Srl Ufficio Henry Van Ameyde v. Srl Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti In Circolazione Internazionale (Case 90/76)

Before the Court of Justice of the European Communities

ECJ

(The President, Kutscher C.J.; Donner P.C.; Mertens de Wilmars, Sorensen, Lord Mackenzie Stuart, O'Keeffe, and Bosco JJ.) Herr Gerhard Reischl, Advocate General.

9 June 1977

Reference from the Tribunale Civile E Penale of Milan under Article 177.

Insurance. Restrictive measures. Automobile insurance.

The various Community measures (directive, recommendation and decision) relating to motor insurance 'green cards' do not authorise either national measures or agreements between insurance companies or their national bureaux which are incompatible with the provisions of the EEC Treaty relating to competition, the right of establishment and the freedom to provide services. [15]

Insurance. Foreign claims. Loss adjusters.

National laws which reserve exclusively to insurance companies the settlement of claims in respect of accidents caused by foreign vehicles conforms to the objectives of the 'green card' system. Such an exclusive right does not conflict with any rule of the EEC Treaty (in particular, **Article 90** in conjunction with **Articles 85** and **86**) so long as the settling company is entitled, if it wishes, to have recourse to a loss adjuster for the investigation of the claim. [18] & [22]

Restrictive practices. Automobile insurance.

A decision or course of conduct of a national insurance bureau or concerted practices of its members which have the object or effect of excluding undertakings whose business consists solely in the investigating of accident claims on behalf of insurers (*i.e.* loss adjusters) may possible fall under the prohibition of Article 85 or of Articles 90 and 86 EEC. It is for the national court to decide whether that is in fact so. [24]-[25]

Nationality discrimination. Freedom of establishment and to supply services.

The non-discrimination principle laid down in Article 7 EEC is, so far as the freedom of establishment and services is concerned, absorbed by Articles 52 and 59. In those *479 spheres, therefore, the test is compliance with **Articles 52** and **59** and not **Article 7.** [27]

Nationality discrimination. Automobile insurance.

Rules or conduct having the effect of reserving to the national insurance bureau of a member-State or its members or to insurance companies with an establishment there the final decision as to the payment of damages to victims of accidents caused in the territory of that State by vehicles normally based in another member-State are not discriminatory within the meaning of **Articles 52** and **59** EEC. [30]
The Court interpreted various Community provisions with regard to the 'green card' system for handling automobile insurance claims arising out of transnational motor car accidents, whereby claims are to be handled by the national insurance bureau of the country of the accident. The 'freezing out' of the plaintiff loss adjuster in Italy was held not to be *per se* incompatible with Community law.

Representation

Fernand Charles Jeantet, of the Paris Bar, for the plaintiff company.
Gianguido Scalfi, of the Milan Bar, for the defendant bureau.
Arturo Marzano, Avvocato dello Stato, for the Italian Government as amicus curiae.
A. Marchini-Camia, legal adviser to the E.C. Commission, for the Commission as amicus curiae.
A written amicus brief was also submitted by the Belgian Government.

The following cases were cited in argument:
1. Re the Vereeniging Van Cementhandelaren (E.C. Commission--72/22/EEC), 16 December 1971: [1973] C.M.L.R. D16, [1972] J.O. L13/34
2. Re the Nederlandse Cement-Handelmaatschappij N.V. (E.C. Commission--72/68/EEC), [1973] C.M.L.R. D257, [1972] J.O. L22/16.
3. General Motors Continental N.V. v. E.C. Commission (25/75), 13 November 1975: [1976] 1 C.M.L.R. 95, [1975] E.C.R. 1367.

4. Istituto Chemioterapico Italiano SpA and Commercial Solvents Corp. v. E.C. Commission (6-7/73), 6 March 1974: [1974] 1 C.M.L.R. 309, [1974] E.C.R. 223.
5. Re GEMA (No. 1) (E.C. Commission--71/224/EEC), 2 June 1971: [1971] C.M.L.R. D35, [1971] J.O. L134/15.

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Facts

In the main action an Italian company, a subsidiary of a Dutch company carrying on business as a loss adjuster, is suing the Ufficio *480 Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale (Italian Clearing Office for International Motor Vehicle Insurance) hereinafter referred to as 'the Ufficio Centrale.' The loss adjuster complains that, either by a decision of the Ufficio Centrale or by a decision of its members or by a concerted practice of the latter, it has been excluded from the market, in which it specialises, for the settlement of claims in respect of accidents caused by foreign vehicles in Italy.
The business of loss adjuster which originated in the United Kingdom is a comparatively new one in the other member-States. In the United Kingdom insurers have long been accustomed, at least in connection with certain categories of risks, to call in independent experts to investigate claims and also in certain cases to check the risks which it is proposed should be insured. This kind of business increased when Lloyds of London became interested in non-marine insurance: in fact the syndicates of insurers of which Lloyds is comprised do not generally have their own 'claims' departments. The loss adjuster receives his instructions from the insurer and is the latter's agent.
The loss adjuster is not necessarily a technical expert. He may himself have recourse to a technical expert. He protects the interests of his principal. Outside the British market the loss adjuster works as a correspondent, especially for British insurers and in particular Lloyds. Loss adjusters consider that they are members of a profession. They are paid fees the amount whereof varies according to the complexity of the matter.
Loss adjusters must during the investigation of claims which insurers instruct them to carry out, supply their principals with as detailed, accurate and exhaustive particulars as possible of all the factors which make it possible to decide whether the accident gives rise to reimbursement of any loss or injury and what the amount of any such reimbursement will have to be. Nevertheless the final decision as to the amount to be paid rests with the insurer. When this work is described as the 'settlement of accident claims' it must be understood in the light of the facts set out above. A distinction must be drawn between the investigation of the loss which may be carried out by the loss adjuster and the final decision as to payment of damages which is only taken by the insurer. The injured party cannot apparently bring an action against the loss adjuster.
Before the introduction of the green card system and the setting up of central national bureaux, that is to say before the fifties, loss adjusters had an important

part to play when accidents occurred abroad. Indeed if a national and a foreign motor vehicle were involved in an accident in a State a loss adjuster in that State often found that he was authorised by the foreign insurer to investigate the loss and negotiate a settlement with the injured party. This *481 explains why this kind of business had grown as a result of the increase of tourism.
The Van Ameyde company carried on business in Italy for many years before the entry into force of the national law introducing compulsory insurance in respect of motor vehicles against civil liability. During this period it carried on business relating to losses caused by foreign motor vehicles as the agent of insurance undertakings in countries outside Italy authorised to handle and settle claims for loss or injury caused in Italy by foreign vehicles which these undertakings had insured.
Since the entry into force in Italy of the law on compulsory insurance in respect of motor vehicles against civil liability the Ufficio Centrale has availed itself of this law to lay down that foreign insurance undertakings may not henceforth nominate a loss adjuster to handle and investigate losses caused in Italy by vehicles insured by them.

