ORDER OF THE COURT
19 March 1993 *

In Case C-157/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura Circondariale di Genova for a preliminary ruling in the proceedings pending before that court between

Pretore di Genova

and

Giorgio Banchero,

on the interpretation of Articles 5, 30, 37, 85, 86, 90, 92 and 95 of the Treaty and Articles 2, 4(1) and 6(2) of Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ, English Special Edition 1972 (31 December), p.3),

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: C. Gulmann,
Registrar: J.-G. Giraud,

* Language of the case: Italian.

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By order of 14 March 1992, received at the Court on 8 May 1992, the Pretura di Genova (Genoa Magistrate's Court), Italy, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 5, 30, 37, 85, 86, 90, 92 and 95 of the Treaty and Articles 2, 4(1) and 6(2) of Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ, English Special Edition 1972 (31 December), p.3).

2 Mr Giorgio Banchero was prosecuted before the Pretura di Genova for illegal possession of 2.3 kg of foreign cigarettes, and argued before that court that the Italian monopoly of manufactured tobacco and the national rules applicable under Italian law to imports of manufactured tobacco from other Member States were not compatible with Community law.

3 In those circumstances the Pretura di Genova referred the following questions to the Court for a preliminary ruling:

' *Question 1*

Are the provisions of Articles 5, 30, 37, 85, 86, 90, 92 and 95 of the Treaty, the provisions of Articles 2 and 6(2) of Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufac-

tured tobacco, and the provisions of Article 4(1) of that directive, in conjunction with Council Directive 77/388/EEC of 17 May 1977 (Sixth VAT Directive, OJ 1977 L 145, p.1) compatible with the nature and normative characteristics of a national monopoly such as the one resulting — *inter alia* by virtue of its practical implementation — from the legislation applicable in Italy to the tobacco sector?

In particular:

1. Is Article 37(1) of the Treaty to be interpreted as meaning that, as things stand at present, the national monopoly of manufactured tobacco must be reorganized in such a way as to eliminate any possibility of discrimination, direct or indirect, between nationals of the Member States as regards the conditions of supply and marketing of goods?

2. Is Article 37 of the Treaty to be interpreted as permitting, as things stand at present, the retention of a national monopoly which confers an exclusive right both to produce and market the goods to which the monopoly applies, or is the exclusive right to produce and sell conferred on a national monopoly in itself capable of creating discrimination within the meaning of Article 37 of the Treaty?

3. Is Article 30 of the Treaty compatible with a monopoly of production and sale, such as the national monopoly in question, or is such a monopoly potentially capable, by its intrinsic nature, of permitting preferential choices which can be considered to be "measures having equivalent effect" within the meaning of Article 30 of the Treaty?

4. In the event of a declaration that the abovementioned provisions of the Treaty are incompatible with the provisions of national law governing the State tobacco monopoly, by what criteria may that monopoly have to be reorganized in order for it to fulfil the obligations which Community law imposes on the Member States in that sector, and in particular to bring it into line with Article 90(1) of the Treaty and the other provisions of Community law applicable in that field?

5. Can Article 2 of Council Directive 72/464/EEC be considered compatible with national legislation (Law No 825 of 13 July 1965 and Law No 724 of 10 December 1975) which subjects imports of manufactured tobacco to a "frontier surcharge" not provided for in that directive?

6. Can Article 6(2) of Council Directive 72/464/EEC in conjunction with Article 95 of the Treaty be considered compatible with national legislation (Law No 825 of 13 July 1965 and Law No 724 of 10 December 1975) which subjects national importers and manufacturers to a different system as regards the detailed rules for levying and paying the excise duty?

7. Do the Treaty provisions on competition, in particular Articles 5, 7, 85, 86, 87, 88, 89 and 90, apply also to the undertakings, holding a monopoly established by law, with an exclusive right to produce and market the goods protected by the monopoly?

8. Is Article 37 in conjunction with Article 92 of the Treaty compatible with a provision of national law which, on account of aids granted by law to an undertaking enjoying exclusive rights, permits that undertaking to market its own products at a price which is different from (and perhaps even lower than) the price of similar products of Community origin?

Question 2

If the reply to Question 1 is in the affirmative, do the present state of Community harmonization of excise duties and the elimination of customs duties within the Community, in conjunction with principles of proportionality and non-discrimination laid down by the Court of Justice, preclude national legislation which regards excise duty infringements concerning goods to which the State monopoly applies as smuggling offences and applies to them the penalties, including criminal penalties, provided for by the customs legislation on frontier duties, in contrast to the treatment of similar infringements concerning other taxes applied within the State?'

4 It must be noted to begin with that the need to arrive at an interpretation of Community law which will be of use to the national court requires that that court should define the factual and legislative context of the questions which it refers or at least explain the assumptions of fact on which those questions are based (judgment in Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo* [1993] ECR I-393, paragraph 6).

5 As the Court stated in that judgment, those requirements are of particular importance in certain areas, like that of competition, characterized by complex factual and legal situations.

6 The order for reference does not contain enough information to meet those requirements. The national court merely refers firstly to the Italian monopoly of manufactured tobacco without describing its defining features, and to discrimination of unspecified content relating to the conditions for the supply and marketing of goods, and secondly to a 'frontier surcharge' imposed on imports of manufactured tobacco from other Member States, and finally to the criminal penalties applicable to illegal imports of manufactured tobacco. It does not set out the content of the provisions of national law it refers to, nor the precise reasons for which it has doubts as to their compatibility with Community law and considers it necessary to refer questions to the Court for a preliminary ruling. In that respect the order for reference, in its insufficiently precise account of the situations of law and fact referred to by the national court, does not enable the Court to give an adequate interpretation of Community law.

7 In those circumstances it must be held, pursuant to Article 92 of the Rules of Procedure, that the questions referred to the Court for a preliminary ruling are manifestly inadmissible.

Costs

8 The costs incurred by the Italian Government and the Commission of the European Communities, 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

hereby orders:

The reference for a preliminary ruling by the Pretura Circondariale di Genova made by order of 14 March 1992 is inadmissible.

Luxembourg, 19 March 1993.

J.-G. Giraud — Registrar

O. Due — President