OPINION OF ADVOCATE GENERAL ALBER

delivered on 6 June 2000 *

I — Introduction

1. This reference for a preliminary ruling essentially raises the question whether the provisions of the EC Treaty relating to the internal market — in particular Article 3(c) and (g), Articles 3a and 5, the second paragraph of Article 7a and Articles 102a and 103(3) and (4) [1] — preclude the fixing of prices for books in France. The Court has already ruled on the French system for fixing book prices, on several occasions [2] — all prior to the establishment of the internal market on 1 January 1993 — holding that, as Community law stood at that time, the second paragraph of Article 5, read in conjunction with Articles 3(f), 85 and 86 of the EEC Treaty, did not preclude the Member States from enacting legislation under which the retail price of books had to be fixed by the publisher or by the importer and was binding on all retailers, provided that such legislation was consonant with the other specific provisions of the EEC Treaty, in particular those relating to the free movement of goods. In the main proceedings, the Court d'Appel de Grenoble is confronted with the question whether the legal situation has now been altered by the incorporation into the EC Treaty of the provisions on the internal market.

II — National legal provisions

2. Article 1 of French Law No 81-766 of 10 August 1981 [3] stipulates *inter alia* that all publishers or importers of books must fix a retail price for the books which they publish or import. The retailers must fix a retail price between 95 and 100% of that fixed price. In the case of imports of books published in France, the retail price fixed by the importer must be at least as high as that fixed by the publisher. However, under Law No 85-500 of 13 May 1985 and Law No 93-1420 of 31 December 1993, which also were enacted pursuant to the judgments of the Court of Justice, that latter provision does not apply to books imported from other Member States of the European Community, save where they are imported

* Original language: German.

1 — Article 3(c) and (g) have not been amended. Following amendment by the Treaty of Amsterdam and consolidation, the other articles are now as follows: Article 4, 10, 14(2), 98 and 99(3) and (4).

2 — See, to that effect, Case 229/83 *Leclerc* v *Au blé vert* [1985] ECR 1, Case 299/83 *Leclerc* v *Syndicat des libraires de Loire-Océan* [1985] ECR 2515, Case 95/84 *Boriello* [1986] ECR 2253 and Case 254/87 *Syndicat des libraires de Normandie* [1988] ECR 4457.

3 — Official Journal of the French Republic of 11 August 1981.

for the purpose of circumventing the system for fixing book prices.

III — Facts

3. Echirolles Distribution SA (hereinafter 'the appellant') operates a retail outlet trading as 'Centre Leclerc'. Since it was offering books for sale at a price more than 5% lower than that fixed by the publisher or importer, contrary to the fourth paragraph of Article 1 of the Law of 10 August 1981, it was ordered to pay damages to the bookseller Patrick Corbet, to the 'Association du Dauphiné pour le Maintien et l'Application de la Loi du 10 août 1981 sur le Prix Unique du Livre', to the 'Association des Libraires de Bandes Dessinées' and to the 'Union des Libraires de France' (hereinafter 'the respondents'). [4]

4. The appellant contested that judgment before the national court. As grounds it claims *inter alia* that the Law, which was compatible with Community law under the previous legal situation, may have become incompatible as a result of the entry into force of the provisions of the EC Treaty on the internal market.

4 — Judgment of the Tribunal de Commerce de Grenoble of 12 December 1997.

5. In its reference for a preliminary ruling, the referring court points out *inter alia* that the fixing of book prices in France generally affects both private and professional purchasers and covers cultural and technical books without distinction. The system thus increases the operating costs of undertakings or individuals for which or for whom information from books is necessary and important, such as lawyers, doctors and architects. Individual booksellers or organised groups of booksellers are not therefore permitted to pass on, in the retail prices charged by them, gains which normally result from better productivity, combined purchasing or more efficient management of their commercial activities or even from the quality of the services provided. The price-fixing for books, where the price is fixed by a third party not party to the contract, thus affects the free operation of the market. Through this practice France has made the book trade an area in which competition is excluded.