The green card system and the central bureaux

Before the green card system was introduced and central bureaux were set up the foreign tourist involved in an accident often ran the risk of having his car impounded as security for settlement of the loss. In member-States in which insurance against civil liability in respect of motor vehicles was compulsory the foreign tourist often had to take out insurance (called frontier insurance) in the country which he visited with an insurer established in that country.
This situation was an obvious impediment to freedom of movement and to tourism.
The first attempt to remedy this situation was made in 1934. The International Institute for the Unification of Private Law drew up a draft international convention at the League of Nations. Owing to the world war the draft came to nothing and at the end of the war it foundered on the fundamental differences between the laws relating to civil liability of the various States.
During the meeting in Geneva on 25 January 1949 the Road Transport Subcommittee of the UN Economic Commission for Europe issued Recommendation No. 5 for submission to countries in which insurance against civil liability in respect of motor vehicles was compulsory inviting all the governments to call upon their domestic insurers specialising in this field to enter into agreements in accordance with the general principles laid down beforehand in order to enable drivers going to other countries to satisfy the specific requirements of the laws applying to insurance in those countries.
The guiding principles underlying these agreements were the following:
(a) The setting up in each country of an appropriate central body, recognised by the respective Governments and called the National Insurance Office or Central Bureau, comprising all or most of the *482 undertakings concerned with compulsory insurance against civil liability in respect of motor vehicles carrying

on business in each country.
(b) The issue by the bureau to member insurers of uniform national insurance documents, which guarantee compensation for damage caused in foreign countries and the issue of these documents to the various insured.
The aforementioned recommendation also provided that countries such as Italy which did not have a system of compulsory insurance might set up a national insurance bureau.
As a result of a British initiative a group of European insurers met in London to look more closely at the whole question of implementing Recommendation No. 5 and in 1952 formulated the Uniform Agreement between Bureaux or the London Convention which was uniformly adopted by each of the national insurers' bureaux. The wording of this uniform agreement and the form of the uniform international certificate of insurance were approved by the Organisation for European Economic Co-operation and the system, which is known as the green card system after the colour of the certificate, came into force in 1953.
Shortly afterwards the Italian insurers acceded to the 'London Convention' even though the system of compulsory motor vehicle insurance was not in force in Italy, with the result that the international certificate of insurance during this initial period merely certified that the user of the motor vehicle registered abroad was covered by the insurer's guarantee. The Italian bureau, namely the Ufficio Centrale, for its part confined its activity to investigations and expert reports with a view to a possible settlement subject to the approval of the foreign insurer concerned with the accident. At that time the Ufficio Centrale was not responsible for the settlement of accident claims. It merely acted as the authorised agent of foreign insurers for the purpose of investigating accident claims. As before, the foreign insurer remained liable. Thus the foreign insurer could appoint a loss adjuster as his agent instead of making use of the services of the Ufficio Centrale.
During this period (from 1953 to 1970) the Ufficio Centrale did not object and could not have objected to a foreign insurer appointing a loss adjuster as his agent instead of using the services of a member of the Ufficio Centrale. Since a direct link was created between the foreign insurer and the Italian who had suffered loss or injury, and since the foreign insurer was entirely responsible for settling accident claims, the latter was completely free to entrust the settlement in whole or in part to whatever body he wished.
The aim of the European Convention on Compulsory Insurance against Civil Liability in respect of motor Vehicles signed by 15 countries including Italy at Strasbourg on 20 April 1959 was to *483 ensure that compensation is paid for loss or injury suffered as a result of the use of vehicles registered abroad.
Article 2 (2) of Annex I to the abovementioned Convention adopts unreservedly the green card system and provides that foreign vehicles may be driven on the territory of the host country on condition that a bureau, recognised for this purpose by the Government of that country, assumes direct responsibility for compensating, in accordance with municipal law, injured parties for damage caused by such vehicles.
By Act 990 of 24 December 1969 Italy fulfilled its international obligation which it

entered into when it signed the Strasbourg Convention and adopted the system of compulsory insurance against civil liability in respect of motor vehicles. Section 6 of this Act governs the insurance of motor vehicles registered abroad by expressly providing that
'motor vehicles and waterborne craft ... registered or listed in foreign States, which at the material time are being driven in the territory or in the territorial waters of the Republic, shall, for the period of stay in Italy, be covered by an insurance policy within the meaning of the present Act and in accordance with the procedure laid down by the implementing regulation. The obligation to be insured shall, nevertheless, be deemed to have been discharged if the driver is in possession of an international certificate of insurance by the appropriate body constituted abroad which testifies to the existence of an insurance for civil liability for damage caused by the motor vehicle or craft, provided that the certificate is recognized by a corresponding body constituted in Italy which the insured uses as his address for service and which, under the terms and conditions laid down by the present Act, assumes responsibility for settling claims in respect of damage caused in the territory or the territorial waters of the Republic, guarantees payment thereof to those entitled, and it recognized for this purpose by the Ministry for Industry, Trade and Craft Trades'. [FN1]

FN1 'per i veicoli e natanti ... immatricolati o registrati in Stati esteri, che circolino temporaneamente nel territorio o nelle acque territoriali della Repubblica, deve essere stipulata, per la durata della permanenza in Italia, un'assicurazione ai sensi della presente legge secondo le modalita che saranno stabilite con il regolamento di esecuzione. L'obbligo della assicurazione si considera tuttavia assolto quando l'utente sia in possesso di un certificato internazionale di assicurazione rilasciato da apposito ente costituito all'estero che attesti l'esistenza di un'assicurazione per la responsabilita civile per i danni causati dal veicolo o dal natante, a condizione che il certificato risulti accettato da un corrispondente ente costituito in Italia presso il quale l'assicurato si intende domiciliato, che si assume di provvedere, nei limiti e nelle forme stabilite dalla presente legge, alla liquidazione dei danni causati nel territorio o nelle acque territoriali della Repubblica, garantendone il pagamento agli aventi diritto e sia, a tale effetto, riconosciuto dal Ministero dell'Industria del Commercio e dell'Artigianato.'

Pursuant to section 6 of Act 990 of 1969 the Minister for Industry promulgated the Decree of 26 May 1971 which recognises l'Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale Srl having its registered office in Milan as the 'body constituted in Italy'.
In each country in which the green card system is in force a *484 motorist can obtain from his insurer this card which is issued by the national bureau (the Paying Bureau) and which certifies that he is covered by compulsory insurance. With this card a motorist can travel to another member-State where the system is in force without having to take out another insurance policy and without it being necessary for the company with which he is insured to have a branch office in

