ORDER OF THE COURT
23 March 1995 *

In Case C-458/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura Circondariale, Rome for a preliminary ruling in the criminal proceedings before that court against

Mostafa Saddik

on the interpretation of Articles 3, 9, 30, 37, 85, 86, 87, 88 and 90 of the EC Treaty,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler, P. J. G. Kapteyn, C. Gulmann and P. Jann (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward, J.-P. Puissochet (Rapporteur), G. Hirsch and H. Ragnemalm, Judges,

Advocate General: M. B. Elmer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

* Language of the case: Italian.

makes the following

Order

1 By order of 24 November 1993, received at the Court on 7 December 1993, the Pretore di Roma (Magistrate for the Rome District) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of Articles 3, 9, 30, 37, 85, 86, 87, 88 and 90 of the EC Treaty.

2 Criminal proceedings are pending before the Pretore against Mr Mostafa Saddik, a Moroccan national, who is accused of the offence of smuggling in relation to 93 packets of foreign cigarettes of various brands but not bearing any indication of their origin.

3 The first question raised by the Pretore is whether the penalties for which Mr Saddik is liable on account of non-payment of frontier duties are compatible with Community law. According to the order for reference, the Pretore is also unsure whether penalties may be imposed on Mr Saddik for non-payment of VAT, since the Pretore considers that such imposition might involve double taxation contrary to the Treaty. However, the questions referred relate only to the charge concerning non-payment of frontier duties.

4 Secondly, the Pretore inquires whether Community law precludes a system such as the Italian processed-tobacco monopoly, under which retail sales effected otherwise than through the network of authorized retailers are prohibited. The Pretore points out, however, that although Mr Saddik has not been charged with illegal resale of tobacco, he might be so charged in the future.

5 Those are the circumstances in which the Pretore di Roma submitted the following questions for a preliminary ruling:

'1.

Are Articles 25, 282, 292 and 341 of Presidential Decree No 43 of 23 January 1974, in so far as they impose criminal penalties in respect of the evasion of frontier duties payable on importation of foreign goods, and more specifically foreign processed tobacco, into the territory of the State, compatible with Articles 3, 9 and 30 of the Treaty of Rome?

2.

Is Article 64 of Law No 907 of 17 July 1942, as subsequently amended, in so far as it imposes penalties for infringement of the monopoly on the sale of goods subject thereto, contrary to Articles 37, 85, 86, 87, 88 and 90 of the Treaty of Rome?

3.

If the answer to Question 2 above is in the affirmative, is Law No 907 of 17 July 1942, as subsequently amended, compatible with the abovementioned articles of the Treaty of Rome, in so far as, by restricting the marketing of processed tobacco through a licensing system, it restricts free trade in and the free movement of goods?'

6 The Court has consistently held that in proceedings under Article 177 of the Treaty it has no jurisdiction to rule on the compatibility of national measures with Community law. It should, however, be borne in mind that the Pretore is asking the Court to interpret the Treaty articles to which his questions relate in order to decide whether the national rules in question are compatible with those Community provisions.

7 The observations submitted by the Irish and Italian Governments and by the United Kingdom in this case focus mainly, if not entirely, on the admissibility of the questions referred by the national court.

8 The Irish Government considers that the absence of established facts and especially of any information as to the origin of the goods concerned in the proceedings greatly impedes the ability of the Member States to assist the Court in its deliberations on this case, in particular in enabling it to answer the first question.

9 While the United Kingdom agrees that it is desirable to avoid undue formalism, it also points out that if a request for a preliminary ruling does not set out in adequate detail the legal and factual context of the questions referred by a national court, a Member State will be placed at a disadvantage for the purposes of determining whether or not to exercise its right to submit written observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

10 The Italian Government is doubtful about the admissibility of the first two questions. It makes observations similar to those submitted by Ireland and the United

Kingdom and also points out that a reply to the second question is completely unnecessary to enable the national court to give judgment on the matters with which the defendant is charged.

11 The Commission considers that the first question seems apposite and raises no problem of admissibility but that it is less clear whether the other two questions have a real link with the subject-matter of the proceedings.

12 The Court would recall here that since it must arrive at an interpretation of Community law which will be helpful to the national court, this makes it necessary for the national court to define the factual and legislative context of the questions it is asking or, at the very least, to explain the factual circumstances on which they are based (see, *inter alia*, the judgment in Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo* v *Circostel* [1993] ECR I-393, paragraph 6, the order in Case C-157/92 *Pretore di Genova* v *Banchero* [1993] ECR I-1085, paragraph 4, and the order in Case C-378/93 *La Pyramide* [1994] ECR I-3999, paragraph 14).

13 Furthermore, as Ireland and the United Kingdom have correctly pointed out, information provided in decisions making references not only enables the Court to give helpful answers but also enables the Governments of the Member States and other interested parties to submit observations pursuant to Article 20 of the Statute of the Court. It is the Court's duty to ensure that the opportunity to submit observations is maintained, bearing in mind that, by virtue of the abovementioned provision, only the decisions making references are notified to the interested parties (see the judgment in Joined Cases 141/81, 142/81 and 143/81 *Holdijk and Others* [1982] ECR 1299, point 6).

14 It is true that the Court has accepted that the requirement for the national court to define the factual and legislative context of the questions it submits is less pressing

where the questions relate to specific technical points and enable the Court to give a useful reply even where the national court has not given an exhaustive description of the legal and factual situation (judgment in Case C-316/93 *Vaneetveld and Others* [1994] ECR I-763, paragraph 13). That is not, however, the case in these proceedings.

15 The order for reference does not in fact contain sufficient information to satisfy the abovementioned requirements.

16 First, the origin of the tobacco seized is not clear from the order for reference. That information, which would have made it possible to identify the customs and tax rules to which the goods ought to have been subject, is nevertheless necessary in order to give a helpful answer to the first question.

17 Secondly, the Pretore asks the Court whether the Treaty precludes legislation imposing penalties for contraventions of the Italian rules on processed tobacco sales. As the Court notes at paragraph 4 above, Mr Saddik has not been charged with illegal resale of tobacco, although the Pretore states that he might be so charged in the future. On that last point, it should be borne in mind that the spirit of collaboration which must prevail in the preliminary ruling procedure requires the national court to have regard to the task entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see the judgment in Case C343/90 *Lourenço Dias* v *Director da Alfândega do Porto* [1992] ECR I-4673, paragraph 17, and the order in *La Pyramide*, cited above, paragraph 11).

18 It follows from the foregoing that, because the order for reference is too vague about the legal and factual situations envisaged by the national court or because the situations are purely hypothetical, the Court is unable to provide a helpful interpretation of Community law.

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

Costs

20 The costs incurred by the Irish and Italian Governments, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

hereby orders:

The reference for a preliminary ruling submitted by the Pretura Circondariale di Roma by order of 24 November 1993 is inadmissible.

Luxembourg, 23 March 1995.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President