference does not contain any information to support the conclusion that Articles 48, 52 and 90 of the Treaty are applicable to the case at issue in the main proceedings.

18 As regards Article 90 of the Treaty, the Commission submits that the facts of the case at issue in the main proceedings differ significantly from those examined by the Court in *Job Centre* and *Carra and Others*, which both concerned a public body carrying on the placement of employees. The Commission considers that in the case at issue in the main proceedings, where only *ex post* notification is required, the Italian Republic is not acting as an undertaking but instead carrying out a supervisory task designed to protect salaried workers.

19 As regards the application of Articles 48 and 52 of the Treaty, the Commission points out that, according to settled case-law, those provisions do not apply to activities which are in all relevant respects confined to a single Member State. However, even if those provisions can be applied to the case at issue in the main proceedings, the Commission argues, solely in the alternative, that the obligation to notify laid down in Article 9a of Law No 608/1996 and the penalty imposed for non-compliance with that obligation do not constitute an obstacle to freedom of movement for workers. The employer is required to make notification after the actual hiring of an employee, irrespective of whether or not the employee is Italian. Moreover, the penalty is merely an administrative fine and is imposed only on the employer.

Findings of the Court

20 It should first be recalled that, according to settled case-law, the procedure provided for by Article 234 EC is an instrument of cooperation between the Court of Justice and national courts by means of which the Court provides the national courts with the points of interpretation of Community law which they need in order to decide the disputes before them (see Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 22; Case C-378/93 *La Pyramide* [1994] ECR I-3999, paragraph 10, and Case C-361/97 *Nour* [1998] ECR I-3101, paragraph 10).

21 In the context of that cooperation, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court.

Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court is, in principle, bound to give a ruling (see Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59; Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38, and Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 18.

22 However, the Court has also held that in exceptional circumstances it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see *PreussenElektra*, cited above, paragraph 39, and *Canal Satélite Digital*, cited above, paragraph 19).

23 The Court has also pointed out that it is important for the national court to state the precise reasons which caused it to raise the question of the interpretation of Community law and to consider it necessary to refer questions to the Court for a preliminary ruling (Case C-101/96 *Italia Testa* [1996] ECR I-3081, paragraph 6). The Court has thus held that it is essential that the national court give at the very least some explanation of the reasons for the choice of the Community provisions of which it requests an interpretation and on the link it establishes between those provisions and the national legislation applicable to the dispute (Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 9).

24 In the present case, it is clear that the order for reference does not contain sufficient information to satisfy those requirements.

25 First of all, as regards the interpretation of Articles 48 and 52 of the Treaty, the national court does not explain the reasons which have led it to raise the question of the interpretation of those provisions of Community law and to consider that it is necessary to refer a question on that matter to the Court for a preliminary ruling.

26 It is not possible to establish from either the order for reference or the observations submitted to the Court a link between, on the one hand, the principles of freedom of movement for workers and freedom of establishment within the Community laid down in the Treaty and, on the other, the legal and factual circumstances of the dispute in the main proceedings. In particular, there is nothing to suggest that Mergellina Snc or its employees have made or wanted to make use of those freedoms.

27 Second, as regards the interpretation of Article 90 of the Treaty, the Tribunale di Biella itself states in the order for reference that the legal and factual circumstances of the dispute in the main proceedings are different from those examined by the Court in *Job Centre*. The national court itself also observes that the case in point concerns a mere obligation to notify and not a monopolistic system of prior authorisation by the Member State. In so doing, the national court has not provided any information to suggest that Article 90 of the Treaty may be applicable to the case in the main proceedings.

28 There is no legal or factual feature of the dispute in the main proceedings which permits the inference that the Sezione Circondariale per l'Impiego acts as an undertaking for the purposes of Article 90 of the Treaty where, by virtue of the second paragraph of Article 9a of Law No 608/1996, it receives notifications relating to the hiring of employees.

29 Third, as regards Article 10 of Legislative Decree No 469/1997, which, according to the national court, empowers the public authorities to punish offences committed by persons who are not authorised to engage in the placement of employees, the order for reference does not explain how that provision is relevant to the resolution of the dispute in the main proceedings.

30 It follows from the foregoing that, since there is no information establishing the relationship between the facts and the subject-matter of the dispute in the main proceedings, on the one hand, and the interpretation of Articles 48, 52 and 90 of the Treaty sought by the national court, on the other, the Court is not in a position to give a useful answer to the question referred for a preliminary ruling.

31 In those circumstances, it must be held, pursuant to Articles 92 and 103(1) of the Rules of Procedure, that the question referred to the Court is manifestly inadmissible.

Costs

32 The costs incurred by the Italian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber)

hereby orders:

The reference for a preliminary ruling made by the Tribunale di Biella by order of 18 October 2001 is inadmissible.

Luxembourg, 25 February 2003.

R. Grass

Registrar

C.W.A. Timmermans

President of the Fourth Chamber