6. In its reference for a preliminary ruling, the national court concludes that the Law does not infringe Article 85 of the EC Treaty (now Article 81 EC) since the fixing of book prices does not result from an agreement between traders. In the past, an infringement of Articles 30 and 36 of the EC Treaty (now Articles 28 and 34 EC) was presumed only where the Law governed cross-border situations. However, that is not the case here. Therefore, the national court considers that in the light of the EC Treaty both the Court of Justice and the European Commission have ultimately approved the contents of the Law as it now

stands before the provisions on the internal market entered into force.

7. However, the question whether this also applies following the establishment of the internal market has not (yet) been decided. On the assumption that the internal market is to be regarded as the merger of national markets into a single market, the national court considers that the provisions on the internal market may also affect systems for fixing book prices which apply only nationally. It is possible that the internal market may not be treated merely as an area for the free movement of goods: it may also have to be regarded as a single market whose operating rules are as binding on States as they are on individuals.

8. In order to be able clarify whether the French law is compatible with Community law as it now stands, the national court considers it necessary to establish whether the legal situation has been altered by the entry into force of the provisions on the internal market. Because of its obligation to give a ruling within an appropriate period, the court cannot wait for any express amendment of Community law governing the fixing of book prices.

IV — The question referred for a preliminary ruling

9. For these reasons, the court before which the dispute has been brought has referred the following question to the Court of Justice for a preliminary ruling:

'Is the French legislation requiring publishers to impose on booksellers fixed prices for the resale of books, regardless of their contents, to consumers and to business purchasers compatible with the internal market established on 1 January 1993, and in particular with Articles 3(c) and (g), 3a and 5, the second paragraph of Article 7a and Articles 102a and 103(3) and (4) of the Treaty establishing the European Economic Community, as amended by the Single European Act and the Treaty on European Union?'

V — Arguments of the parties

10. The appellant argues that the French system for fixing book prices infringes the principle of a market marked by the balance of supply and demand, in that it creates an area in which the rules of competition do not apply. The French legislature intended to protect artistic and literary creation by fixing the prices of books, but in doing so failed to take account of the fact that the legislation on book pricing has a general effect and thus also covers technical books which, however, do not require such protection. Even if

books are to be recognised as forming part of a cultural patrimony, there still exists a connection with economic life, as is demonstrated *inter alia* by the fact that the fixing of book prices in France has led to an overall increase in book prices.

11. Although in its previous judgments on the fixing of book prices in France the Court of Justice has held that the principle of price-fixing by publishers is compatible with Community law, it referred specifically to Community law as it stood at that time, that is to say at a time at which the notion of the internal market was not yet part of the EC Treaty. However, following the incorporation of the provisions on the internal market, the relevant rules of the EC Treaty might might now render the French legislation at issue incompatible with it.

12. In addition, the appellant claims that the French provisions on the fixing of book prices also constitute an infringement of Article 30 of the EC Treaty since they also apply where a national of another Member State wishes to buy books in France and thus becomes bound by the prices fixed by French publishers, which constitutes an obstacle to the free movement of goods.

13. The Austrian and French Governments point out in the first place that the question is inadmissible in its present form since it essentially asks the Court of Justice to consider the compatibility with Community law of a national provision. However, if the Court of Justice does consider it necessary to give a ruling, the question should be reworded. The Austrian Government considers that it should be reworded because it also refers to provisions of Community law whose interpretation cannot affect the main proceedings because they are not directly applicable so that the parties cannot rely on them. The Commission submits that the question must be construed as relating essentially to Article 85 of the EC Treaty, read in conjunction with the provisions referred to. Consideration of Articles 30 and 36 of the EC Treaty, on the other hand, is not necessary, since the national court concludes that they do not preclude the application of the French provisions.

