3. By reason of its nature and its function in the system of the sources of Community law, a regulation has direct effect. The direct applicability of a regulation requires that its entry into force and its application in favour of or against those subject to it must be independent of any measure of reception into national law. Proper compliance with that duty precludes the application of any legislative measure, even one adopted subsequently, which is incompatible with the provisions of that regulation.

4. Article 7 of the Treaty prohibiting discrimination on grounds of nationality does not apply to national rules which are not applicable on the basis of the nationality of the traders concerned and which take into consideration solely the location of the commercial activities.

In Case 31/78

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

FRANCESCO BUSSONE

and

ITALIAN MINISTRY FOR AGRICULTURE AND FORESTRY

on the interpretation and the validity of regulations of the EEC on the common organization of the market in eggs or laying down detailed rules for the application of that organization, the consequences thereof or amendments thereto, that is Regulation (EEC) No 1619/68 of the Council of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 489), Regulation (EEC) No 95/69 of the Commission of 17 January 1969 (Official Journal, English Special Edition 1969 (I), p. 7), Regulation (EEC) No 2771/75 of the Council of 29 October 1975 (Official Journal L 282 of 1 November 1975, p. 49) and Regulation (EEC) No 2772/75 of the Council of 29 October 1975 (Official Journal L 282 of 1 November 1975, p. 56),

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The order making the reference and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Mr Francesco Bussone, an Italian businessman, residing at Vanesca in the Province of Cuneo, runs an egg-packing centre; on 11 October 1977 he had to pay Lit 180 000 to the Ministry for Agriculture and Forestry to obtain bands and labels for affixing to egg packs. Production and distribution of these labels is in fact reserved to that Ministry by Italian Law No 419 of 3 May 1971 (Gazzetta Ufficiale No 167 of 5 July 1971) and by the Ministerial Decree kof 19 October 1971 (Gazzetta Ufficiale No 280 of 6 November 1971) containing implementing provisions. Those provisions are intended to incorporate into national law the rules contained in Regulation (EEC) No 2771/75 of the Council of 29 October 1975 on the common organization of the market in eggs (Official Journal L 282 of 1 November 1975, p. 49), as amended by Regulation (EEC) No 368/76 of the Council of 16 February (Official Journal L 45 of 21 February 1976, p. 2), and in Regulation (EEC) No 2772/75 of the Council of 29 October 1975 (Official Journal L 282 of 1 November 1975, p. 56), which regulations contained detailed rules for and amendments to the regulations which had previously been applicable in this connexion (Regulation (EEC) No 1619/68 of the Council of 15 October 1968 — Official Journal, English Special Edition 1968 (II), p. 489 — and Regulation (EEC) No 95/69 of the Commission of 17 January 1969 — Official Journal, English Special Edition 1969 (I), p. 7).

Those regulations provide, *inter alia*, that packs containing eggs are to be provided with a band or label which cannot be reused after the pack has been opened and which are to bear indications relating to the name or business name of the undertaking, the quality and weight-grading, the number of eggs contained in the pack and their freshness; the bands or labels are to be issued by or under the supervision of certain official agencies of the Member States; a model for the labels is to be laid down by the authorities of the Member States and communicated to the other Member States and the Commission. Finally, only undertakings authorized by the competent national authorities and called "packing centres" may grade eggs by quality and weight.

Thus Article 4 of the aforementioned Italian Law No 419 of 3 May 1971 provided that "the bands and labels shall be prepared by the Ministry for Agriculture and Forestry and issued with a serial number to the packing centres in return for payment of a sum fixed in Article 9" which sum was fixed by the aforementioned Ministerial Decree of 19 October 1971 at a certain amount in Italian lire per band or label.

Such is the legal basis of the charge to be paid by Mr Bussone to the Treasury of the Province of Cuneo. Mr Bussone paid the amount charged by the Treasury but then commenced proceedings before the Pretura di Venasca against the Ministry

for Agriculture and Forestry for reimbursement of that sum which he thought had been wrongly charged.

By order of 7 March 1978, registered at the Registry of the Court on 10 March, the Pretura di Venasca referred to the Court the following questions for a preliminary ruling:

"A. Must Regulation (EEC) No 1619/68 of the Council (as last amended by Regulation (EEC) No 2772/75 (Official Journal L 282 of 1 November 1975)) and Regulation (EEC) No 95/69 of the Commission be interpreted to mean that they empower the Member States to reserve exclusively to their public authorities the preparation and distribution of bands and labels and in particular must the provision in Article 5 of Regulation No 95/69 in accordance with which such bands and labels 'shall bear an official marking laid down by the competent authority' be interpreted to mean that this provision implies that the public authorities have an exclusive right to affix the official marking and to prepare and distribute the labels?

B. Must the said regulations be interpreted to mean that the Member States may make the issue of bands and labels conditional on payment of a consideration far in excess of the cost of such bands and labels?

