JUDGMENT OF THE COURT
17 DECEMBER 1970[1]

SpA SACE
v Ministry for Finance of the Italian Republic[2]
(Reference for a preliminary ruling by the Tribunale, Brescia)

Case 33/70

Summary

1. *Free movement of goods — Customs duties — Charges having equivalent effect — Prohibition — Direct effect — Individual rights — Protection of these rights by national courts*

(EEC Treaty, Article 9, Article 13 (2))

2. *Community institutions — Common provisions — Directives — Direct applicability — Conditions*
(EEC Treaty, Article 189)

1. Articles 9 and 13(2) taken together, involve, at the latest at the end of the transitional period, with regard to all charges having an effect equivalent to customs duties on imports, a clear and precise prohibition on exacting the said charges, which is not subject to any reservation for the States to subject its implementation to a positive act of national law or to an intervention by the institutions of the Community. This prohibition lends itself by its very nature to producing direct effects in the legal relations between Member States and their subjects. Therefore, from the end of the transitional period, these provisions confer on individuals, with regard to all charges having equivalent effect, to which such provisions refer, rights which the national courts must protect.

2. A directive the object of which is to impose on a Member State a final date for the performance of a Community obligation does not concern solely the relations between the Commission and that State, but also entails legal consequences of which both the other Member States concerned in its performance and individuals may avail themselves when, by its very nature, the provision establishing this obligation is directly applicable.

In Case 33/70

Reference to the Court under Article 177 of the EEC Treaty by the President of the

1 — Language of the Case: Italian.
2 — CMLR.

Tribunale, Brescia, for a preliminary ruling in the action pending before that court between

SpA SACE of Bergamo,

and

Ministry for Finance of the Italian Republic,

on the interpretation of Article 13 (2) of the Treaty of Rome and of the provisions of Directive No 68/31 of the Commission of the European Communities of 22 December 1967 (OJ 1968, L 12, p. 8),

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. Italian Law No 330 of 25 June 1950 (Gazetta Ufficiale della Repubblica Italiana (Official Gazette of the Italian Republic) No 137 of 17 June 1950) established a duty for administrative services imposed on goods imported from abroad amounting to 0.5% of their value. The dutiable value of the goods for the purpose of the application of that duty is determined in accordance with the rules in force for the application of *ad valorem* customs duty.

2. Considering it to be a charge having an effect equivalent to a customs duty, the Commission, in accordance with the provisions of Article 13(2) of the EEC Treaty, determined by means of a directive of 22

December 1967, the timetable for the abolition of the said charge in so far as it applied to products not subject to an organization of agricultural markets (OJ 1968, L12, p. 8). According to the directive, the duty at issue was to be abolished by means of successive reductions in the rate applicable on 31 December 1957, so that the duty would be completely abolished by 1 July 1968.

3. SpA SACE of Bergamo, which on 17 September 1969 had imported from the other Member States goods having a total value of approximately 10 000 000 lire and had had to pay on that account a sum of 50 995 lire in respect of duty for administrative services, brought an action before the President of the Tribunale, Brescia, on 1 July 1970 for the repayment of the sums which, in its opinion, had been levied unlawfully by the Italian State.

4. By a decision of 4 July 1970, the President of the Tribunale, Brescia, stayed the proceedings and requested the Court of Justice, in accordance with Article 177 of the EEC Treaty, to give a preliminary ruling on the following questions:

(1) Following the adoption of Directive No 68/31 of 22 December 1967, published in the Official Journal of the European Communities No 12/8 of 16 January 1968, are the provisions of Article 13(2) of the Treaty of Rome (or in any event, the provisions of Directive No 68/31 itself) directly applicable in the domestic legal system of the Italian State?

(2) If the reply to Question (1) is in the affirmative, were rights conferred on individuals as from 1 July 1968 of which the national courts must take cognizance?