14. The respondents in the main proceedings, as well as the French, Greek, Austrian and Norwegian Governments and the Commission, refer to the previous case-law of the Court of Justice concerning the fixing of book prices in France and essentially take the view that the provisions introduced by the Single European Act and by the Treaty establishing the European Union could not lead to any change to previous case-law. The notion of the internal market is not completely new. The mere fact that this notion has now become part of positive law does not mean that the principles applied by the Court of Justice prior to its introduction must be revised. In

order to be able to assess whether Community law precludes the application of national systems for fixing book prices it is necessary to examine whether a competition policy exists at Community level which relates to purely national systems or practices concerning the fixing of prices for books. However, no such competition policy at Community level exists even now.

15. The French and Norwegian Governments further point out that the Treaty establishing the European Union introduced significant changes in the field of culture. In that Treaty, and in particular in Article 128 thereof (now, following amendment, Article 151 EC), the Community has an appropriate legal basis for Community action. The fact that the Community has to take cultural aspects into account in its action under other provisions of the Treaty means, in the view of the French Government, that the French provisions on the fixing of prices for books are not contrary to Community law.

VI — Appraisal

1. *Admissibility*

16. The national court has referred its question to the Court of Justice in the form of a question concerning the compatibility of a national rule with Community law. However, in proceedings for a preliminary ruling pursuant to the first paragraph of Article 177 of the EC Treaty (now Article 234 EC), only questions relating to the interpretation and validity of Community law may be referred to the Court of Justice. In Article 177 proceedings, the jurisdiction of the Court of Justice does not extend to reviewing provisions of national law. The national courts themselves have to rule on those provisions in the light of the preliminary ruling.

17. However, it is clear from the order for reference that by its question the national court is essentially seeking to ascertain whether the provisions of the EC Treaty on the internal market must be interpreted as allowing a Member State to enact or maintain provisions relating to the fixing of prices for books. The national court is therefore asking the Court of Justice to provide criteria for interpreting the relevant provisions in order to be able itself to assess the compatibility of the national law at issue with Community law. Thus, the question is admissible if it is so interpreted and reworded.

18. In addition, the Austrian Government takes the view that the proceedings for a preliminary ruling have no relevance to the main proceedings. Since none of the parties to the main proceedings may rely on the provisions to which the national court

refers and the national court is not required to disapply conflicting national provisions, the order for reference must be rejected on the ground that the question referred is not relevant.

19. However, it should be borne in mind that, according to well-established case-law of the Court of Justice, it is solely for the national court before which the dispute has been brought to determine the relevance of the questions which it submits to the Court of Justice. This follows from Article 177 of the Treaty which provides the basis for close cooperation between national courts and the Court of Justice. Therefore, if the questions referred concern the interpretation of Community law, the Court of Justice is required, as a matter of principle, to give a ruling on them. Consequently, an order for reference may be rejected only where it is evident that no link exists between the interpretation of Community law requested by the national court and the circumstances or subject-matter of the main proceedings, that is to say that the question is not actually necessary. That would be the case, for instance, if answering the question amounted to the Court of Justice giving its opinion on general or hypothetical questions.

20. Even though the direct applicability of the provisions to which the national court refers may be a matter of doubt, there is an obvious connection between the provisions on the internal market and the national law on the fixing of prices for books. At issue here are not general or hypothetical questions. The question whether Community law does in fact preclude the application of the French law turns on consideration of the substance of the reference. The order for reference is thus admissible.

2. *Substance*

21. Under Article 5 of the EC Treaty (now Article 10 EC), the Member States must take appropriate measures to ensure fulfilment of the obligations arising out of the Treaty and abstain from any measure which could jeopardise the attainment of the objectives of the Treaty. It is open to question whether this provision has independent legal effect or whether its wording is too general, with the result that it can have binding effect only when read in conjunction with other provisions of the Treaty. Admittedly, it is possible to imagine cases in which no further elements of Community law need be raised because the obligations may stem solely from the duty to cooperate sincerely with the Community. This applies in particular to the obligation to abstain from adopting measures which may jeopardise the objectives of the Treaty. However, these objectives must be specified in an adequately precise manner. This is certainly not so in the case of the notion of the internal market which is set out in only general terms.