C. Must the said regulations be interpreted to mean that their direct applicability must not be jeopardized by the adoption of national provisions which, whilst purporting to implement the regulation in question, introduce additional conditions, such as those reserving to the public authorities the right to prepare and distribute bands and labels and marking the issue of such bands and labels subject to the payment of a pecuniary consideration?

D. Does reservation to the public authorities of the right to prepare and distribute labels, and making the issue thereof subject to the payment of a sum in excess of their cost, result in discrimination on grounds of nationality which is prohibited in accordance with Article 7 of the EEC Treaty?

E. In any case must Regulation (EEC) No 2771/75 of the Council, in particular Article 2 thereof, and Regulations (EEC) Nos 2772/75 of the Council and 95/69 of the Commission be interpreted to mean that a national provision laying down additional and special conditions as compared with those conditions contained in the said regulations may disturb the proper functioning of the organization of the market in eggs and in particular the proper observance, and accordingly the correct application and operation, of marketing standards?"

The procedure followed its normal course. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice written observations were submitted by Francesco Bussone, represented by E. Cappelli, P. De Caterini and M. Gay, by the Commission of the European Communities, represented by P. Kalbe, assisted by G. Berardis, and by the Government of the Italian Republic, represented by A. Maresca and M. Braguglia.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry and the hearing was fixed for 28 September 1978.

II — Summary of the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

A — Observations of the applicant in the main proceedings

Mr Bussone first summarizes the state of the Community rules and the form chosen for the common organization of the market in eggs; of the forms set out in Article 40 (2) of the Treaty that of "common rules on competition"was chosen, which implies that normally no price and intervention rules would be established for the internal market within the Community; in such an organization, in the absence of any guaranteed price for the producer, the stabilization of the market is effected purely by compliance with "common rules on competition" which take the form of common marketing standards (also called "quality standards"). This type of organization is not peculiar to the egg sector alone but has also been adopted, for example, in the fruit and vegetables sector, and in that of plants and floricultural products. In all those cases the application of such standards is intended to have the effect of eliminating from the market products of unsatisfactory quality, of encouraging producers and traders to satisfy more fully the requirements of consumers and of facilitating commercial dealings on the basis of fair competition, thus serving to improve the profitability of production.

In Mr Bussone's view the regulations in question define exhaustively the marketing standards and the manner in which they are to be applied and constitute a complete and detailed body of rules characterized by precise provisions intended to guarantee the uniform application of marketing standards in the Community and leaving only mere organizational functions to the Member States.

Mr Bussone goes on to examine the legislation and the Italian rules which were intended to lay down the national measures to apply the Community rules in question in Italy (Law No 419 of 3 May 1971, Gazzetta Ufficiale No 167 of 5 July 1971; Decree of 19 October 1971, Gazzetta Ufficiale No 280 of 6 November 1971). Article 3 of the Ministerial Decree provides that:

"The price of the bands and labels referred to in Article 1 is laid down as follows:

— Lit 3 for each band for small packs bearing the word 'extra';

— Lit 36 for each label of any other type.

The bands and labels shall be distributed to authorized packing centres submitting a written application in duplicate to the Ministry for Agriculture and Forestry.

The application must be accompanied by a receipt from the Treasury of the province, certifying payment under Chapter No 3584 of the estimate of revenue for 1972 and the corresponding chapters for subsequent years of the amount corresponding to the price of the bands and labels. The application must also state the date and serial number of the said receipt.

The department responsible for distribution shall indicate on the applications the series and numbers of the bands and labels distributed. There shall also be affixed to the applications the date and the department stamp and the signature of the competent official. Of the two copies of the application so completed, one shall be retained by the said department and the other shall be sent or returned to the applicant".

Mr Bussone then summarizes the circumstances from which the dispute between himself and the Ministry for Agriculture and Forestry arose and comments on the way in which the questions asked by the Pretura di Venasca are set out.

Although five questions have been formulated, closer examination reveals that the Court has, in substance, been asked two questions: the first (Question A) asks whether the rules relating to the marketing of eggs permit Member States to reserve to the public authorities the distribution of labels; the second — clearly the main question — seeks to establish whether, when labels are supplied, payment of a pecuniary consideration may be demanded (Question B).

Questions C, D and E are merely an indication of the legal grounds on which the Pretura seeks to base its doubts as to the invalidity of the national rules introducing the contested pecuniary charge.

The first question is of less importance than the second for the solution of the main dispute, which concerns the recovery of amounts paid in error *(condictio indebiti)* and thus clearly depends principally on the answer to the second question.

With regard to Question A Mr Bussone observes that the "obligation of conformity" and compliance with the standards laid down for the product, which are the subject of rules of an essentially technical nature, expressly leave to the national supervisory authorities only certain specific responsibilities:

— The authorization of packing centres (Article 5 of Regulation (EEC) No 2772/75 and Article 2 of Regulation (EEC) No 95/69);

— The models of the bands and labels (Article 5 (2), Article 6 (2) and Article 7 (2) of Regulation (EEC) No 95/69);

— The designation of the supervisory bodies and the carrying out of related tasks (Article 26 (1) of Regulation (EEC) No 2772/75);

— The penalties applicable to infringements (Article 29 of Regulation (EEC) No 2772/75).