5. The order for reference was registered at the Court of Justice on 9 July 1970. The Commission of the European Communities, SpA SACE and the German Government submitted written observations.
Having heard the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided not to hold a preparatory inquiry.
The Italian Republic, SpA SACE and the Commission of the European Communities presented their oral observations at the hearing on 17 November 1970.
The Advocate-General delivered his opinion at the hearing on 8 December 1970.
The Italian Republic was represented by Pietro Peronaci, SpA SACE by Professor Albertazzi, the Commisssion by Sergio Ventura and the Federal Republic of Germany by R. Morawitz.

II — Observations submitted in pursuance of Article 20 of the Statute

The observations submitted in pursuance of Article 20 of the Statute may be summarized as follows:

1 — *Observations of the Commission of the European Communities*

(a) The first question

(i) The *Commission* first makes the point that the question concerns the direct applicability of provisions relating to the obligation of Member States to abolish between themselves customs duties and charges having equivalent effect. Since this is an obligation to act, it is appropriate to consider whether the Italian Republic has or has not a discretionary power enabling it wholly or partially to exclude the effects of the obligation.
Article 13(2) of the EEC Treaty which imposes on Member States the obligation to abolish progressively, during the transitional period, charges having an effect equivalent to customs duties on imports, then refers, for the purpose of determining the timetable for such abolition, to directives of the Commission. The obligation thereby imposed on Member States, which is in itself clear and specific, is suspended until the end of the transitional

period or the expiry of prior time-limits which may be fixed by the Commission in its directives. The obligation has become direct and effective:

— as from the dates fixed by the directives of the Commission with regard to the charges having equivalent effect dealt with in such directives;

— at the expiry of the transitional period for all other charges having equivalent effect; the expiry of the transitional period must however be taken to be 31 December 1969 and not 1 July 1968, the date fixed by the decision of the Council of 26 July 1966 (OJ 2971, p. 66) for the advance implementation of the customs union.

As from these dates Member States no longer have a margin of discretion in performing the obligation devolving upon them by virtue of the Treaty and nothing therefore stands in the way of the direct applicability of the Community provisions in question. In this case in particular, the directive of the Commission, notified to the Italian Republic on 28 December 1967, fixed 1 July 1968 as the date by which the imposition of the duty at issue had to come to an end. Consequently, it must be considered that as from the expiry of the said time-limit, the provisions of Article 13(2) took full effect, without any exception as regards the abolition of the 'duty for administrative services', and became operative in law between the Italian Republic and individuals.

The Commission's argument is supported by the case-law of the Court and, in particular, by the judgment of 16 June 1966 (Case 57/65 [1966] E.C.R. 205) and by that of 6 October 1970 (Case 9/70 Grad [E.C.R.] 1970).

(ii) The Commission points out secondly that, because of the interpretation which it gives to the provisions of Article 13(2), it is not necessary to examine the problem of the direct applicability of the directive of 22 December 1967.

It states however that, for all practical purposes, the direct effect of provisions which, although contained in directives, are by their very nature directly applicable cannot be contested.

Regardless of its form, a rule is directly applicable if, considering its nature, its purpose and its function, it can produce direct effect in the relationship between the person to whom it is addressed and third parties.

(b) The second question

The Commission observes that once it is accepted that the Community provisions at issue are directly applicable as from the date fixed by the Commission's directive, then it must also be accepted that as from that date individual rights have been created which the national courts must protect.

The fact that the provisions in question impose on Member States an obligation to act cannot be used to rebut that argument. In fact, the Court of Justice has stated that both obligations to act, such as those in Article 95, imposed by Community law on Member States, and obligations to refrain from acting may create individual rights (Judgment of 3 April 1968, *Molkerei Zentrale*, Case 28/67 [1968] E.C.R. 143).

In both cases, the Court has defined in the same way the consequences deriving from the direct applicability of a provision of Community law.

The only essential factor is indeed the precision and the completeness of the rule in question. Article 13 does not refer to an abstract obligation to refrain, but to an obligation to abolish charges having equivalent effect which, being limited objectively and territorially, had to be defined by a directive which thus complements the enactment in Article 13.

(c) The Commission considers that, as regards the obligation to abolish the duty for administrative services levied in Italy in pursuance of Law No 330 of 15 June 1950, the provisions of Article 13(2) of the EEC Treaty are directly applicable as from 1 July 1968 in the Italian legal system and create individual rights which the courts must protect.