(a) Articles 3, 3a and 7a of the EC Treaty (now, following amendment, Articles 3, 4 and 14 EC)

22. Articles 3, 3a and 7a of the EC Treaty, which must be interpreted in order to answer the question referred, concerns the introduction of the concept of the internal market and the nature thereof. Therefore, in the present case, it is necessary above all to define the substance of that concept. In order to do so, it must first be placed in its historical and systematic context.

23. The original EEC Treaty, like the present version of the Treaty, contained the concept of the common market, without, however, referring to the internal market, as is still the case. This concept was incorporated into the then EEC Treaty by the preamble to and Article 13 of the Single European Act of 28 February 1986. The Single European Act set the Community the objective of establishing the internal market and provided for a number of further amendments to that end. The Treaty on European Union, which entered into force on 1 January 1993, confirmed the integratory function of the establishment of the internal market — literally, the creation of an area without internal frontiers — and adopted it as an objective of the European Union (first indent of Article B of the Treaty on European Union [5]). The aim of setting up an internal market was to eliminate the barriers dividing Member States so that the national domestic markets could merge into a single economic area. Thus, the essential requirements relating to the setting up of the common market, which Article 2 of the EC Treaty (now, following amendment, Article 2 EC) imposed on the Community, was specified in substantive terms.

24. Therefore, the notion of the internal market is inextricably linked to that of the common market from which it emerged. According to the established case-law of the Court of Justice [6] concerning the original treaty, the creation of the common market is one of the objectives of the Community. The Court of Justice describes it as an economic area with structures similar to those of a domestic market. Its establishment is intended to remove barriers to intra-Community trade with a view to merging national markets into a single market achieving conditions as close as possible to those of a genuine domestic market.

25. The present case hinges on whether the establishment of the internal market is a treaty objective which has effect only in conjunction with other provisions of the Treaty, such as those relating to the free movement of goods (Article 30 et seq. of the EC Treaty) or to competition (Article 85 et seq. of the EC Treaty) or whether it is a self-standing provision which lays down independent obligations without further measures to attain the objective being necessary on the part of the Member States. If it were only a treaty objective, it would

5 — Now, following amendment, first indent of Article 2 EU.

6 — See *inter alia* Case 270/80 *Polydor* [1982] ECR 329, paragraphs 16 to 18, and Case C-41/93 *France* v *Commission* [1994] ECR I-1829, paragraph 19, and the references contained therein.

firstly constitute a task whose implementation would require the adoption of appropriate measures. Secondly, this would mean that, as Community law stands at present, the abovementioned provisions relating to the internal market would have to be read, and could have binding effects and impose obligations, not in isolation but only in conjunction with the relevant provisions of the Treaty defining their aims more precisely.

26. The wording of the provisions suggests that the internal market, just like the concept of the common market, should be regarded as a mere Treaty objective which has to be defined more closely by the relevant provisions of the Treaty.

27. Under Articles 3 and 3a of the EC Treaty, the activities of the Member States and the Community are to include, as provided in the Treaty and in accordance with the timetable set out therein, the adoption of an economic policy of the Member States which is based on the internal market and conducted in accordance with the principle of an open market economy with free competition. In its judgment in *Alsthom Atlantique*,[7] the Court of Justice ruled that '[t]he institution of a system ensuring that competition in the common market is not distorted, as envisaged by Article 3(f) of the Treaty,[8] is an objective specified more closely in several other provisions relating to the rules of competition'. These provisions include in particular Article 85 of the EC Treaty, which prohibits agreements and concerted practices between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the Community.

28. According to the case-law of the Court of Justice, Article 3 of the EC Treaty 'determines the fields and objectives to which the activities of the Community are to relate. It thus lays down the general principles of the common market, which are to be applied in conjunction with the respective chapters of the Treaty devoted to their implementation.'[9] So, Article 3(f) of the EEC Treaty[10] is also one of the general principles of the common market which are to be applied in conjunction with the respective chapters of the EEC Treaty devoted to implementation.

29. It is true that the second paragraph of Article 7a of the EC Treaty defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured, but the same article expressly adds 'in accordance with the provisions of [the] Treaty'. Therefore, although the concept of the internal market has become positive

7 — Case C-339/89 [1991] ECR I-107.