It is therefore necessary to establish whether the Community regulations can be interpreted as meaning that the bands and labels can or must be prepared by the public authorities and in particular by the bodies designated to supervise the system.

It can certainly not be stated that there exists an obligation to this effect. It is sufficient therefore to examine whether the Member States are entitled to reserve the preparation of the labels to certain bodies.

Reference may be made to the provisions of Article 17 (1) of Regulation (EEC) No 2772/75, according to which — at least for large packs — the labels "... shall be issued by or under the supervision of the official agencies mentioned in Article 26", in order to argue that the Member States retain the right to have the bands and labels issued by the agencies appointed to supervise the system.

That possibility is, however, limited to bands and labels for large packs, as in all other cases (see Articles 6, 7 and 8 of Regulation (EEC) No 95/69) the regulations are silent in this respect. Neither the objective of the Community rules nor the practice in the other Member States can be said to reserve to the national authorities the exclusive right to produce all the identification marks and, in any event, doubts exist as to whether the right to have the labels referred to in Article 17 (1) of Regulation (EEC) No 2772/75 issued by the official agencies is restricted to large packs or whether that right also applies by analogy to the other cases, as happens in Italy. There is also doubt, and it is possibly even more substantial, as to whether the objection underlying the reservation of the production of labels to a State agency is not merely in that way to obtain payment of a consideration, having regard, to the fact that the materials used for the labels have no influence at all on the implementation of the marketing standards.

The Pretura's question relating to Article 5 (2) of Regulation (EEC) No 95/69, according to which the labels "shall bear an official marking laid down by the competent authority", is not of very great importance as the context and the practice in the other Member States show that it is merely a matter of determining the characteristics of the label.

The second question, relating to whether or not the charge made in consideration for the issue of labels was lawful, is of greater importance. In Mr Bussone's view it must first be noted that the Community rules contain no reference to such pecuniary consideration. In that respect therefore the Italian measures are unilateral; indeed in the terms of Article 17 (1) of Regulation (EEC) No 2772/75 the administration is not obliged but merely entitled to issue labels; there is an obligation only as regards supervision. Exercise of that entitlement on the other hand has enabled the administration to make considerable profits as the cost price of a label is Lit 3 to 4 while the charge made is Lit 36. The charge made should not be in excess of the cost.

The question must further be asked whether a benefit has been provided within the meaning of the term as used by the Court of Justice with regard to charges having an effect equivalent to customs duties. In Mr Bussone's opinion the answer must be in the negative as the administration made use of the option given it and made the service which it provided compulsory; moreover, responsibility for the use of the label remains with the operator, that is to say the packing centre.

It might also be imagined in view of Article 4 of Law No 419/71, which provides that "the revenue ... shall serve to finance the checks specified for the application of the present law", that the allocation of that revenue is the counterpart of the check and therefore in respect of a benefit within the meaning of the judgment in the *Bauhuis* case (Case 46/76 [1977] ECR 5) and the case of *Commission* v *Netherlands* (Case 89/76 [1977] ECR 1355). In fact, however, in this instance the check is carried out merely by random sampling and by ensuring that the label accords with the contents. As the check itself, which is attested by means of a label affixed by the checker, costs nothing, there is no reason to apply the *Bauhuis* case.

Mr Bussone considers that the third question seeks to establish whether a national provision which introduces conditions which were not laid down by the regulations should be regarded as capable of adversely affecting the direct applicability of those regulations. He refers to the judgment in Case 39/72 (*Commission* v *Italy* [1973] 1 ECR 101) recalling that methods of implementation cannot jeopardize the simultaneous and uniform application of Community law. He takes the view that rules which are sufficiently exhaustive to be directly applicable should not allow of subsequent national provisions in particular where, as in the present instance, the duties of the Member States are expressly and fully specified. Even where the Member States are authorized to adopt additional measures (which is not the case in this instance) they have no discretionary power (Case 32/72 *Wasaknäcke* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1972] 2 ECR 1181; see also the opinion of Mr Advocate General Mayras). The residual power of the Member States should, the Court has ruled, be determined restrictively. Even if that does not presuppose the abolition of all existing legislative system (see the opinion of Mr Advocate General Trabucchi in Case 2/73 *Geddo* v *Ente Nazionale Risi* [1973] 2 ECR 865 at p. 882) the fact remains that in the present instance the marketing of eggs was not regulated in Italy before the advent of the Community system and it was therefore abnormal to take

advantage of that fact to impose what is really a tax on the persons concerned.