2 — *Observations of the German Government*

(a) The *German Government* points out that the problem posed by the Italian courts is whether the directive by which the Commission, acting within its powers, fixed the time-limit for the abolition of the charge having equivalent effect at a date in advance of that fixed by the Treaty itself in Article 13(2) (expiry of the transitional period), has the same effect in relation to direct applicability as the fixing of time-limits determined by the Treaty itself.
The German Government considers that this question requires a reply in the negative because, according to Article 189 of the EEC Treaty, directives are only, addressed to Member States and because, by comparison with regulations, they are not intended to have direct effects.
It is moreover for this reason that their publication in the Official Journal is not a condition of their applicability, as is the case for regulations. In principle, directives require to be reformulated in terms of national law. Member States are expressly left the choice of form and methods for their implementation. A directive cannot therefore have the effect of making Articles 9 and 13(2) of the EEC Treaty directly applicable before the date prescribed. Such a result could only have been achieved if the time-limit were itself capable of being directly applicable.

(b) In support of its argument the German Government refers to the observations which it submitted in Case 9/70 (Grad). Generally speaking, the direct applicability of directives should be ruled out for several reasons:
(i) The integration aimed at by the Treaties is brought about, on the one hand, by *regulations*, legal acts enabling the creation of a legal system proper to the Community and prevailing over and replacing national rules and, on the other hand, by *directives* which leave the national law unaffected and only impose on Member States the obligation to reframe that law in a particular way, while very often leaving to their discretion the methods which they actually adopt for the purpose. The fact that the Treaty prescribes, in certain fields, the choice of form of the directive (as for example in Article 100) emphasizes the important point of principle which the signatory States attached to the distinction between directives and other measures, a point which would go by default if the directive were treated as a regulation.
(ii) It is not permissible for individuals to plead the illegality of directives on the grounds that they are addressed to Member States, that they are not of general application and have no direct effect and that it is for Member States to give effect to them.
(iii) Directives are not necessarily published in accordance with the first paragraph of Article 191 as is the case with regulations. If they were directly applicable, an essential condition of legal certainty would be lacking.

(c) As regards more particularly Directive No 68/31, the German Government puts forward the following reasons against its direct applicability.
(i) As this directive refers exclusively to a particular charge, the direct applicability of the prohibitions laid down in Articles 9 and 13(2) of the EEC Treaty which it entails, can concern only the duty for administrative services. The directive would thus have the effect of dividing up the sphere of application of the general rule established by the Treaties and direct applicability would in the end be conferred not on the rule laid down in the Treaty but solely on the directive, since it alone determines the material content of the prohibition and prescribes the time when the prohibition comes into effect.
(ii) Furthermore, since the Italian Republic is the only party to whom the directive in dispute is addressed, direct applicability can only operate in that country. The fact of subjecting direct applicability to such limitations, both in regard to substance and geographical area, is not compatible with the principles on which the Court, in particular in Case 26/62 *(Van Gend & Loos)*, based the direct applicability of Treaty provisions.
(iii) Finally, as only the Italian text of the directive is authentic, if the latter were directly applicable, the general principle

of the regulation of 15 April 1958, determining the languages to be used in Community measures and providing that for documents of general application the four languages are authentic, would be disregarded.

(d) The German Government also points out that the opinion which it is defending cannot be faulted by reliance on the judgment of the Court of 18 February 1970, Case 38/69 ([1970] E.C.R.). This judgment concerns a situation in which a 'decision' of the Council fixed an expiry date in advance of that provided for by the Treaty. This decision constituted an autonomous action taken for the purpose of *filling* a gap in the Treaty on the basis of Article 235 and could, for that reason, have direct effect, but that is a condition which is not satisfied by Directive No 68/31 issued pursuant to Article 13(2).

(e) The German Government considers, therefore, that Directive No 68/31 cannot be directly applicable and that in order to confer, *before* the date prescribed, direct applicability on Articles 9 and 13(2) of the EEC Treaty, the fixing of time-limits should itself have been capable of direct application. After the end of the transitional period, however, the provisions of Italian law at issue could no longer be applied and, from that time, individuals have rights which the courts must protect.