8 — Now Article 3(g) EC.

9 — See *inter alia* Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 75, and the references contained there.

10 — See footnote 9 above.

law though Article 7a, it needs to be developed by other provisions of the Treaty in order to have binding effect. This may also be inferred from the term 'ensured' since it does not state it 'is' an area of free movement. However, conceptually, further special measures form an integral part of ensuring such free movement.

30. Under the first paragraph of Article 7a of the EC Treaty, the Community is to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992. However, setting that date does not create an automatic legal effect. [11] Consequently, for that reason alone, no obligations on the Member States can arise which go beyond an objective of the Treaty.

31. Reference must also be made to the judgment of the Court of Justice in *Wijsenbeek*. [12] Admittedly, this case concerned the free movement of persons who — prior to the integration of the 'Schengen acquis' into Community law — claimed the right to cross borders without controls as a consequence of the internal market. At paragraph 40, the Court held: 'That article [that is to say Article 7a] cannot be interpreted as meaning that, in the absence of measures adopted by the Council ... requiring the Member States to abolish controls of persons at the internal frontiers of the Community, that obligation automatically arises from expiry of that period.' Therefore, if the internal market on its own is unable to establish rights having direct effect for Community nationals, no obligations on the Member States having direct effect may likewise be inferred from it alone.

32. Accordingly, the Court of Justice has ruled in *France* v *Commission* [13] that the internal market is to be established by measures adopted by the Community in accordance with the provisions of the article and of the other provisions mentioned therein. In Opinion 1/91, [14] the Court of Justice also expressly described the contents of Articles 2, 8a (now, following amendment, Article 18 EC) and 102a of the EC Treaty (now Article 98 EC) as objectives for whose attainment free trade and competition are appropriate means.

33. Previous cases decided by the Court of Justice concerning the fixing of book prices in France also corroborates that reasoning. Pursuant to several judgments of the Court of Justice concerning this French law, those sections which were contrary to Community law, in particular in respect of Article 30 of the EEC Treaty, have been adapted. In its judgments the Court of Justice examined the legislation concerned

11 — See the Declaration on Article 7a annexed to the Final Act of the Single European Act.

12 — Case C-378/97 [1999] ECR I-6207.

13 — Case C-41/93 (cited in footnote 7 above).

14 — Opinion of 14 December 1991 [1991] ECR I-6079, paragraph 50.

in the light of *inter alia* Article 3(f) of the EEC Treaty [15] and other provisions thereof. In each case it concluded that the legislation on the fixing of prices for books, as most recently amended, was not open to objection under Community law. It expressly held that in those cases neither Article 7 of the EC Treaty nor any other provision or any other principle of Community law applies to unequal treatment under legislation on the fixing of the retail price of books by the publisher or the importer. As I stated above, the incorporation of the concept of 'internal market' in no way alters this view.

34. Thus, in the light of the foregoing it must be stated that the provisions concerning the internal market, that is to say Articles 3 and 3a and the second paragraph of Article 7a of the EC Treaty, merely constitute Treaty objectives which are specified more closely only by the action of the Community and the Member States or though the applicable provisions of the Treaty and therefore have direct legal effect only in conjunction with those provisions.

(b) Articles 5 and 85 of the EC Treaty

35. It should be noted that, as far as the present case is concerned, no submissions alluding to agreements, decisions or concerted practices prohibited under Article 85 of the EC Treaty between the publishers or the retailers relating to the fixing of retail prices have been made. Consequently, only brief consideration need be given below to Articles 5 and 85 of the EC Treaty.

36. In its first judgment on the fixing of book prices in France in *Leclerc* v *Au blé vert*, [16] to which I have already referred, the Court of Justice ruled that this legislation does not require agreements to be concluded between publishers and retailers or other conduct of the sort contemplated by Article 85 (1) of the Treaty; it imposes on publishers and importers a statutory obligation to fix retail prices unilaterally. Therefore, it considered 'whether national legislation which renders corporate behaviour of the type prohibited by Article 85(1) superfluous, by making the book publisher or importer responsible for freely fixing binding retail prices, detracts from the effectiveness of Article 85 and is therefore contrary to the second paragraph of Article 5 of the Treaty.' [17]

37. At that time — as now — there was, as regards purely national systems or practices in the book trade, no Community competition policy to which the Member States had to adhere on account of their obligation to abstain from measures which could jeopardise the attainment of the objectives of the Treaty. Therefore, the

15 — See footnote 9 above.