Mr Bussone contends that the fourth question should be expanded as it in fact asks whether the Italian measures entail discrimination both by virtue of nationality and with regard to the principle of equality of treatment. As regards the first point it is sufficient to observe that only packing centres which are established in Italy are subject to the charge, a situation which is contrary to the concept of the common organization of the market. A Member State should endeavour to discriminate neither against nationals of other Member States nor against its own nationals (Case 39/72 *Commision* v *Italy* [1973] 1 ECR 101 at p. 116, 24th paragraph of the decision). With regard to the second point, a proper application of Article 40 (3), which provides that the common organization of the market "shall exclude any discrimination between producers or consumers within the Community", should prevent any difference in treatment to the detriment of the product wrapped and graded in Italy which at present is subject to a special charge imposed on an agricultural product and financing an administrative activity. As they are subject to special conditions the marketing standards in Italy are not only more restrictive and more onerous but in particular different not only from those which are adopted in the Community regulation but also from those applied in the other Member States. Thus the "sale of labels for eggs" adversely affects the direct applicability of Community regulations by giving rise to a diference in treatment and discrimination. It should be possible to apply the case-law of the Court of Justice (Case 31/74 *Galli* [1975] 1 ECR 47) to common organizations of the market which have not established a system of prices, and it should therefore be possible to exclude any national rules which could impede, directly or indirectly, actually or potentially, trade within the Community (in this respect see the judgment in Case 190/73 *Officier van Justitie* v *Van Haaster* [1974] 2 ECR 1123 at p. 1134).

Furthermore, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to a common organization of the market (see Case 51/74 *Hulst* v *Produktschap voor Siergewassen* [1975] 1 ECR 79).

Mr Bussone suggests that the following answer should be given to the Pretura di Venasca:

"Regulations (EEC) Nos 2771/75 and 2772/75 of the Council of 29 October 1975 and Regulation (EEC) No 95/69 of the Commission of 17 January 1969 must be interpreted as meaning that national provisions laying down a pecuniary charge for the issue or use of bands and labels provided for by the Community regulations on marketing standards for eggs are incompatible with the common organization of the market in eggs".

B — Observations of the Commission

The Commission first summarizes the facts and the state of the Community and Italian rules. It goes on to summarize and to place the questions asked in that context as follows:

The five questions referred to the Court by the Pretura di Venasca seem to hinge on two main points:

(a) The concept of the direct applicability of Community law, and in particular of regulations, in the national legal system and the implications of that concept such as they appear in particular from the numerous decided cases of the Court of Justice;

(b) The concept of discrimination on grounds of nationality which is prohibited by the principle laid down in Article 7 of the Treaty of Rome.

These two points show that there exists a presumption that Law No 419 of the Italian Republic of 3 May 1971 which purports to implement Regulations (EEC) Nos 1619/68 and 95/69 on marketing standards for eggs runs contrary to the principle of the direct applicability of regulations in the national legal system and that at the same time it infringes the principle of non-discrimination enshrined in Article 7 of the Treaty in so far as it reserves to the public authorities the preparation and distribution of labels to be affixed to packs containing eggs in accordance with Community rules while making the issue of such labels conditional on payment of a pecuniary consideration.

With regard to Question A the Commission recalls the wording of the first subparagraph of Article 17 (1) of Regulation (EEC) No 2772/75 which provides with regard to large packs that they "shall be provided with a band or label ... which shall be issued by or under the supervision of the official agencies mentioned in Article 26". It appears, furthermore, from the said Article 26 that it is for the Member States to determine and apply the administrative measures and the checks necessary for the practical application of the marketing standards; the regulations thus entrusts the organization of and the detailed rules for the required supervision in their entirety to the Member States, which therefore have a discretionary power in this respect and could possibly reserve to themselves an exclusive right to distribute the labels which would render the checks more efficacious.

As regards Question B the Commission recognizes that the cost of the formalities must be financed "in one way or another"; as the Italian State chose, as the method of financing, the sale of the labels, the price of which represents both the cost of manufacture and of distribution and also the administrative costs of the checks, the system is compatible with the provisions of Regulation (EEC) No 2772/75 in that it allows the Member States a wide discretionary power with regard to finance. It is true that the price charged should not exceed the limits for financing the operation and should not bring a financial benefit to the Member States. In the latter hypothesis the principle of the direct effect of Community regulations would be contravened; the attention of the Italian authorities has already been drawn to this problem. On the basis of the reply given by them it can be said that at present, and taking account of the effects of inflation and the fixed price of the labels, an assessment of the situation depends on a detailed analysis which should be the responsibility of the said authorities; the cost of the procedures can indeed differ from one Member State to another.

With regard to Question C the Commission points out that the direct effect of Community law presupposes, as has been recalled in the decided cases of the Court of Justice, that any contradictory national rules are imcompatible with it and that any national practice of repeating Community rules within the internal system is unnecessary. The fact should not however be forgotten that the reciprocal autonomy of Community law and of national laws does not prevent them from complementing each other to a certain extent, in particular when the collaboration of the Member States and their legal systems is necessary. The present instance should be viewed in this context; the collaboration of the Member States is necessary to carry out the supervision provided for by Community rules. The Italian law does not therefore infringe the principle of direct effect. Nor is that principle contravened by a suitable method of financing the system. However, an excessive consideration would be contrary to that principle and therefore unlawful.