3 — *Observations of SpA SACE*

According to the undertaking *SACE*, two considerations militate in favour of the repeal of the Law of 15 June 1950 introducing the duty for administrative services. The first concerns the effects of Decision No 66/532 of the Council of 26 July 1966 (OJ of 21.9.1966) known as the 'Acceleration Decision' which brings the date of realization of the customs union forward to 1 July 1968. The second concerns the direct effects of Article 13(2) of the Treaty in conjunction with Directive No 68/31 of 22 December 1967.

(a) Effects of the early realization of the customs union

1. According to the undertaking SACE, the Acceleration Decision of the Council of 26 July 1966 (OJ of 1966, p. 2971) caused all the provisions of Article 12 et seq. of the Treaty, aiming to abolish the various customs duties and, in particular, charges having an effect equivalent to customs duties, to become directly applicable with effect from 1 July 1968. In fact:

— Article 8(7) of the EEC Treaty provides that save for the exceptions or derogations provided for in the Treaty itself or in measures ensuring its execution, the expiry of the transitional period shall constitute the latest date by which all the rules laid down by the Treaty must enter into force. One of these exceptions is precisely the entry into force of all the rules constituting the early realization, on 1 July 1968, of the customs union. From this date all the transitional provisions of Articles 9 to 35 lapsed and all the rules laid down in those articles became directly applicable.

— This argument is not, however, correct, SACE observes, unless the abovementioned Acceleration Decision also concerns charges having equivalent effect.
Article 1 of that decision mentions only customs duties, but this term must be understood to include also charges having equivalent effect. The Treaty declares as much in Article 11 and in the title of the Section 1 of Chapter 1 of Title I of the Treaty and the Court of Justice has, for its part, made clear in its case-law (Judgment of 1 July 1969, Case 24/68, *Commission* v *Italian Republic*, Rec. 1969, p. 193; Judgment of 1 July 1969, *Diamantfonds*, Rec. 1969, p. 211) that the prohibition of charges having equivalent effect does not constitute an exception to the general prohibition of customs duties, but is, on the contrary, an indispensable complement of it. The Court in addition emphasized how little importance it attached to the designation of the charges in question.
Furthermore the interpretation proposed derives also from the fact that the Acceleration Decision clearly refers to the

realization of the whole customs union. This general interpretation follows from the recitals in the Acceleration Decision itself and from the declarations made by the institutions, especially in the General Report for the year 1967 (p. 39).
Finally, the similar nature of customs duties proper and charges having equivalent effect operating as 'charges levied at the frontier' within the meaning of the judgment of the Court in Case 24/68 leads to the same conclusion.

2. The undertaking SACE also observes that the same solution can be arrived at by proceeding from the direct applicability of the Acceleration Decision of 26 July 1966 in conjunction with Directive No 68/31, since direct effect may result from a body of rules, as emerges from the judgment of the Court in Case 9/70 (*Grad*).
The decision of 26 July 1966 provides in Article 1 that: 'Member States shall abolish customs duties still existing as between them on products other than those listed in Annex II to the Treaty by applying on 1 July 1967 a reduction to lower the duty on each product to 15% of the basic duty and by abolishing these duties on 1 July 1968'.
There can be no doubt that this decision, which is clear and precise, which requires no Community or national action to be taken and which has been accepted by all Member States, is directly applicable. The Court has moreover confirmed it by implication in its judgment in Case 38/69 (Judgment of 18 February 1970, [1970] E.C.R.).
To render the rescinding provision of the Acceleration Decision directly applicable, it is therefore sufficient that Directive No 68/31 merely declares that the duty for administrative services constituted, by virtue of its nature and its effects, a charge levied at the frontier which had to be abolished following the realization of the customs union on 1 July 1968. Mention of this date in the directive therefore constituted only confirmation of what the decision of 26 July 1966 already required.

