JUDGMENT OF THE COURT (Fourth Chamber)
11 July 1991 *

In Case C-351/88,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Amministrativo Regionale del Lazio (Regional Administrative Tribunal, Lazio, Italy) for a preliminary ruling in the proceedings pending before that court between

Laboratori Bruneau Srl

and

Unità sanitaria locale RM/24 de Monterotondo,

on the interpretation of Articles 30 and 92 of the EEC Treaty,

THE COURT (Fourth Chamber),

composed of: M. Díez de Velasco, President of Chamber, C. N. Kakouris and P. J. G. Kapteyn, Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman, Principal Administrator,

having regard to the written observations presented on behalf of:

— Laboratori Bruneau Srl, by Ernesto Beretta and Aldo Bozzi, of the Milan Bar, Giuseppe Bozzi, of the Rome Bar, and Aloyse May, of the Luxembourg Bar,

— the Italian Government by Pier Giorgio Ferri, Avvocato dello Stato, acting as Agent,

* Language of the case: Italian.

— the Commission of the European Communities by Guido Berardis, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral submissions of Laboratori Bruneau and the Commission at the hearing on 5 June 1991,

after hearing the Opinion of the Advocate General at the sitting on 27 June 1991,

gives the following

Judgment

1 By order of 30 May 1988, which was received at the Court on 6 December 1988, the Tribunale Amministrativo Regionale del Lazio referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 30 and 92 of the EEC Treaty in order to enable it to assess the compatibility with those provisions of Italian legislation reserving a percentage of public supply contracts to undertakings established in the Mezzogiorno.

2 The question arose in proceedings between Laboratori Bruneau Srl and Unità sanitaria locale RM/24, Monterotondo (Rome) (hereinafter referred to as 'USL'), following its exclusion from the tendering procedure for a contract to supply suturing material.

3 Under Article 17(16) and (17) of Law No 64 of 1 March 1986 ('Disciplina organica dell'intervento straordinario nel Mezzogiorno', a system of rules governing special aid for Southern Italy), the Italian State extended to all public bodies, authorities, and bodies and companies in which the State has a shareholding, including local health authorities situated throughout Italy, the obligation

to obtain at least 30% of their supplies from industrial, agricultural and small craft undertakings established in Southern Italy in which the products concerned undergo processing.

4 In accordance with the provisions of the national legislation, USL laid down the conditions governing a restricted tendering procedure for the supply of suturing material. Laboratori Bruneau Srl challenged that decision before the Tribunale Amministrativo Regionale del Lazio on the ground that it had been excluded from the restricted tendering procedure for the contract as it was not established in the Mezzogiorno.

5 In the course of its consideration of the application, the national court decided to request the Court of Justice to give a preliminary ruling on the following question:

'Whether, firstly, Articles 30 and 92 of the EEC Treaty must be interpreted as meaning that national rules reserving a percentage of public supply contracts to undertakings located in particular regions of national territory constitute measures of equivalent effect to quantitative restrictions or "aids" and, secondly, whether they preclude such rules?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant provisions, the procedure and the written observations submitted to the Court.

7 In its judgment in Case C-21/88 *Du Pont de Nemours Italiana* v *Unità sanitaria locale No 2 di Carrara* [1990] ECR I-889, the Court, in reply to questions of identical scope from the Tribunale Amministrativo Regionale della Toscana, held first that Article 30 of the EEC Treaty must be interpreted as precluding national rules which reserve to undertakings established in particular regions of the national territory a proportion of public supply contracts, and secondly, that the fact that national rules might be regarded as aid within the meaning of Article 92 of the

Treaty could not exempt them from the prohibition set out in Article 30 of the Treaty.

8 Since the observations made to the Court in the present case do not contain any element of fact or law which might lead to a different response, the reply given in the judgment in Case C-21/88, referred to above, must be repeated.

Costs

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

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question submitted to it by the Tribunale Amministrativo Regionale del Lazio, by order of 30 May 1988, hereby rules:

1. Article 30 of the EEC Treaty must be interpreted as precluding national rules which reserve to undertakings established in particular regions of the national territory a proportion of supply contracts.

2. **The fact that national rules might be regarded as aid within the meaning of Article 92 of the Treaty cannot exempt them from the prohibition set out in Article 30 of the Treaty.**

Díez de Velasco Kakouris Kapteyn

Delivered in open court in Luxembourg on 11 July 1991.

J.-G. Giraud
Registrar

Díez de Velasco
President of the Fourth Chamber