In the Commission's view Question D makes allusion to "inverted discrimination" working against nationals of the Member State which adopted the contested measure, that is to say, in this instance, Italian producers. However, Italian Law No 419 is applicable on the basis of the place where the activities are carried on, whatever the nationality of there producers. There therefore exists no discrimination within the meaning of Article 7 of the Treaty. The application of different charges imposed on egg producers depending on the place of production is in fact a problem of harmonization subject to limits which should be imposed on the amount of such charges.

With regard to Question E the Commission recalls that the contested charges are an integral part of a system which, while giving the Member States complete freedom with regard to the organization of the requisite checks, allows them by implication to obtain the necessary means to finance the system but nothing more. Any other practice would go beyond the objectives of the common organization and would upset the balance of that organization.

The Commission consequently proposes that the following answers should be given to the questions asked by the Pretura di Venasca:

1. The exclusive right of the public authorities to prepare and distribute the bands and labels to be affixed to packs of eggs provided for by Regulations (EEC) Nos 2772/75 and 95/69 and to affix the official marking laid down by the competent authority is not incompatible with those regulations.
2. The payment required for the issue of the bands and labels is not, in principle, incompatible with the said Community regulations in view of the fact that it constitutes the necessary consideration for the material cost of the labels and the cost of the compulsory supervisory procedures which are expressly required of the national bodies. That consideration does not constitute an infringement of the prohibition of discrimination on grounds of nationality laid down in Article 7 of the Treaty.
3. The pecuniary consideration must be in proportion to the real cost of the supervisory procedures. Any excessive consideration would constitute an extraneous element which might disturb the proper functioning of the mechanisms of the common organization of the market and the measure introducing it would be contrary to the principle of the direct effect of Community regulations.

C — *Observations of the Government of the Italian Republic*

The Italian Government recalls the state of the Community and national rules. With regard to the questions asked it refers first in general terms to the case-law of the Court of Justice (judgment of 12 July 1973, Case 2/73 *Geddo* v *Ente Nazionale Risi* [1973] 1 ECR 865; judgment of 2 February 1977, Case 50/76 *Amsterdam Bulb* v *Produktschap voor Siergewassen* [1977] ECR 137 and the opinion of the Advocate General at page 152; judgment of 3 February 1977, Case 52/76 *Benedetti* v *Munari* [1977] ECR 163), which, with regard to the exercise of mutual powers regarding common organizations of the market, sets aside any "dogmatic approach" and prefers a "pragmatic approach"; the Member States have not only retained functions of a purely executory nature and the lawfulness of the national measures should form the subject-matter of a factual examination having regard to the objectives and functioning of the common rules.

The common organization of the market in eggs is fairly simple and makes no provision for a system of internal prices

or for intervention measures and is primarily aimed at maintaining quality. The adoption of such Community provisions "does not necessarily imply that the implementing measures should be in all respects identical throughout the Community" (see judgment of 18 May 1977 in Case 111/76 *Officier van Justitie* v *Van den Hazel* [1977] ECR 901) so long as there is no barrier, either actual or potential, to the principle of the free movement of the product.

There remains the question of the consideration charged for the supply of the bands or labels. The Italian text of Article 17 of Regulation (EEC) No 2772/75 which refers to labels which are to be "forniti", that is to say "supplied", in contrast to Article 17 of Regulation (EEC) No 1619/68 which refers to labels to be "rilasciati" that is to say "issued", [1] presupposes the possibility of a consideration. In the present case is that consideration liable to interfere with the objectives and functioning of the common organization of the market in eggs, including the marketing standards? In abstract terms and in agreement with the Court of Justice and its Advocate General (Case 2/73 the *Geddo* case *loc. cit.)* it must be accepted that local disparities — for example in production costs — may be accompanied by various levels of rates of fiscal or parafiscal charges. In practical terms the incidence of Lit 3 for small packs and Lit 36 for other packs (which are more often used) is barely a fraction of a lira and is approximately 0.2 % of the producer price. As the consumer price is pratically double the producer price the incidence on the competitive capacity of Italian producers is infinitesimal, as is moreover clear from a table submitted by the Italian Government relating to Italian exports of fresh eggs in their shells. Moreover, the system in force in Italy has neither reduced the growth in exports nor affected their development.

The Italian Government states that the pecuniary charge for the labels is made up of the production cost (approximately Lit 5 compared with a total of Lit 36 for large packs) and the cost of the supervisory service (from Lit 29 to 30) which leads to an improvement in quality ensured by specialized staff for the protection of consumers. The cost of providing that service is not even covered by the revenue from the sale of bands and labels, as is attested by the Italian national budget.

Finally, with regard to discrimination account should be taken of the fact that the nationality of the proprietor of the packing centre is not taken into consideration. Furthermore, what interest would a State have in discriminating against its own producers in comparison with others?

III — Oral procedure

The hearing was held on 28 September 1978. The applicant in the main proceedings, the Government of the Italian Republic and the Commission of the European Communities presented oral argument, expanded the arguments presented in their written pleadings and replied to questions asked by the Court of Justice.

The Advocate General delivered his opinion at the hearing on 26 October 1978.