(b) Express repeal of the Law of 15 June 1950 by the effect of the direct applicability of Community rules expressly repealing the duty for administrative services

Two forms of arguments are put forward in this connexion by SACE.
(i) The first concerns the direct applicability of the provisions of Article 13(2) in conjunction with those of Directive No 68/31.
For reasons of expediency Article 13 was left partly 'blank' by the authors of the Treaty, who, by paragraph (2) of that article, left the Commission to determine the timetable for the abolition provided for in paragraph (1) of charges having equivalent effect.
Through the adoption of the directive the provision has become a complete and perfected set of rules in all respects. From the time of issue of this directive, Member States no longer have any discretionary power in the observance of the Community precept.
In Case 57/65 [1966] E.C.R. 205, the Court recognized, by its judgment of 16 June 1966, that the third paragraph of Article 95 of the Treaty became applicable on the date (the beginning of the second stage) set in that provision for the repeal or amendment of certain national laws.
In the opinion of SACE, there is no reason for distinguishing between Article 95 which lays down expressly the date by which internal taxation must be abolished and Article 13(2) whereby the Commission is empowered to determine the date for the abolition of charges having equivalent effect.
Power was only delegated to the Commission for technical reasons and on grounds of political expediency, but power to repeal none the less derives directly from Article 13.
(ii) The second set of considerations relied upon by SACE concerns the direct applicability of the directive as such.
Two fundamental objections are advanced against the direct applicability of directives: (a) the argument that under Article 189 only regulations are considered to be directly applicable, (b) the fact that directives are addressed only to Member States and not to individuals.
SACE replies that the fact that Article 189

of the Treaty states that a regulation shall be directly applicable does not rule out the possibility that other Community acts such as directives (or decisions) may similarly be directly applicable. The question is to decide on the meaning of the term 'directly applicable'. In Article 189 this term means, primarily, that the provision does not require any domestic legislation to confer on it an authority which it already has, whereas, in the case-law of the Court, the expression 'directly applicable' means that the provision has direct effect in respect of individuals without the need for any domestic law acknowledging rights which have already been conferred on them by the Community provision. In the case of Article 189, reference is made to the formal aspect whereas in the case-law of the Court emphasis is placed on the substantive aspect.

SACE adds that the article is of limited scope by reason of the fact that the classification of Community measures which it gives is incomplete.

Finally, with regard to the argument that directives are addressed only to Member States and not to individuals, the undertaking SACE points out that according to the case-law of the Court of Justice in Cases 26/62, 6/64 and 57/65, Articles 12 and 53 of the Treaty are directly applicable although they are also addressed directly to Member States and that, on the basis of this case-law some authors maintain that all Community provisions which are clear, precise and complete and which impose on Member States an obligation which is legally perfected, are directly applicable.

4 — *Observations submitted by the Italian Government in the oral procedure*

The *Italian Government* is of the opinion that the Acceleration Decision of 26 July 1966 did not in any way confer rights on individuals and was not intended to derogate from the machinery set up by Article 13(2).

It would moreover have been undesirable if it had done so, for that would have taken away from the Commission the delicate task conferred upon it by Article 13(2) of abolishing charges very different in nature from those of customs duties.

The Italian Government points out, in addition, that the Court cannot give a ruling on a question whether or not, in consequence of the provisions of Article 13(2) of the EEC Treaty in conjunction with those of Directive No 68/31 of the Commission, the national law has been repealed.

This question of the conflict of two irreconcilable rules is solely a matter for the national court which normally has to resolve it on the basis of the so-called theory of adaptation.

The Italian Government finally asserts that Article 13(2) is an incomplete rule by reason of the fact that it provided for subsequent action. Had it been supplemented by a regulation — by definition directly applicable — direct rights would have been conferred on individuals. That is not the case here, since the form of the directive is prescribed by the Treaty and the combination of Article 13(2) and Directive No 68/31 — both incomplete sets of rules — cannot constitute a perfected set of rules.

Rights which the national courts must protect have therefore not been created, either by Article 13(2) in conjunction with Directive No 68/31, or by Directive No 68/31 itself.

Grounds of judgment

1 By a decision of 4 July 1970 which reached the Court Registry on 9 July 1970, the President of the Tribunale, Brescia, referred to the Court of Justice under Article 177 of the Treaty establishing the European Economic Community, two questions

relating to the interpretation of Article 13 of the EEC Treaty and of Directive No 68/31 of 22 December 1967 (OJ 1968 L 12, p. 8).