that State. If the motorist has an accident in the State which he is visiting his vehicle will not be impounded and he will not be detained for the purpose of guaranteeing payment of any damages since the person suffering loss or injury as a result of the accident will be able, under domestic law, to take direct action against the national bureau which is called the 'Handling Bureau'.
Under the bilateral agreement between the Handling and the Paying Bureau the latter undertakes to repay the Handling bureau the sums which it has paid out and the expenses which it has incurred and in addition pays it a commission equal to 15 per cent. of the sums paid out.
The system is based both on this network of bilateral agreements and also on the domestic law of the country where the accident occurred, which acknowledges that its national bureau has undertaken to pay for the damage caused by foreign drivers in possession of a green card.
Thus the part played by the Ufficio Centrale changed after compulsory insurance had been introduced. Instead of merely being the agent of the insurers of foreign motor vehicles the Ufficio Centrale had, pursuant to its domestic law, to assume direct liability for every accident in Italy caused by a foreign motor vehicle, the driver of which was in possession of a green card.
According to the Uniform Agreement between Bureaux, the Ufficio Centrale as a Handling Bureau simply has the option of incorporating in its bilateral agreements Clause 4, which has been drafted as follows:
(a) '...
(b) A Member of the Paying Bureau may request the Handling Bureau to leave the handling and settlement of claims to a nominated correspondent, who may be one of the following:
(i) a Member of the Handling Bureau;
(ii) an organisation established in the country of the Handling Bureau for the purpose of transacting insurance, whether motor insurance or some other class of insurance;
(iii) an organisation established in the country of the Handling Bureau and specialising in the handling of claims on behalf of Insurers.
If the Handling Bureau approves the request, it thereby gives authority to the nominated correspondent to handle and settle claims. The request for this authority is made to the Handling Bureau by the Paying Bureau, which then becomes responsible for the fulfilment of the following undertakings.
In requesting the approval of a nominated correspondent, the Member of the Paying Bureau undertakes: *485
to entrust the handling of all claims to the said correspondent;
to forward to the said correspondent all notifications relating to such claims and to leave to the said correspondent the handling and settlement of such claims.
The Handling Bureau for its part undertakes to forward to the correspondent all notifications which they receive from the Insured as well as all claims received from third parties and to inform the third parties of the authority given to the correspondent.
The nominated correspondent becomes responsible to the Handling Bureau, as the duly authorised agent of the said Bureau, for the handling of such claims. In

so doing, the correspondent will take into account any directions, whether general or specific received from the Handling Bureau.
Exceptionally, if so requested, the Handling Bureau may give the same authority as described above to a nominated correspondent to handle a specific claim, notwithstanding that such correspondent has received no general authority.
At any time, and without being required to give a reason, the Handling Bureau may take over the handling of a particular claim from the nominated correspondent or may revoke the correspondent's general authority.
(c) If in the country of the Handling Bureau, the transaction of insurance is solely through a State Insurance Organisation, the Handling Bureau will, if requested by a Paying Bureau or a Member of a Paying Bureau either in respect of a particular claim or in respect of claims in general, leave the handling and settlement of such claim or claims to an independent claims handling organisation established by the Handling Bureau for the purpose or, if there be no such organisation, to a duly qualified person in the country of the Handling Bureau nominated by the Member of the Paying Bureau for the purpose.
(d) In all these cases the Member will, by taking over the settlement of claims, undertake to the Handling Bureau to settle such claims in full compliance with the requirements of the insurance law of that country, and the Paying Bureau will be responsible for the fulfilment of this undertaking'.
Only four of the bureaux set up in the member-States have agreed to incorporate the whole of this clause in their bilateral agreements.
If the Ufficio Centrale had adopted this clause and, on the request of foreign insurers, entrusted the applicant with the settlement of accident claims, the Italian bureau would under domestic law always have been held liable to the injured person. The loss adjuster would have been the authorised agent of the Ufficio Centrale which could at any time have determined the agency. But the Ufficio Centrale only incorporated paragraph (b) (i) of the clause in question in its agreements.
The plaintiff claims that from that time it was no longer able to carry on its business in Italy. In fact the settlement of accident claims has always been carried out by the members of the Italian bureau (who were themselves free to have recourse to a loss adjuster).
For the purpose of further facilitating the use of motor vehicles in the Community Council Directive 72/166/EEC of 24 April 1972 *486 [FN2] required frontier checks on insurance in respect of vehicles normally based in one member-State and entering the territory of another member-State to be discontinued.

FN2 [1972] O.J.Spec. Ed. 360.

For this purpose the directive advocates an agreement between the national insurers' bureaux guaranteeing reimbursement for any loss or injury caused by a motor vehicle normally based in the territory of another member-State even if such a vehicle is not insured. And, since frontier insurance checks obviously cannot be discontinued if there are one or more member-States in which insurance against civil liability in respect of motor vehicles is not compulsory, it

provides for the general application of this insurance.
The agreement contemplated was entered into on 12 December 1973. [FN3] It is supplemental to the Uniform Agreement between Bureaux and is called ' Supplementary Agreement between National Bureaux'. The main provision of that agreement is that if a vehicle normally based in a member-State is being driven in another member-State, the user of that vehicle shall be deemed to be insured within the meaning of the agreement even if in fact he is not. It follows from this that the Ufficio Centrale is responsible for settling any claim for loss or injury in Italy caused by a motor vehicle of another member-State even if the driver is not insured.

FN3 [1974] O.J. L87/15.

The Commission in its Recommendation 73/185 of 15 May 1973 [FN4] recited that the six national insurers' bureaux of the original member-States concluded an agreement on 16 October 1972 in accordance with the principles of the Council Directive and asked each original member-State to refrain with effect from 1 July 1973 from making checks at the frontier on insurance against civil liability in respect of the use of vehicles which are normally based in the European territory of another member-State. Subsequently the Commission in its Decision 74/166 of 6 February 1974 [FN5] recited that the national insurers' bureaux of all the member-States had concluded the agreement of 12 December 1973 which has already been mentioned and fixed 15 May 1974 as the date from which the checks in question were to be eliminated.

FN4 [1973] O.J. L194/13.

FN5 [1974] O.J. L87/13.

There exist two other Community measures which concern the green card system but which are not relevant to the present case: Commission Decision 74/167 EEC [FN6] and the Commission Recommendation 74/165/EEC of 10 February 1974. [FN7]

FN6 [1974] O.J. L87/14.

FN7 [1974] O.J. L87/12.

On 22 July 1975 the 'Motor Insurers Bureau' acting on its own behalf and on behalf of all the bureaux of the Community informed the Commission on the form known as A/B of the content of the Uniform Agreement between Bureaux and the Supplementary Agreement in order to request a negative clearance or exemption under Council Regulation 17.
*487 On 15 January 1975 the plaintiff lodged, pursuant to Article 3 (2) (b) of Regulation 17 a complaint with the Commission against the conduct of the Ufficio Centrale seeking the finding of an infringement of Articles 85 and 86 of the EEC