1 — Translator's note: In the English texts the word "issued" is used on both occasions.

Decision

1 By an order of 7 March 1978 which was received at the Court Registry on 10 March 1978 the Pretura di Venasca referred to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty five questions relating to the interpretation and validity of EEC regulations on the common organization of the market in eggs or concerning marketing standards for eggs.

2 The questions were raised in the context of a dispute in which the operator of a duly authorized egg-packing centre is claiming from the Italian Ministry for Agriculture and Forestry reimbursement of the sum of Lit 180 000 — plus interest and costs — paid by way of consideration for the issue of bands and labels to be affixed to egg packs.

3 The national court first asks the following question:

"Must Regulation (EEC) No 1619/68 of the Council (as last amended by Regulation (EEC) No 2772/75 (Official Journal L 282 of 1 November 1975, page 56)) and Regulation (EEC) No 95/69 of the Commission be interpreted to mean that they empower the Member States to reserve exclusively to their public authorities the preparation and distribution of bands and labels and in particular must the provision in Article 5 of Regulation (EEC) No 95/69 in accordance with which such bands and labels 'shall bear an official marking laid down by the competent authority' be interpreted to mean that this provision implies that the public authorities have an exclusive right to affix the official marking and to prepare and distribute the labels?"

4 In order to reply to that first question it is necessary to describe the system adopted by the Council for the common organization of the market in eggs and the marketing standards and the detailed rules laid down by the Commission to implement that organization.

5 In order to take due account simultaneously of the objectives laid down in Article 39 and in Article 110 of the Treaty, the stabilization of the market in eggs is to be implemented by complying with the "common rules on competition" which take the form of common quality standards and make no provision for a system of prices and intervention on the internal market of the Community.

6 The marketing standards for eggs, which were deemed necessary to improve the quality of eggs and to facilitate their sale in the interests of producers, traders and consumers, lay down the criteria to be applied for the classification of eggs (Articles 1 to 13 to Regulation (EEC) No 2772/75), the common provisions relating to packaging (Articles 16 to 22) and the provisions relating to supervision by means of random sampling (Articles 26 to 28).

7 With regard more particularly to the system of packaging and labelling, by virtue of which the consumer is to be able to distinguish between eggs of different quality and weight grades, the first subparagraph of Article 17 (1) of Regulation (EEC) No 2772/75 provides that: "Large packs even when they contain eggs in small packs shall be provided with a band or label which cannot be re-used after the pack has been opened and which shall be issued by or under the supervision of the official agencies mentioned in Article 26", and Article 26 defines the nature of the said agencies in the following terms: "Compliance with this regulation shall be supervised by agencies appointed for the purpose in each Member State. A list of such agencies shall be forwarded to other Member States and to the Commission ... Any amendment to this list shall be communicated to other Member States and the Commission".

8 "Since graded eggs are liable to depreciate in quality", Regulation (EEC) No 95/69 laid down rigorous requirements for packaging set out in detail in particular in Article 5 which provides that: "(1) The bands and labels ... shall be white and shall be printed in black. (2) ... these bands and labels, which may be numbered, shall bear and official marking laid down by the competent authority. Each Member State shall ... provide one or more specimens of the band and label to the other Member States and to the Commission".

9 From a comparison and joint interpretation of the first subparagraph of Article 17 (1) and Article 26 of Regulation (EEC) No 2772/75 and Article 5 of Regulation (EEC) No 95/69 it is clear that those provisions do not reserve to the public authorities the exclusive right to affix the marking and to prepare and distribute labels but that they leave the Member States entirely at liberty to entrust the organization of and the detailed rules for supervision to the agency which they regard as being the most suitable in their internal order to carry out that task.

10 The discretionary power held by the Member States in this respect by virtue of the aforesaid provisions authorizes them to entrust exclusively to the public authorities the preparation and distribution of bands and labels.

11 The first question should be answered to that effect.

12 The following second question is asked:

"Must the said regulations be interpreted to mean that the Member States may make the issue of bands and labels conditional on payment of a consideration far in excess of the cost of such bands and labels?"

13 That question may be divided into two parts, the first asking whether the regulations authorize the Member States to make the issue of bands and labels conditional on payment of a consideration, the second, if that is the case, raising the problem of the validity of that consideration if the amount is far in excess of the cost of such bands and labels.

14 Whilst the regulations on the common organization of the market in eggs and on marketing standards for eggs contain detailed rules relating to grading by quality and weight, packing, warehousing, transport, presentation and marking of eggs they contain no provision relating to the selling price of labels or the method of financing the administrate costs inherent in the supervision.

15 As the regulations neither oblige Member States to distribute the labels to users free of charge nor prohibit them from requiring a consideration for the issue of bands, it must be concluded that they leave the Member States free to resolve the problem of financing the supervision.

16 That freedom allowed to the Member States cannot, however, be used in such a way as to jeopardize the objective of the rules which grant it.

17 Article 4 of Italian Law No 419 provides that: "the revenue from the sale of labels shall serve to finance the checks specified for the application of the present law".