16 — Cited in footnote 3 above.

17 — Cited in footnote 3 above, paragraph 15.

Court of Justice considered that the Member States' obligations stemming from Article 5, read in conjunction with Article 3(f) [18] and 85 of the EEC Treaty, were not sufficiently precise to preclude them from enacting legislation governing competition in respect of retail prices for books.

38. However, as the Court of Justice has consistently held, [19] Article 5, read in conjunction with Article 85 of the EC Treaty, requires the Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings. According to the case-law, such would be the case where a Member State required or favoured the adoption of agreements, decisions or concerted practices contrary to Article 85 or reinforced their effects or deprived its own legislation of its official character by delegating to private traders responsibility for taking economic decisions affecting the economic sphere.

39. Although the French law concerning the fixing of prices for books delegates to publishers responsibility for fixing the prices for books which retailers can demand from final consumers and thus affects an economic decision, as I have already mentioned, it is not evident from either the order for reference or the submissions of the parties that there are any agreements, decisions or concerted practices between the publishers or retailers concerning the fixing of book prices. In that regard, no causal link can be established between the legislation and the practices of the undertakings concerned which would render Article 85(1) applicable.

40. Therefore, the second paragraph of Article 5, read in conjunction with Article 3(g) and Article 85 of the EC Treaty, does not preclude national legislation requiring publishers to fix the retail prices of books since no adequate link exists between the State measure and the commercial decisions which are ultimately taken.

(c) Competition policy

41. There is no need to consider this point in greater depth since there is, as regards purely national systems for fixing book prices, no Community competition policy to which the Member States had to adhere on account of their obligation to abstain from measures which could jeopardise the attainment of the objectives of the Treaty. In that regard, reference should also be made to Article 128(4) of the EC Treaty under which the Community has to take cultural aspects into account in its action, which therefore includes the way in which it takes action in the field of competition.

18 — See footnote 9 above.

19 — Case C-2/91 *Meng* [1993] ECR I-5751, Case C-245/91 *Ohra* [1993] ECR I-5851 and Case C-185/91 *Reiff* [1993] ECR I-5801.

42. Since the pronouncement of the judgment in *Leclerc* v *Au blé vert*,[20] the Commission has brought proceedings relating to national provisions on the fixing of prices for books against individual Member States in three cases.[21] In all these three cases, the Commission examined the cross-border effects of the relevant systems for fixing book prices and essentially objected that the provisions concerned posed an obstacle both to imports and exports of books and thus affected intra-Community trade.

43. In the present case, neither the order for reference nor the observations of the parties contain any information from which it could be concluded, with a sufficient degree of probability, that there are tangible effects on intra-Community trade.

44. In its case-law, the Court of Justice has ruled that an agreement covering the entire territory of a Member State has, by its very nature, the effect of reinforcing the compartmentalisation of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is designed to bring about.[22] In order that an agreement between undertakings may affect 'trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States, such as might prejudice the realisation of the aim of a single market in all the Member States.'[23]

45. The answer to the question whether the requirements of Article 85(1) of the EC Treaty are fulfilled generally turns on complex economic assessments which the national court has to carry out, if necessary on the basis of the criteria laid down in the case-law of the Court of Justice.

46. However, in the present case, it must be concluded that the French legislation on the fixing of prices for books as a whole is not likely to affect trade between Member States within the meaning of Article 85(1) of the EC Treaty. This is also indirectly evident from the fact that books written in a particular language are not necessarily subject to cross-border trade in large quantities. Consequently, the enactment of legislation on the fixing of prices for books does not constitute a failure by a Member State to fulfil its obligation to abstain from measures which could jeopardise the attainment of the objectives of the Treaty, particularly since no relevant Community competition policy exists.