Treaty consisting essentially in the fact that:
the Ufficio Centrale had not accepted optional clause 4 (b) (iii) of the Uniform agreement between Bureaux and had excluded loss-adjusters from settling accident claims under the green card system;
the Ufficio Centrale reserved the right to refuse or to revoke at any time without the need to justify its decision the appointment of the plaintiff sought by foreign insurers for the settlement of accident claims in the category referred to above.
In dealing with this application the Commission formally opened an investigation which has not yet been concluded.
At the same time as it lodged the complaint before the Commission the plaintiff asked the Tribunale Civile e Penale di Milano to declare that the claim made by the Ufficio Centrale to the effect that it could entrust the investigation and settlement of accident claims exclusively to those insurance companies which are members of the defendant institute is illegal and consequently to declare illegal any action by the Ufficio Centrale in respect of third parties which tends to restrict the plaintiff's freedom of action and to deprive it of business.
By order of 29 April 1976 the Tribunal of Milan referred the following questions to the Court of Justice for a preliminary ruling:
1. 'Are Council Directive No. 72/166/EEC (Official Journal, English Special Edition, 1972 (II), p. 360), Commission Recommendation No. 73/185/EEC (Official Journal No. L 194, p. 13) and Commission Decision No. 74/166/EEC (Official Journal No. L 87, p. 13) to be interpreted as authorising provisions of national law, agreements, decisions and practices agreed between the national insurers' bureaux, or action by an individual national bureau or of the undertakings affiliated thereto which have as their object or effect the restriction or elimination of competition from undertakings whose business is confined to the settlement of claims in respect of accidents caused by vehicles from another country, such business being wholly reserved to insurance undertakings which are members of the said national bureau?
2. Whatever the answer to Question 1, do Articles 85, 86 and 90 of the EEC Treaty prohibit any provision of national law, any agreement between bureaux or any decision, concerted practice or action which tends to reserve exclusively to the insurance undertakings which belong to the national bureau the settlement of claims in respect of damage arising out of the use of foreign vehicles, to the exclusion of undertakings engaged solely in the business of settlement and which are not members of the bureau, even though they may have been nominated by the insurers of the vehicle causing damage who are based in its country of origin?
3. Whatever the answer to Question 1, do the principle of nondiscrimination (Article 7 of the Treaty), the provisions concerning the right of establishment (Articles 52 et seq. of the Treaty) and the freedom to provide services (Article 59 of the Treaty) prohibit *488 any provision of national law or any action the effect of which is directly or indirectly to obstruct in a member-State the effective exercise and the carrying on of the business of the settlement of claims by an undertaking established in the territory of the said member-State, even if the provision or the action is the work of a national insurers' bureau within the

meaning of the definition given in Directive No. 72/166/EEC?
4. If the answer to Question 1 is in the affirmative, are the Community measures therein mentioned to be regarded as lawful when considered from the standpoint of conformity with Articles 7, 52, 59, 85, 86 and 90 of the EEC Treaty and of any other consideration which might vitiate them, including want of a statement of reasons and of observance of essential procedural requirements?'

Opinion of the Advocate General (Herr Gerhard Reischl)

I

1. By an order of 29 April 1976 a Civil Chamber of the Tribunale Civile e Penale di Milano referred to the Court of Justice several questions which were raised in the context of a case between a company with limited liability under Italian law--Ufficio Henry Van Ameyde--and the Italian Clearing Office for International Motor Vehicle Insurance (Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internationale) hereinafter referred to as 'the Ufficio Centrale'.
The plaintiff is a subsidiary of the Dutch company with limited liability H. Van Ameyde BV of The Hague, a company which does not belong to the Netherlands Motor Insurers' Bureau and which controls other companies in the Common Market and in Spain. The Italian subsidiary company was formed on 24 January 1963 and, on behalf of insurance companies, is concerned with the handling and settlement of claims in respect of accidents which are covered by insurance. The business which it carries on is generally described by the English term ' loss adjuster'. The work is done by independent assistants to the insurance companies as experts who ascertain the circumstances of an accident or other incident and the extent of the damage and *settle* the compensation on behalf of an insurance company. The business of offices of this kind is frequently of an international nature; their principals are insurance companies from various countries which are faced with problems in settling claims in respect of accidents which have occurred abroad where a person insured with them is involved. Under Italian law, in spite of its close links with insurance business, the business of loss adjuster is clearly distinguished from insurance business. For assistance in the handling and settlement by a company such as the plaintiff in the main action of accident claims the obligation to obtain authorisation from the government which is imposed on insurance companies does not apply.
*489 The defendant in the main action, the Ufficio Centrale, was formed on 23 April 1963 as a company with limited liability under Italian law by authorised insurers dealing in insurance for civil liability for motor vehicles in order to introduce into Italy the 'green card' system set up by the insurers of various countries in 1952 consequent on the Recommendation of the Road Transport Subcommittee of the United Nations Economic Commission for Europe of 25 January 1949; by means of this system it was intended to ensure that insurance against civil liability in respect of motor vehicles would, by means of an international insurance certificate, the so-called 'green card', retain its validity in the countries, and under the legal provisions of the countries, through which the

vehicles concerned travelled as international road traffic.
As the carrying on of insurance business is prohibited by Italian law *inter alia* to companies with limited liability the Ufficio Centrale cannot itself be classed as an insurance company. It does not conclude any contracts of insurance and also does not undertake to guarantee cover for risks arising from traffic accidents in consideration of the payment of a premium.
2. The compulsory insurance against civil liability in respect of motor vehicles which already existed in all the other member-States was introduced into Italy by the Act of 24 December 1969 (no. 990) which was to enter into force six months after the publication of the implementing provisions. Those provisions were issued by the President of the Republic by Decree of 24 November 1970 which was published on 14 December 1970; accordingly compulsory insurance of motor vehicles has existed in Italy since 12 June 1971.
Section 6 of the Act of 24 December 1969 provides that
'motor vehicles ... which at the material time are being driven in the territory ... of the Republic, shall, for the period of stay in Italy, be covered by an insurance policy within the meaning of the present law. ...
The obligation to be insured shall, nevertheless, be deemed to have been discharged if the driver is in possession of an international certificate of insurance issued by the appropriate body constituted abroad which testifies to the existence of an insurance for civil liability for damage caused by the motor vehicle ..., provided that the certificate is recognised by a corresponding body constituted in Italy which the insured uses as his address for service and which, under the terms and conditions laid down by the present Act, assumes responsibility for settling claims in respect of damage caused in the territory ... of the Republic, guarantees payment thereof to those entitled, and is *recognised* for this purpose by the Ministry for Industry, Trade and Craft Trades. ...'
The 'corresponding body constituted in Italy' is the Ufficio Centrale which, having received the authorisation of the Minister on 27 June 1957 became a Member of the Council of Bureaux in London--that is the organisation which groups together all the national bureaux--on the basis of recognition by Ministerial Decree of 26 May 1971 *490 . Membership of the Ufficio Centrale is compulsory for all Italian undertakings which are entitled, within the meaning of section 10 of the Act of 24 December 1969, to carry on the business of insurance of motor vehicles, including Italian agencies of foreign insurance companies.
3. As before a check on the green card was carried out at the frontiers with all the delays that such a check entails.
In order to obviate this formality the Council adopted Directive 72/166/EEC of 24 April 1972. By means of that directive machinery at two levels and based on agreement, was introduced:

With the support of the Council of Bureaux in London the national bureaux concluded an agreement solely under private law in order to guarantee the settlement of accident claims independently of the existence of a contract of insurance;
In addition the Directive presupposed the conclusion of an agreement between

the individual national bureaux and their respective administrations.
The removal of the check of the green card at the Italian frontiers was made possible by the fact that by Ministerial Decree of 12 October 1972 the Ufficio Centrale was authorised to undertake the settlement of claims for damage which had been caused by motor vehicles from the remaining five member-States (since the Decree of 11 December 1973 motor vehicles from the new member-States are included) and also by the fact that on 16 October 1972 in Brussels the Ufficio Centrale concluded the agreement provided for in Article 2 (2) of the Council Directive of 24 April 1972 with the bureaux of the other five original member-States of the EEC and on 12 December 1973 in Paris with the bureaux of the three new member-States.
Under that agreement the settlement of claims for compensation made by persons suffering loss by reason of accidents is to be carried out in accordance with the legal provisions of the individual member-States concerning compulsory insurance by the appropriate national bureau in the territory of which the accident occurred but the costs of that bureau are to be refunded by the bureau of the State to which the person who caused the accident belongs. Article 4 of the Agreement contains provisions concerning the relations between the Paying Bureau and the Handling Bureau and the relations between the members of these bureaux and their correspondents appointed to handle and settle claims. Article 4 (a) provides that:
'If a member of the Paying Bureau has an organization situated in the country of the Handling Bureau and established there for the purpose of transacting Motor Insurance, the Handling Bureau will, if so requested, leave the handling and settlement of claims to the Member.'
The Italian bureau only recognised the following provision from the Optional Clauses set out in Article 4 (b): *491
(b) 'A Member of the Paying Bureau may request the Handling Bureau to leave the handling and settlement of claims to a nominated correspondent, who may be one of the following:
(i) A Member of the Handling Bureau.'
On the other hand it did not recognise the optional provisions whereby the correspondent may be:

