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 Because this law has not been repealed, the Court held recently in Case 8/70, brought by the Commission under Article 169 of the EEC Treaty, that the Italian Republic had infringed Article 13(2) of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.

SACE requested, during the proceedings, that the case should be referred to the Court for a ruling on the interpretation of the provisions of Community law in question, in accordance with Article 177 of the EEC Treaty.
The President of the Tribunale, Brescia, acceded to this request. By order made on 4 July 1970, he ordered that the proceedings be stayed and referred the case to the Court for a preliminary ruling on the following questions:

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

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

Now that the applicant in the main action, the Commission of the European Communities and the Government of the Federal Republic of Germany have submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC and now that the applicant, the Commission and the Government of the Italian Republic have given their oral observations at the hearing on 18 November 1970, I shall give my views on the questions raised.

1. There can be no doubt as to the admissibility of the reference. In particular, it is of no importance that the proceedings in the main action are merely of a summary nature, in other words, simply for the granting of an order for payment. The Court can in such circumstances have a case referred to it, as occurred in Case 29/69, despite the fact that the proceedings concerned the granting of an interim order. In addition, there is no reason to object to the wording of the questions which are clearly designed to obtain an interpretation of a provision of the Treaty in conjunction with certain provisions of secondary Community law.
On the other hand, it is impossible — and I must say this straight away — to adopt the proposal made by the applicant in the main action during the oral hearing and to declare that the national law in question is no longer applicable in view of the provisions of Community law. Only the national court can draw such legal consequences where it proves to be possible on the basis of the interpretation of Community law given by the Court. It is therefore of little importance whether the parties to the main action can in fact request an alteration of the questions submitted to the Court; there is in any event no doubt that the reply sought by the applicant would fall outside the scope of Article 177.

2. As regards defining the subject of the reference, I would say furthermore that no problems at all arise from the specific terms in which the questions have been posed: they concern solely the direct effect of the provisions of Article 13(2) of the EEC Treaty in conjunction with those of the aforementioned Commission directive. That is the matter to which the Court must confine its attention.
There is therefore no reason to extend the examination and to hold, for example, that on the expiry of the transitional period Article 13(2) brought about direct effect the result being that charges having an effect equivalent to customs duties could no longer be applied as from that date. It is true that this was convincingly demonstrated (in particular by the Government of the Federal Republic of Germany) by reference to the related problems posed by the third paragraph of Article 95 and to the relevant case-law (Case 57/65 [1966] E.C.R. 205). Nevertheless, as emerges from the facts set out in the order for reference, since the main action concerns the levying of charges on imports effected in September 1969, in other words before the expiry of the transitional period, the point cited is immaterial for deciding the issue in the main action.

Similarly, there is no need, in my opinion, to examine in detail the applicant's contentions based on the Acceleration Decision of the Council of 26 July 1966 (OJ 1966, p. 2971) (that is to say the decision 'concerning the abolition of customs duties and the prohibition of quantitative restrictions as between Member States and application of the Common Customs Tariff duties for products other than those set out in Annex II to the Treaty'.) As you know, it has been stated in this connexion that this decision had brought forward the end of the transitional period within the meaning of Article 8(7) and Article 13, in other words that it prematurely rendered all the transitional provisions of Articles 9 to 35 inoperative. It has been contended that as a result of this decision, which according to the existing case-law of the Court must be considered directly applicable, and of the provisions, also directly applicable, of Article 13(2) of the EEC Treaty, on the realization of the customs union on 1 July 1968 charges having an effect equivalent to customs duties, had also to be abolished not least because by their nature there is no difference between customs duties and charges having an effect equivalent to customs duties (in other words, disguised customs duties). Generally speaking, according to this argument, all charges of any kind which were levied at frontiers inside the Community had to be abolished by 1 July 1968. With regard to these contentions, I would merely say at this point, without entering into a more detailed discussion, that the opposite point of view, put forward by the Commission, seems to me to be correct. Account must be taken of the fact that the Acceleration Decision relates solely to the abolition of customs duties and quantitative restrictions and to the introduction of the Common Customs Tariff, and that Article 13(2) of the EEC Treaty made clear provision for a special procedure, namely the issue of directives by the Commission in relation to charges having an effect equivalent to customs duties the variety of which is such that they cannot be brought under an abstract set of rules In these circumstances, it cannot in fact be assumed that the Acceleration Decision also applied to charges having an effect equivalent to customs duties, in other words that it brought forward the end of the transitional period generally. The contentions of the applicant based on the Acceleration Decision thus contribute nothing to the solution of the dispute and should therefore have no bearing on the preliminary ruling.

3. Having made these introductory remarks I will now turn directly to the questions asked. First let us recall the provisions of Article 13(2) of the Treaty. It provides that 'Charges having an effect equivalent to customs duties on imports, in force between Member States, shall be progressively abolished ... during the transitional period' and the Commission shall determine 'by means of directives the timetable for such abolition'.

As for the question of direct applicability the wording of Article 13(2) makes it clear that this provision did not constitute a provision of the Treaty, complete in itself, before the expiry of the transitional period and could not therefore *per se* have any direct effect in the sense which concerns us here. This, it is true, does not emerge from the concept of 'charges having an effect equivalent to customs duties on imports' for the reason that it lacks the precision necessary in the interests of legal certainty. Similar arguments have already been put forward in the first case relating to the direct applicability of Treaty provisions concerning Article 12 of the EEC Treaty which also covers charges having an effect equivalent to customs duties. Such arguments were however then regarded as unsound and, in consequence, must be so regarded in the interpretation of Article 13(2). Article 13(2) is incomplete in itself and therefore not capable of having direct effect; this derives from the fact that during the transitional period it had to be perfected by the adoption of secondary Community legislation in other words, Commission directives. According to the existing case-law of the Court, Article 13(2) does not therefore contain an unconditional obligation.