2 In the first question the Court is asked to rule whether, following the adoption of Directive No 68/31 of 22 December 1967, the provisions of Article 13 (2) of the Treaty or, in any event, the provisions of Directive No 68/31 itself are directly applicable in the domestic legal system of the Italian State.

3 If the reply to the first question is in the affirmative, the Court is asked to rule, in addition, whether rights of which the national courts must take cognizance were conferred on individuals as from 1 July 1968.

4 The two questions are closely linked and must be examined together.

5 According to Article 9 of the EEC Treaty the Community is based upon a customs union which involves in particular the prohibition between Member States of customs duties and all charges having equivalent effect.

Under Article 13 (2) of the Treaty charges having an effect equivalent to customs duties on imports, in force between Member States, were to be progressively abolished by them during the transitional period; the Commission was to determine by means of directives the timetable for such abolition, guided by the rules contained in Article 14 of the Treaty in respect of customs duties proper and by the directives issued by the Council for this purpose.

6 The so-called Acceleration Decision No 66/532 of the Council of 26 July 1966 (OJ of 21. 9. 1966, p. 2971) implementing Articles 14 and 235 of the Treaty fixed 1 July 1968 as the day by which all customs duties were to be abolished.

7 On the basis of this decision, the Commission, acting in pursuance of Article 13 (2) of the Treaty, addressed to the Italian Republic on 22 December 1967 Directive No 68/31 whereby the duty for administrative services charged in Italy on imported goods was to be progressively abolished for imports from other Member States, so as to be completely eliminated by 1 July 1968.

8 It appears from the file submitted to the Court that the dispute pending before the national court concerns in particular the question whether, and if so, from what date, the obligation imposed on the Italian Republic to eliminate the duty for administrative services has direct effect.

9 Article 13 (2) imposes on Member States the obligation to abolish progressively 'during' the transitional period charges having an effect equivalent to customs duties on imports.

Although the Commission had to decide the rhythm with which such charges had to be abolished during the transitional period, nevertheless it appears from the very wording of Article 13 that these duties had in any event to be eliminated at the latest at the end of the said period.

Therefore from the end of this period Article 9 must have its full effect on its own.

10 Articles 9 and 13 (2) taken together, involve, at the latest at the end of the transitional period, with regard to all charges having an effect equivalent to customs duties on imports, a clear and precise prohibition on exacting the said charges, which is not subject to any reservation for the States to subject its implementation to a positive act of national law or to an intervention by the institutions of the Community.

It lends itself, by its very nature, to producing direct effects in the legal relations between Member States and their subjects.

Therefore, from the end of the transtional period, these provisions confer on individuals, with regard to all charges having equivalent effect, to which such provisions refer, rights which the national courts must protect,

11 Article 13 (2) gave the Commission power to decide, before the end of the transitional period on the abolition of charges having equivalent effect designated by it and to order their elimination by means of directives 'during' the said period.

In exercise of this power the Commission, following Acceleration Decision No 66/532, appointed 1 July 1968 by Directive No 68/31 as the date by which the abovementioned charge was to be completely eliminated.

12 It follows from the above that the question put by the President of the Tribunale, Brescia, in so far as it concerns the direct effect of the obligation relating to the elimination of the Italian charge for administrative services, refers, in reality, to the combined effect of Articles 9 and 13 (2) of the Treaty, of Decision No 66/532 and of Directive No 68/31.

13 The effect of Directive No 68/31 must be considered in the light of all these provisions.

For this purpose, it is necessary to consider not only the form of the measure at issue, but also its substance and its function in the system of the Treaty.

14 The appointing by the Commission, under Decision No 66/532, of a date prior to the end of the transitional period has in no way changed the nature of the obligation imposed on Member States by Articles 9 and 13 (2).

This obligation is therefore capable of producing direct effects, as it would have done at the end of the transitional period.