(ii) 'an organization established in the country of the Handling Bureau for the purpose of transacting insurance, whether motor insurance or some other class of insurance;
(iii) an organization established in the country of the Handling Bureau and specializing in the handling of claims on behalf of Insurers.'
The abolition of the check on the green card, provided for between the original member-States by Commission Recommendation 73/185/EEC of 15 May 1973 [FN8] from 1 July 1973, finally came into effect by means of Commission Decision 74/166/EEC of 6 February 1974 [FN9] as from 15 May 1974 for the nine member-States.

FN8 [1973] O.J. L194/13.

FN9 [1974] O.J. L87/13.

From this arose a noticeable change in the role of the national bureaux and the scope which the latter allowed to the bureau responsible for settlement in particular in Italy. Before the introduction of compulsory insurance in Italy the third party injured by a foreign motor vehicle had to make a claim directly to the foreign insurer. The Italian bureau acted in this respect solely as ' servicing bureau' but not as 'Handling Bureau': acting upon a request sent to the Italian Bureau or one of its agencies by an insured who was in possession of a green card the Italian Bureau investigated any claim made against that insured person. To this end it immediately made contact either directly or through the Paying Bureau with the member of the Paying Bureau which had issued the green card in order to regulate the handling or investigation of the claim on behalf of the member of the Paying Bureau as the settlement of the claim required the agreement of that member.

During that period the Ufficio Centrale recognised in this connection the instructions issued by the members of foreign bureaux to the Van Ameyde office to act as their agents and permitted the co-operation of this bureau in the handling and settling of such accident claims in which foreign motor vehicles insured with members of the foreign bureaux were involved. However the Ufficio Centrale expressly reserved the right to re-examine its position if compulsory insurance was introduced in Italy.

Since the introduction of compulsory insurance for motor vehicles in Italy persons injured by a foreign motor vehicle can and must apply directly to the Ufficio Centrale in respect of all damage caused in Italian territory irrespective of the nationality and the residence *492 of the insurer and of the insured as the Italian legislature sought to ensure public safety in its territory by granting the *legal monopoly for handling and settling* international accident claims to the Ufficio Centrale.

The activities of the Ufficio Central are no longer restricted to *investigating* the case in collaboration with the original insurer; it has rather become the *Handling* Bureau and is thereby entitled to investigate accident claims and to settle them as though it had issued the policy itself. The Ufficio Centrale also remains directly liable to the injured person if it assigns the settlement of accident claims to insurance companies operating in Italy as the correspondents of foreign insurance companies with whom the insurance policy was effected and which issued the green card. It is further authorised to grant compensation for damages directly if the accident was caused by a motor vehicle which was not insured within the meaning of the Act of 24 December 1969 but if necessary it can have recourse against the owner and the driver of the motor vehicle.

From this time onwards the Italian bureau itself specified the Italian correspondent for the foreign insurers against civil liability of foreign nationals who were involved in a traffic accident in Italy: it sent letters to this effect both to the other foreign bureaux and to their members stating that in future it would only recognise the nominations of the locally competent member of the Italian bureau

as the correspondent insurance company and would only forward cases for investigation to that Italian company; it further informed them that in future foreign insurers had to apply directly to the Italian insurer so nominated and *could* no longer apply to the Bureau.
The Lloyd's 'Service Motor Policies' which had referred accident claims to the Italian office of Van Ameyde informed that office of this position and added that it had no option but to accept this state of affairs and therefore requested the office to cease investigating the cases referred to it and to transfer them to the Italian bureau.
Furthermore the Italian bureau complained about a French company which continued to refer accident claims to the Van Ameyde office 'although since June 1971 it is no longer authorised to investigate cases' (letter of the French bureau of 9 September 1975).
The other national bureaux called on their members in the form of an ultimatum to accord with this practice 'in conformity with the Uniform Agreement between Bureaux' (letter of the Belgian bureau of 5 September 1975).
In these circumstances and in compliance with the precise instructions given to it by its principals--the foreign companies--the Italian office of Van Ameyde ceased investigating the documents referred to it and transferred them to the Italian bureau. However, as it regarded itself as the victim of a virtual boycott--not on the grounds *493 of its nationality as it was an Italian company but because of its nature as a 'private' office--it initiated proceedings before the Tribunale di Milano in order to obtain a declaration that the claim made by the Ufficio Centrale that the *investigation and settlement* of accident claims should be referred only to insurance companies which were members of the Ufficio Centrale was unlawful.
By order of 29 April 1976 the Tribunale di Milano stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:
[*The Advocate General repeated the questions, and continued:*]

II

My view on these questions is as follows.
1. The first question is intended to determine whether the relevant Community measures, namely Council Directive 72/166 of 24 April 1972 [FN10], Commission Recommendation 73/185/EEC of 15 May 1973 [FN11] and First Commission Decision 74/166/EEC of 6 February 1974 [FN12] are to be interpreted as containing an authorisation of measures by individual States, agreements, decisions and concerted practices which have the effect of restricting the activities of loss adjusters or of excluding them from the settlement of claims in respect of accidents caused by foreign motor vehicles. To anticipate matters I may say at once that in accordance with all the views put forward in the proceedings I would answer this question in the negative.

FN10 [1972] O.J.Spec.Ed. 360.

FN11 [1973] O.J. L194/13.

FN12 [1974] O.J. L87/13.

Council Directive 72/166, on the approximation of the laws of the member-States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability, contains--apart from the question of the territorial extent of the guarantee arising from contracts relating to civil liability insurance for motor vehicles--no measures at all on the co-ordination or approximation of national legal provisions. On the contrary it presupposes the conclusion of an agreement between national bureaux which is intended to make it possible to remove the checks on the green card at frontiers within the Community. In particular Article 2 (2) of the Directive provides that:

'As regards vehicles normally based in the territory of a member-State, the provisions of this Directive, with the exception of Articles 3 and 4, shall take effect:

after an agreement has been concluded between the six national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another member-State, whether or not such vehicles are insured;

from the date fixed by the Commission, upon its having ascertained in close co-operation with the member-States that such an agreement has been concluded;

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for the duration of that agreement.'

Commission Recommendation 73/185/EEC and Commission Decision 74/166/EEC merely confirm the conclusion of the agreements provided for in the Council Directive between the national bureaux of the original member-States on 16 October 1972 and between the national bureaux of all member-States on 12 December 1973 and derive from this the conclusion in accordance with the directive that from that time the checks on the green card at frontiers within the Community be abolished. Thus neither the text nor the sense and purpose of the Community provisions referred to support the view that they should authorise any restrictions on the activity of loss adjusters.