20 — Cited in footnote 3 above.

21 — Decisions on the British Net Book Agreement, the Netherlands cases of trade regulations and Reiber/KvB and the cases of collective and individual written undertakings concerning Germany and Austria.

22 — Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851, paragraph 48, and the references contained therein.

23 — See, for instance, Joined Cases C-215/96 and C-216/96 *Bagnasco and Others* [1999] ECR I-135, paragraph 47, and the references contained therein.

(d) Economic policies and the 'principle of an open market economy with free competition' — Articles 3a, 102a and 103(3) and (4) of the EC Treaty (now Article 99 EC)

47. The principle of an open market economy with free competition is set out in Articles 3a(1) and (2), 102a and 105(1) of the EC Treaty (now Article 105 EC) and is related to the provisions on economic and monetary policy. Thus, the Treaty establishing the European Union, which introduced these provisions, sees this principle more in the context of the Community's economic and monetary policy than as a factor in defining the term 'internal market'. Under Article 102a, Member States are to conduct their economic policies 'with a view to contributing to the achievement of the objectives of the Community, as defined in Article 2, and in the context of the broad guidelines referred to in Article 103(2).' The Member States and the Community are to act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 3a.

48. The term 'economic policies' as used in Article 102a is not defined more closely in the Treaty itself. The broad guidelines for the economic policies of the Member States and the Community which the Council formulated pursuant to Article 103(2) also include micro-economic ideas for the regulation of certain, particular markets. For instance, Chapter V of Council Recommendation of 7 July 1997 on the broad guidelines of the economic policies of the Member States and of the Community [24] contains observations on better functioning product and services markets. According to those provisions, in order to safeguard and promote the Community's competitiveness, employment and living standards in a world of free trade and constant technological change, it is essential that Member States and the Community, in line with the Broad Guidelines for Economic Policies, intensify their efforts to modernise their markets for goods, services and labour. As part of the strategy to foster growth and employment, while achieving price stability, it is essential to improve the operation of product and service markets, to stimulate competition, to foster invention and innovation and to ensure efficient price setting.

49. Price-fixing systems such as that at issue here do, however, contain elements which suggest an inefficient allocation of resources. However, these provisions of Community law are merely Treaty objectives and policies of the Member States or the Community, which do not impose on the Member States clear and sufficiently specific obligations regarding their conduct. According to the objectives set out in Articles 2 and 3 of the EC Treaty, they are rather principles which, on their own, have no binding legal effect but which are to be viewed in conjunction with the other

24 — OJ 1997 L 209, p. 12.

provisions of Community law which define their content more closely.

50. According to the case-law of the Court, obligations may arise for Member States only from provisions of Community law which are worded in a sufficiently specific, precise and clear manner. However, that specifically is not so in the case of the abovementioned general principles of an open market economy with free competition and economic policy.

51. The answer to be given to the question referred by the national court must therefore be that as Community law now stands the provisions of the EC Treaty to which it refers do not preclude the application of the French provisions on the fixing of prices for books.

VII — Costs

52. The costs incurred by the French, Austrian, Greek and Norwegian Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

VIII — Conclusion

53. For the foregoing reasons, I therefore propose that the Court should answer the question referred to it for a preliminary ruling as follows:

The second paragraph of Article 5 (now the second paragraph of Article 10 EC), read in conjunction with Article 3(c) and (g) (now, after amendment, Article 3(c) and (g) EC) and 85 of the EC Treaty (now Article 81 EC) and Article 3a (now

Article 4 EC), the second paragraph of Article 7a (now, after amendment, Article 14(2) EC), 102a and 103(3) and (4) of the EC Treaty (now Articles 98 EC and 99 EC) are to be interpreted as meaning that, as Community law stands at present, they do not preclude the Member States from enacting legislation under which the retail price of books is to be fixed by the publisher or by the importer and is binding on all retailers, provided that such legislation is consonant with the other specific provisions of the EC Treaty.