15 Directive No 68/31, the object of which is to impose on a Member State a final date for the performance of a Community obligation, does not concern solely the relations between the Commission and that State, but also entails legal consequences of which both the other Member States concerned in its performance and individuals may avail themselves when, by its very nature, the provision establishing this obligation is directly applicable, as are Articles 9 and 13 of the Treaty.

16 This interpretation is all the more imperative since in its judgment of 18 November 1970 the Court declared that the Italian Republic had failed to fulfil its obligations under the Treaty by continuing to levy the charge in question after 1 July 1968.

17 By reason of the notification of the directive in Italian, the interests of the party given notice of the obligations defined by the measure—in the present case the Italian State—are fully protected.

18 The obligation to eliminate the duty for administrative service contained in Directive No 68/31 of the Commission of 22 December 1967, in conjunction with Articles 9 and 13 (2) of the Treaty and with Decision No 66/532 of the Council has direct effect in the relations between the Member State, as the party to whom the directive is addressed, and its subjects and confers on them from 1 July 1968 rights which the national courts must protect.

Costs

19 The costs incurred by the Commission of the European Communities and by the Government of the Federal Republic of Germany, which have submitted their

observations to the Court, are not recoverable and 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 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 observations of the parties to the main action, the Government of the Federal Republic of Germany 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 9, 13, 14, 177 and 235;
Having regard to Regulation No 1 of the Council of the EEC of 14 April 1958;
Having regard to Directive (EEC) No 68/31 of the Commission;
Having regard to Decision (EEC) No 66/532 of the Council;
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 President of the Tribunale, Brescia, in accordance with the order made by that court on 4 July 1970, hereby rules:

(1) From the end of the transitional period Article 13 (2) of the EEC Treaty confers on individuals, with regard to all charges having an effect equivalent to customs duties on imports, rights which the national courts must protect;

(2) The obligation to eliminate the duty for administrative services contained in Directive No 68/31 of the Commission of 22 December 1967, in conjunction with Articles 9 and 13 (2) of the Treaty and with Decision No 66/532 of the Council has direct effect in the relations between the Member State, as the

party to whom the directive is addressed, and those subject to its jurisdiction and confers on them from 1 July 1968 rights which the national courts must protect.

Delivered in open court in Luxembourg on 17 December 1970.

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

A. Van Houtte R. Lecourt

Registrar President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 10 DECEMBER 1970[1]

Mr President,
Members of the Court,

The action pending before the Tribunale, Brescia, concerns Italian Law No 330 of 15 June 1950. Because this law has not been repealed, the Court held recently in Case 8/70, brought by the Commission under Article 169 of the EEC Treaty, that the Italian Republic had infringed Article 13(2) of the EEC Treaty in conjunction with Commission Directive No 31/68 of 22 December 1967. This Law, may I remind you, provides for a duty for administrative services to be levied on imported goods amounting to 0.5% of their value. This duty was levied on the undertaking SACE when, on 17 September 1969, it imported goods from a Member State into Italy. In compliance with a customs decision taken by the Bergamo customs office, it had to pay levies amounting to lit. 50 995 on the value of the goods.

SACE considers that the demand for this sum is unjustified. It maintains that this is a charge having an effect equivalent to a customs duty (which was in fact the finding by the Court in the aforementioned judgment) and that the directive (which has not been challenged by the Italian Government) issued by the Commission pursuant to Article 13(2) of the EEC Treaty gives rise to the obligation to reduce progressively such charges in so far as they relate to imports from Member States and to abolish them completely by 1 July 1968 at the latest (which, wrongly, has still not been done). SACE further considers that the provisions of Article 13(2) of the EEC Treaty in conjunction with those of the Commission directive, which leaves the Italian Government no discretion but contains a clear stipulation as to the time-limit allowed for the abolition of the charge, are seen as to confer rights directly on individuals which the latter may invoke in national courts against contrary provisions of national law. This is why SACE instituted proceedings before the President of the Tribunale, Brescia, against the Ministry for Finance of the Italian Republic for an order ('decreto inguintivo') for repayment of administrative charges imposed unlawfully. Since this order for payment depends essentially on questions of Community law, as I have mentioned,

1 — Translated from the German.