However, as the Italian Government correctly pointed out, the provisions of the Council Directive could only take effect after the agreements between the national bureaux of the member-States had been concluded; its effectiveness is also restricted to the duration of those agreements. In the context of the first question therefore we must also examine the Agreement between Bureaux in order to determine the scope of the provisions of Community law which are complemented by the Agreement and the interpretation of which must accord with the interpretation of the Agreement.

In the view of the plaintiff in the main action Articles 4 (b), 6 and 7 of the Agreement between Bureaux contain inadmissible restrictions on competition. In my view this is certainly not the case. The fact that Article 4 (b) allows the choice of an agent other than a member of the national bureau by a foreign insurer only

in the terms of an optional clause which the national bureau concerned may or may not accept on concluding the agreement takes account of the fact that the law and organisation of compulsory insurance against civil liability in respect of motor vehicles in the individual member-States is entirely different. For that reason each national bureau must accept the agreement in a form which is compatible with national law. Under Italian law a person can only act as an insurer if he is authorised for that purpose by the State, if he complies with certain requirements in respect of assets, lodges certain securities, sets up certain reserves and is subject to control by the State. In addition the Italian law reserves a decision as to the compensation of the victim of an accident exclusively to an insurer who is resident in Italy or a foreign insurer who has a branch office in Italy. In view of these rules the Italian bureau could only adopt optional subclause (i). In addition the fact that the Ufficio Centrale has freedom of choice of insurance correspondents and can revoke an appointment at any time is a logical consequence of the liability of the Ufficio *495 Centrale to the victim of an accident. The same applies to the rules contained in Articles 6 and 7 of the Agreement between Bureaux.

The plaintiff in the main action argues that the Agreement between bureaux improperly restricts the foreign insurer who has no branch office in Italy in the choice of his assistants in that he cannot instruct a loss adjuster in whom he has confidence with the settlement of an accident claim. In reality, however, the Agreement between Bureaux does not exclude the possibility of entrusting to a loss adjuster his normal business of handling the accident claim and preparing the settlement by collecting all documents which are relevant in determining the amounts of compensation. A foreign insurer with no branch office in Italy is in fact not prevented by the Agreement between Bureaux from requesting the Italian insurer whom he has selected as correspondent or who was appointed as his correspondent by the Ufficio Centrale to avail himself of the services of a particular loss adjuster in settling the accident claim. The whole business of settling cannot in any case be undertaken by a loss adjuster as he cannot pay the compensation on his own authority and under Italian law has no power to do so.

In conclusion it can therefore be stated that the Agreement between Bureaux which in a way is a component of Community rules does not authorise any measures restricting competition.

2. The second question seeks to determine whether the provisions of Articles 85, 86 and 90 of the EEC Treaty on the law relating to competition prohibit measures adopted by individual member-States, agreements between bureaux, decisions or concerted practices which exclude loss adjusters from the settlement of claims in respect of damage caused by foreign motor vehicles even if they have been expressly nominated by the insurers of the person causing the damage operating in the country of origin.

(a) In so far as this question concerns the *Agreement between Bureaux* I have already answered it in my remarks concerning provisions of Community law to the effect that the Agreement between Bureaux contains no provision which prevents loss adjusters from co-operating in settling in the course of their normal

auxiliary activities claims in respect of accidents which have been caused by foreign motor vehicles. From this standpoint therefore the agreement infringes neither Article 85 nor Article 86 of the EEC Treaty.

(b) *Italian law* requires that the settlement of claims in respect of damage caused by foreign motor vehicles in Italian territory shall be carried out solely on the responsibility of the Ufficio Centrale. This responsibility and the liability towards the victim of the accident continue to exist if the Ufficio Centrale transfers the settlement of the claim for damage to an insurer established in Italy or the branch office in Italy of the foreign insurer concerned as is expressly permitted by Italian law. On the other hand Italian law does not allow the Ufficio Centrale on application by a foreign insurer who has *496 no branch office in Italy to employ a loss adjuster as direct assistant. Under Italian law only insurers who are resident in Italy or have a branch office there are entitled to make a final decision as to the settlement of claims for damage by determining the amount of the compensation and to pay it. In agreement with the Commission I regard this rule as justified because it serves to protect the victim of an accident. If it were permissible for a foreign insurer directly or by the intermediary of a loss adjuster, who certainly cannot make the final decision as to the payment of compensation, to settle an accident claim in the event of any dispute the victim of the accident would have to seek to enforce his rights outside Italy. It would thus make it very difficult for him to ensure compliance with the conditions and guarantees applicable to damages. However, if it were permissible for the loss adjuster to take the final decision as to compensation on behalf of the foreign insurer this would amount to an evasion of the Italian law quite apart from the fact that the loss adjuster would be exceeding his powers and *de facto* would be operating as an insurer in evasion of the legal provisions relating to insurers. In so far as the Italian law excludes loss adjusters as direct correspondents of a foreign insurer who has no branch office in Italy the law relating to competition remains unaffected, as a loss adjuster is something quite distinct from an insurer and consequently can certainly not be in competition with him. The typical business of a loss adjuster consists in particular in auxiliary services on behalf of an insurer but he cannot himself act as an insurer.

On the other hand no provision of Italian law prevents the employment of a loss adjuster by an insurer in connection with the settlement of motor accident claims whether a foreign motor vehicle is involved or not, for the assistance which lies within the scope of a business of this kind. The fact that a foreign insurer who has no branch office in Italy can only appoint the loss adjuster in whom he has confidence through the intermediary of an Italian correspondent in my opinion does not detrimentally affect his competitive position to an unjustified extent because this indirect method is an appropriate and reasonable consequence of the system necessary to protect the victim of an accident.

In conclusion it can therefore be stated that in respect of the green card system Italian law does not give rise to any unauthorised restriction on competition.

(c) The plaintiff in the main action alleges that the Ufficio Centrale and its member companies had shown signs of *conduct* prohibited by the law on competition contained in the EEC Treaty in their implementation of the green

card system. The conduct consisted on the one hand in the fact that the Ufficio Centrale did not adopt the optional clause of Article 4 (b) (iii) of the Uniform Agreement between Bureaux. Further the Ufficio Centrale took the decision not *497 to admit loss adjusters as assistants to insurers in settling claims in respect of accidents in which foreign motor vehicles were involved. In addition the members of the Ufficio Centrale, apparently on the basis of a recommendation from the Ufficio Centrale or by mutual agreement, had to a considerable extent refused to employ loss adjusters as assistants at the request of foreign insurers. I have already pointed out above that the failure to adopt the optional clause in Article 4 (b) (iii) of the Uniform Agreement between Bureaux arose out of the requirements of Italian law and had no detrimental effects on competition.