18 The Italian State has thus chosen as the means of financing the system the sale of the labels whose price represents both the intrinsic cost (manufacture and distribution) of the labels and a contribution to the administrative costs resulting from the carrying out of the supervision required by the Community rules.

19 The sale of the labels is thus directly linked to the introduction of the Community system of supervision intended to improve the quality of eggs and, consequently, facilitate their sale and thus promote the interests of producers, traders and consumers.

20 The answer should therefore be given to the national court that in the absence of any provision in the Community rules relating to the means of financing the costs arising from the supervision the Member States may make the issue of bands and labels conditional on payment of a consideration in respect of that supervision.

21 With regard to the second part of the second question, that is to say the case where the amount of the consideration is far in excess of the cost of the system, the principle must be laid down that whilst the Community provisions leave the Member States free to choose the means of financing the supervision which they require, the choice of the Member States is confined to the strictly necessary objectives of the financing itself.

22 The consideration charged to the authorized packing centres must not exceed the real costs of the supervisory system in question.

23 An excessive financial consideration would be incompatible with the objectives of the common organization of the market as it would affect the competitiveness of Italian producers and would distort the "common rules on competition".

24 Whilst it is inevitable that the cost of undertaking the supervision and issuing labels will not be identical in all the Member States, the consideration charged to the authorized packing centres should not, on the other hand, exceed the costs of the operations in question in each of those States.

25 It is for the national court to determine whether or not the amount charged is justified in order to assess the limits which the consideration must not exceed.

26 The following third question is asked:

"Must the said regulations be interpreted to mean that their direct applicability must not be jeopardized by the adoption of national provisions which, whilst purporting to implement the regulations in question, introduce additional conditions, such as those reserving to the public authorities the right to prepare and distribute bands and labels and making the issue of such bands and labels subject to the payment of a pecuniary consideration?"

27 That question raises the point as to whether the fact that the preparation and distribution of labels is reserved to the public authorities and their issue is made conditional on payment of a pecuniary consideration is contrary to the directly applicable nature of the regulations, which would be prejudiced by the introduction of "additional conditions" "purporting to implement the regulations in question".

28 According to the second paragraph of Article 189 of the Treaty a regulation shall have general application and shall be directly applicable in all Member States.

29 By reason of its nature and its function in the system of the sources of Community law, therefore, a regulation has direct effect.

30 The direct applicability of a regulation requires that its entry into force and its application in favour of or against those subject to it must be independent of any measure of reception into national law.

31 Proper compliance with that duty precludes the application of any legislative measure, even one adopted subsequently, which is incompatible with the provisions of that regulation.

32 That prohibition is, however, relaxed to the extent to which the regulation in question leaves it to the Member States themselves to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation.

33 The position is that established by Regulations (EEC) Nos 1619/68 and 95/69, which provide *inter alia* that "large packs . . . shall be provided with a band or label . . . which shall be issued by or under the supervision of the official agencies . . . appointed for the purpose in each Member State . . . a list of [which] shall be forwarded to other Member States and to the Commission" (Articles 17 and 26 of Regulation (EEC) No 1619/68) and that the latter shall be provided with "one or more specimens of the band and label" . . . "which may be numbered [and] shall bear an official marking laid down by the competent authority" (Article 5 of Regulation (EEC) No 95/69).

34 Nor is it ruled out that in that case the costs of printing and distributing the bands and labels, and those arising from the implementation of the specific checks required by the basic regulations, should be regarded as a service rendered to the user such as to justify the imposition of a pecuniary charge, on condition that it does not exceed the real cost of the supervisory system in question.

35 Indeed the fact that a Member State reserves to its public authorities the preparation of bands and labels in no way disrupts the functioning of the common organization and does not obstruct and is not of such a nature as to obstruct the free movement of the product.

36 The reply should therefore be given that the directly applicable nature of Regulation (EEC) No 1619/68, replaced by Regulation (EEC) No 2772/75, and Regulation (EEC) No 95/69 is not affected by the adoption of national rules required by the said regulations for their application which comply with the aim and objectives of the regulations by introducing additional conditions such as reserving to the public authorities the preparation and distribution of the bands and labels and making the issue thereof conditional on payment of a pecuniary consideration, on condition that the consideration is not disproportionate to the cost of the supervisory system in question.

37 The national court asks the following fourth question:

"Does reservation to the public authorities of the right to prepare and distribute labels, and making the issue thereof subject to the payment of a sum in excess of their cost, result in discrimination on grounds of nationality which is prohibited in accordance with Article 7 of the EEC Treaty?"

38 In respect of this question, which raises the problem of whether the Italian legislation is in conflict with the principle of non-discrimination enshrined in Article 7 of the EEC Treaty, it should be observed that that legislation is not applicable on the basis of the nationality of the traders, but on the basis of the location of the authorized packing centres, whether the business is carried on by Italian or non-Italian traders.

39 It should be noted that according to the information contained in the file on the case, the majority of Member States have adopted systems according to which the price of the labels and the costs of the supervision — where such operations are not entrusted to the public authorities — are nevertheless charged to the operators of authorized packing centres.