Thus, essentially, the question is whether, with the assistance of the directive of the

Commission which I have repeatedly mentioned, the provision in question was definitively perfected and made complete in itself so as to render it directly applicable. To put the question in this way amounts to asking at the same time whether directives are apt to produce direct effects, in other words whether they can be directly applicable. Even recently this delicate question had to be regarded as very debatable and in the past it would certainly have given rise to fundamental and extensive analysis. However, on the basis of the judgments delivered in Cases 9, 20 and 23/70 it has seemingly been clarified in principle in the sense that directives may also have direct effect. It is no longer necessary to make a detailed study of this point; I need only make a few observations on the judgments cited. In these judgments the Court examined 'the combined effect of provisions contained in a decision and a directive' and held that the provisions of a Council decision, which was there the subject of the examination, in conjunction with those of a Council directive could have a direct effect in the relations between Member States and individuals. This has rendered pointless the objections raised in this case by the Federal German Government and by the Italian Government as, for example, the point that such measures are addressed only to Member States and that Article 189 mentions only regulations directly applicable *in* the Member States. It is therefore quite certain that these factors and, in particular, the lastmentioned do not prevent other measures from having direct effect where they impose an obligation, provided that by their terms, their nature and their raison d'être they are apt to do so.

If we now test the Commission directive of concern to us here by this standard, which we are justified in doing by the problems raised and the rulings given in judgments which I have mentioned, we must admit that the directive even when considered in conjunction with Article 13(2) could not produce direct effect *during* the period which had been set for compliance by the Member State concerned, since there was clearly some latitude having regard in particular to the provisions of Article 14 of the EEC Treaty. However, this consideration is of no further interest in the present case. The directive in question also fixed a final date by which the charge at issue had in any event to be abolished. Since the dispute in the main action relates solely to the period after this date, the question is simply whether the directive can be taken to have had a direct effect for this period. The answer is readily given by the judgments in Cases 9, 20 and 23/70; in these cases too the date on which an obligation was to become effective had been determined by a *directive*. Nevertheless, the Court stated in these judgments: 'that the fact that this date was fixed by a directive does not deprive this provision of any of its binding force' and stressed that, following the said directive, the obligation created by a decision was thereby perfected. In terms of the present case, this means that clearly nothing stands in the way of accepting that Article 13(2) of the EEC Treaty in conjunction with Directive No 31/58 of the Commission was directly applicable as from the date determined by the directive, especially since there no longer existed any latitude as to the incorporation of these provisions into domestic law.

Moreover, it is simple to show that this conclusion cannot be called into question by other considerations. Thus, in particular the fact that the directive was addressed only to *one* Member State (which led the Federal German Government to speak of dividing up the sphere of application of the Treaty provisions) is not, it seems, of any relevance. If such measures of secondary Community legislation, which do not necessarily have to be addressed to all Member States, can be regarded as having direct effect, there is really no reason why this should be limited to cases in which all Member States are affected. Given the peculiarities of certain provisions of the Treaty, which include Article 13(2) and given the variations in the law in the Member States, it may happen that action is necessary only in certain situations and in certain Community areas. Here incidentally reference may be made to the judgments of the Court in Cases 9, 20 and 23/70 and especially to the words 'Particu-

larly in cases where, for example, the Community authorities impose by means of a decision, an obligation on *a* Member State ... to act in a certain way, the effectiveness ('l'effet utile') of such a measure would be weakened if the nationals of this State could not invoke it in the courts and the national courts could not take it into consideration as part of Community law'. Moreover, it is of no importance that publication in the Official Journal of the European Communities is prescribed only for regulations and not for directives. This objection has already been put forward with regard to decisions addressed to Member States in Cases 9, 20 and 23/70. I pointed out in my opinion in those cases that, when not expressly prescribed, publication is not a pre-requisite of legal validity, but rather that its function is essentially protective and that without publication the measure in question cannot be invoked against the individual concerned. I also mentioned that the situation is precisely the opposite where an individual relies on such a measure in his defence in order to derive certain benefits from it. Since the judgments in Cases 9, 20 and 23/70 did not consider the contention concerning the duty to publish in respect of the measures at issue there (regarding it as irrelevant), then this must certainly also apply to the directive in question here. The determining factor here is therefore that the obligation laid down by the directive became binding upon its notification to the Member State concerned, whilst publication in the Official Journal, which in our case actually took place (OJ L12 of 16.1. 1968, p. 8) was of secondary importance. Finally, no decisive conclusion can be drawn from the fact that the directive, which concerns only Italy, is authentic only in its Italian version. Even if according to the Regulation of 14 April 1958, determining the languages to be used, regulations and documents of general application are equally authentic in the four official languages, that does not apply where a measure is addressed only to one Member State. Here notification in the language of that Member State suffices to make the measure binding. In addition, it must also be pointed out that those who carry on business in the territory in question will be familiar with the laws and regulations drawn up in the national language, and that for this reason there is no necessity to make the direct applicability of Community directives dependent upon four texts which are all equally authentic.
Moreover, since it is also established by existing case-law that not only rules and measures containing a duty to refrain from acting but also measures laying down a duty to act may be directly applicable, I can only conclude, as I have indicated above, that the provisions of Article 13(2) of the EEC Treaty in conjunction with those of Directive No 31/68 of the Commission are directly applicable.

4. Accordingly, the questions raised by the President of the Tribunale of Bolzano should be answered as follows:

Following the issue of Directive No 31/68 of 22 December 1967, Article 13 (2) of the EEC Treaty became directly applicable in the domestic legal system of the Italian State, with the result that as from 1 July 1968 individuals have acquired rights which the national courts must protect.