It is for the national court hearing the main action to clarify to what extent there exist decisions by the Ufficio Centrale or courses of conduct agreed by its member companies which have the effect of completely excluding loss adjusters from collaboration in the settlement of claims in respect of accidents involving foreign motor vehicles which forms part of their normal business, since such conduct is denied by the Ufficio Centrale. However, if such conduct is proved it would for several reasons infringe the provisions on competition contained in the EEC Treaty. Such an exclusion of loss adjusters from the auxiliary work appropriate to them which does fall within their sphere of competence would in certain insurance cases preclude any competition with insurers from loss adjusters in offering their auxiliary services. Further, it would make it impossible for foreign insurers in settling an accident claim to rely at least indirectly on the services of a loss adjuster in whom they have confidence and it would thereby deprive them of an important factor in their competition with other insurers. Such detrimental effects to the competitiveness of foreign insurers are not brought about by the green card system and do not therefore call for consideration. The alleged conduct of the Ufficio Centrale and its member companies would also detrimentally affect the provision of services between the member-States of the EEC in that it would prevent undertakings of one member-State from offering their services to undertakings of another member-State and would hinder the latter undertakings in making use of the services of the former. Consequently it would infringe Article 85 (1) of the EEC Treaty. The same conduct would in view of the legal monopoly of the Ufficio Centrale and thus of its member companies constitute an abuse of a dominant position within the meaning of Article 86 of the EEC Treaty. On the other hand the provisions of Italian law, which, as we have seen, do not produce any effects detrimental to competition, can also not be regarded as measures adopted by a State which fall under the prohibition contained in Article 90 (1) of the EEC Treaty.

3. The third question asks whether Articles 7, 52 and 59 of the EEC Treaty prohibit any provision of national law or any action the effect of which is directly or indirectly to obstruct in a member-State the carrying out of the business of the settlement of claims by *498 a loss adjuster established in the territory of the said member-State, even if the provision relates to a national insurers' bureau or the action is to be attributed to that bureau. My answer to this question may be put very briefly.

Article 7 of the EEC Treaty is a general provision which prohibits all discrimination on the grounds of nationality. With regard to freedom of establishment and the freedom to provide services there exist the specific provisions of Articles 52 and 59 of the EEC Treaty which guarantee the application of the principle set out in **Article 7** in their respective spheres. Thus if a rule is compatible with **Articles 52** and **59** it is also compatible with the principle of **Article 7.**

The plaintiff in the main action is a company incorporated under Italian law. In so far as Italian law and the consequent course of conduct of the Ufficio Centrale exclude loss adjusters as *direct* assistants to foreign insurers who do not have a branch office in Italy in settling insurance claims in which foreign motor vehicles are involved the exclusion relates to all loss adjusters without regard to their nationality. It is therefore not evident in what way this can constitute an infringement of Article 52 or Article 59 of the EEC Treaty. However there does not appear to exist an indirect infringement of the right to freedom of establishment and to freedom to provide services as is alleged by the plaintiff in the main action. There exists no provision of Italian law whereby loss adjusters are to be excluded irrespective of their nationality from co-operating in settling insurance claims in which only Italian motor vehicles are involved. There further does not appear to exist any evidence for a practice to this effect by the Ufficio Centrale or the Italian insurers. Finally I have already shown in detail that the fact that foreign insurers who have no branch office in Italy can only entrust a loss adjuster in whom they have confidence with the settlement of claims in respect of accidents in which foreign motor vehicles were involved by acting through the intermediary of an Italian insurer does not constitute disproportionate discrimination against the foreign insurer. For this reason Article 62 of the EEC Treaty is also not applicable as there only exists an insignificant alteration of the legal position of the above-mentioned foreign insurers which moreover was caused by the introduction of compulsory insurance for motor vehicles in Italy.

In conclusion, therefore, it may be stated that neither the freedom of establishment nor the freedom to provide services has been detrimentally affected by the green card system and its implementation in Italy.

4. The fourth question was only asked in the event of the first question being answered in the affirmative. As stated above, that question should in my opinion be answered in the negative and it is therefore no longer necessary to answer the fourth question.

*499 **III**

I suggest that the following answers should be given to the questions referred by the Tribunale Civile e Penale di Milano:

1. Neither Council Directive 72/166/EEC nor Commission Recommendation 73/185/EEC nor Commission Decision 74/166/EEC is to be interpreted as authorising provisions of national law, agreements, decisions, concerted practices or conduct which have as their object or effect the restriction or exclusion of undertakings in their activities where such activities consist solely in the settlement of claims in respect of damage caused by foreign motor vehicles

on behalf of insurers on whom the final decision rests.
2. (a) A provision of national law or an agreement between bureaux which transfers exclusive responsibility to the victim of an accident for the settlement of claims in respect of damage caused by foreign motor vehicles in the territory of that member-State but which does not exclude the possibility that undertakings whose activities consist solely in the settlement of accident claims on behalf of insurers may be used to collaborate in this settlement does not infringe Articles 85 and 86 of the EEC Treaty.
(b) A decision or conduct of a national bureau or concerted practice by its members which is intended to exclude or is likely to exclude undertakings whose activities consist solely in the settlement of accident claims on behalf of insurers from the co-operation in the settlement of claims in respect of accidents caused by foreign motor vehicles which is characteristic of their activities does fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, of Article 86 of the EEC Treaty.
3. Rules or conduct which reserve to the national bureau of a member-State or to insurance companies which are resident in the territory of the member-State concerned or have a branch office there the settlement of insurance claims in respect of accidents which are caused in the territory of the member-State by motor vehicles based in another member-State are not discriminatory within the meaning of Articles 52 and 59 of the EEC Treaty as they exclude undertakings which are not insurers from the settlement of such insurance claims irrespective of their nationality.

JUDGMENT

[1] By order of 29 April 1976 which was received at the Court Registry on 27 September 1976 the Tribunale Civile e Penale of Milan referred to the Court, pursuant to Article 177 of the EEC Treaty, four questions relating to the interpretation of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the member-States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of *500 the obligation to insure against such liability, [FN13] of Commission Recommendation 73/185/EEC of 15 May 1973, [FN14] of First Commission Decision 74/166/EEC of 6 February 1974 [FN15] and of Articles 7, 52, 59, 85, 86 and 90 of the Treaty.

FN13 [1972] O.J.Spec.Ed. 360.

FN14 [1973] O.J. L194/13.

FN15 [1974] O.J. L87/14.

[2] These questions were raised in the course of proceedings between a loss adjusters' undertaking, the plaintiff in the main action, and the Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale,

hereinafter referred to as 'the Ufficio Centrale', the defendant in the main action, wherein the plaintiff requested the national court to declare illegal the claim made by the Ufficio Centrale that it could entrust the investigation and settlement of claims in respect of accidents caused by motor vehicles insured abroad solely to those insurance companies which are affiliated to the defendant and, consequently, to declare illegal any action taken by the Ufficio Centrale in relation to third persons in order to restrict the free activities of the plaintiff and to send its customers elsewhere.

[3] The Ufficio Centrale is the national bureau, recognised by national legislation, to which are affiliated all or most of the insurers against civil liability in respect of motor vehicles who operate in Italy and it is responsible under the so-called 'green card' system for compensation in respect of accidents caused by motor vehicles insured by foreign insurance companies in the terms of the agreements between the national bureaux of countries adopting that system or, following Supplementary Agreements, caused by foreign vehicles which are not insured.

General observations

[4] Two observations of a general nature may be made in respect of the questions referred, the first relating to the meaning of the word 'settle' used in the questions and the other concerning the development of the green card system in the Community context.