40 From these factors it follows that a principle such as that on which the relevant Italian legislation is based does not constitute discrimination on grounds of nationality and therefore does not infringe Article 7 of the Treaty.

41 The following fifth question is asked:

"In any case must Regulation (EEC) No 2771/75 of the Council, in particular Article 2 thereof, and Regulations (EEC) Nos 2772/75 of the Council and 95/69 of the Commission be interpreted to mean that a national provision laying down additional and special conditions as compared with those conditions contained in the said regulations may disturb the proper functioning of the organization of the market in eggs and in particular the proper observance, and accordingly the correct application and operation, of marketing standards?"

42 The answer to this question is already included in the answers to the preceding questions, in particular to the third question.

43 To be more precise, in the absence of express provisions on the compatibility with the organization of the market established by Regulation (EEC) No 2771/75, in particular Article 2 thereof, and Regulations (EEC) Nos 2772/75 and 95/69, of national rules adopted for the implementation of those regulations, it is necessary to seek the solution to the question asked in the light of the aims and objectives of the regulations within the context of the principles laid down by the Treaty itself.

44 The characteristic feature of the organization of the market in eggs is compliance with the common rules on competition and the introduction of common quality standards, having the purpose of encouraging trade initiatives with a view to improving the quality of the products and of perfecting the organization of production.

45 By not seeking to regulate prices in the context of that organization the Community has not sought to achieve uniformity of prices.

46 From the general system of the regulation it is clear that with regard to trade within the Community the organization of the market for the product in question is based on freedom of commercial transactions under fair competitive conditions, by way of an improvement in the quality of the product.

47 Whilst such a scheme precludes the adoption of any national rules which may hinder, directly or indirectly, actually or potentially, trade within the Community it does not preclude the adoption of national rules where the practical application of the system itself and of its detailed rules has specifically been entrusted to the Member States, while making them responsible — as the Italian legislature has done, subject to the reservation that the amount of the consideration charged should be justified — for establishing a system which complies with the aims and objectives of the regulations on the common organization of the market in eggs.

Costs

48 The costs incurred by the Government of the Italian Republic and the Commission, which have submitted observations to the Court, are not recoverable.

49 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Pretura di Venasca by order of 7 March 1978, hereby rules:

1. **Regulation (EEC) No 1619/68 of the Council of 15 October 1968 on marketing standards for eggs (Official Journal, English Special Edition 1968 (II), p. 489), replaced by Regulation (EEC) No 2772/75 of the Council of 29 October 1975 (Official Journal L 282, p. 56), and Regulation (EEC) No 95/69 of the Commission of 17 January 1969 (Official Journal, English Special Edition 1969 (I), p. 7) must be interpreted to mean that the discretionary power held by the Member States by virtue of those regulations authorizes them to entrust exclusively to the public authorities the preparation and distribution of bands and labels.**

2. **In the absence of any provision in the Community rules relating to the means of financing the costs arising from the supervision the Member States may make the issue of bands and labels conditional on payment of a consideration in respect of that supervision.**

3. **It is for the national court to determine whether or not the amount of the consideration thus charged to the authorized packing centres is justified.**

4. **The directly applicable nature of Regulation (EEC) No 1619/68, replaced by Regulation (EEC) No 2772/75, and Regulation (EEC) No 95/69 is not affected by the adoption of national rules required by the said regulations for their application which comply with the aim and objectives of the regulations by introducing additional conditions such as reserving to the public authorities the preparation and distribution of the bands and labels and making the issue thereof conditional on payment of a pecuniary consideration, on condition that the consideration is not disproportionate to the cost of the supervisory system in question.**

5. Article 7 of the Treaty prohibiting discrimination on grounds of nationality does not apply to national rules which are not applicable on the basis of the nationality of the traders concerned and which take into consideration solely the location of the commercial activities.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 30 November 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 26 OCTOBER 1978 [1]

Mr President,
Members of the Court,

The proceedings for a preliminary ruling in which I am today delivering my opinion relate to the common organization of the market in eggs and the Community law and Italian implementing provisions adopted thereunder.

The aforesaid organization of the market is at present regulated by Regulation No 2771/75 of the Council of 29 October 1975 as amended by Regulation No 368/76. There is no need for me here to set out all its details. For the present proceedings it is enough to know that, as regards intra-Community trade, the organization of the market contains no system of price regulation or intervention. It is rather characterized by certain marketing standards which are intended to ensure that only eggs of a certain quality are marketed and which, in this way, are intended to promote sales. Implementing provisions are contained in Regulation No 2772/75 of the Council of 29 October 1975 and in Regulation No 95/69 of the Commission of 17 January 1969 which was adopted in implementation of the predecessor to Regulation No 2771/75. Under those provisions certain quality and weight classes are laid down; rules for the packaging of the eggs must also be complied with. Eggs can only be classified according to Community criteria by certain packing centres which must be authorized by the national authorities. They must affix certain details to

1 — Translated from the German