[5] (a) In the text of the questions with regard to loss adjusters the Italian court refers to their business as being the 'settling' of accident claims caused by foreign vehicles. However it is evident from the file that the profession of loss adjuster consists in particular in supplying an insurance company with extensive, accurate and complete information to enable it to decide whether or not the accident should give rise to payment of damages and the amount of such damages while the final decision as to payment is always to be taken by the insurer. In comparison to an insurer a loss adjuster plays an auxiliary and not indispensable role in view of the fact that an insurer can carry out the same tasks through his own organisation. In the reply to be given to the questions referred the word 'settle' *501 with regard to the profession of loss adjuster must be understood in this limited sense.

[6] (b) It also appears from the file that pursuant to an international agreement to which all member-States both new and old are parties, which was signed at Strasbourg on 20 April 1959, the system of compulsory insurance for civil liability in respect of motor vehicles was adopted by Italy and that the Ufficio Centrale has to assume direct responsibility, both by virtue of the national legislation and by virtue of a system of bilateral agreements, for settling the amount of the damages in respect of any accident caused in Italy by a foreign vehicle whose driver possesses a green card.

[7] Under section 6 of the Italian Act 990 of 24 December 1969 vehicles registered or listed in foreign States which are being driven temporarily in the territory of Italy must be covered by an insurance policy within the meaning of the said Act. Nevertheless the obligation to be insured is to be deemed to have been

discharged if the driver is in possession of an international certificate of insurance issued by the appropriate body constituted abroad known as the 'Paying Bureau' which testifies to the existence of an insurance policy for civil liability for damage caused by the vehicle provided that the certificate is recognised by the Ufficio Centrale authorised for this purpose by Decree of the Minister for Industry of 26 May 1971.

[8] The Agreements between Bureaux which constitute an integral part of the green card system provide that where an accident results in a claim being made against an insured the bureau in the country where the accident took place, known as the 'Handling Bureau', will handle and settle such claim as if the Policy of Insurance had been issued by it. If the Paying Bureau, having supplied a certificate to a member which itself issued it to an insured, has an organisation situated in the country of the Handling Bureau and established there for the purpose of transacting motor insurance, the Handling Bureau will, if so requested, leave the handling and settlement of claims to the member.

[9] On the other hand it is only by virtue of an optional clause (optional clause 4 (b) of the Uniform Agreement between Bureaux) that the Paying Bureau may request the Handling Bureau to leave the handling and settlement of claims to a nominated correspondent, who, in the terms of that clause, may be one of the following:

(i) a member of the Handling Bureau;

(ii) an organisation established in the country of the Handling Bureau for the purpose of transacting insurance, whether motor insurance or some other class of insurance;

(iii) an organisation established in the country of the Handling Bureau and specialising in the handling of claims on behalf of insurers.

*502 Even when the Handling Bureau has accepted the optional clause the nominated correspondent remains responsible to the Handling Bureau for the handling of claims as the duly appointed agent of the said bureau and must comply with both the general and particular instructions received from the Handling Bureau.

[10] On the Community plan Council Directive 72/166 of 24 April 1972 concerns the approximation of the laws of the member-States relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability and has the object of facilitating the free movement of goods and of persons by abolishing checks at the frontier on green cards for vehicles normally based in a member-State entering the territory of another member-State. In the terms of the seventh recital in the preamble to that directive that objective can be effected by means of an agreement between the six national insurers' bureaux, whereby each national bureau would guarantee compensation in accordance with the provisions of national law in respect of any loss or injury giving entitlement to compensation caused in its territory by one of those vehicles, whether or not insured.

[11] By Recommendation 73/185/EEC of 15 May 1973 the Commission, reciting

that the original member-States had taken or were about to take the measures necessary to comply with the directive of 24 April 1972 provided in Article 1 that: 'From 1 July 1973 each original member-State shall refrain from making checks on insurance against civil liability in respect of the use of vehicles which are normally based in the European territory of another original member-State and have not been the subject of notification under Article 4 (b) of the Council Directive of 24 April 1972'.
[12] By Decision 74/166/EEC of 6 February 1974 the Commission, reciting that on 12 December 1973 the national insurers' bureaux of member-States had concluded an agreement in conformity with the said directive provided that: 'From 15 May 1974 each member-State shall refrain from making checks on insurance against civil liability in respect of vehicles which are normally based in the European territory of another member-State and which are the subject of the Agreement of national insurers' bureaux of 12 December 1973'.
[13] Thus the objective of the aforementioned directive, to facilitate the free movement of goods and of persons, has been achieved by means of the said agreements and the said decision.

The first question

[14] This question seeks to ascertain whether the said directive, recommendation and decision must be interpreted as authorising provisions of national law, agreements, decisions and practices agreed *503 between national insurers' bureaux or action by an individual national bureau or of the undertakings affiliated thereto which have as their object or effect the restriction of the business of loss adjusters in the sphere of the settlement of claims in respect of accidents caused by foreign vehicles.
[15] The said directive, recommendation and decision seeking, as set out above, to abolish checks on the green card at frontiers between member-States cannot be regarded as authorising the existence of national provisions or agreements between national insurers, bureaux or their members which are incompatible with the provisions of the Treaty relating to competition, the right of establishment and the freedom to provide services. *A fortiori* they may not authorise any agreements or practices agreed between national insurers' bureaux or any conduct by them which is incompatible with the said provisions of the Treaty.

The second question

[16] The second question seeks to ascertain whether the provisions of Articles 85, 86 and 90 of the Treaty relating to competition prohibit any provision of national law, any agreement between bureaux and any decision or concerted practice which tends to exclude loss adjusters from the settlement of claims in respect of damage caused by foreign vehicles even though they may have been nominated by the insurers of the vehicles causing the damage who are based in its country of origin.
[17] It is necessary to deal separately with the national provisions and the

agreements between bureaux on the one hand and the decisions and concerted practices on the other.

National provisions and agreements between bureaux

[18] The green card system, recognised and perfected by Community provisions, is intended to facilitate the free movement of persons and goods while safeguarding the interests of persons who have suffered loss or injury by the creation in each member-Country of a national bureau composed of insurance companies each one of which is subject to particular checks and to the obligation to supply the guarantees required by national law. Thus a national provision which reserves exclusively to insurance companies the settlement of claims in respect of accidents caused by foreign vehicles in the sense of the final decision concerning the compensation of the accident victims does comply with one of the objectives of the green card system. In giving to the national bureau whose members are insurance companies the exclusive right itself to settle accident claims within the meaning referred to above, or to entrust settlement to one of its members, the member-State does not lay down any measure contrary to the rules of the Treaty, in particular Article 90 in conjunction with Articles 85 and 86, so long *504 as such exclusivity does not conflict with the freedom of the insurer to whom the settlement is entrusted to rely, for the purposes of the investigation of the accident claim, on another undertaking specialized in such matters which is not a member of the bureau.
[19] In the view of the plaintiff in the main action the refusal of the Italian bureau to incorporate in its agreements the optional clause so that members of foreign bureaux are denied the opportunity of choosing as their correspondent in Italy for the handling and settlement of claims an organisation of the kind referred to under (b) (iii) of that clause, constitutes a decision, by an association of insurance undertakings, prohibited by Article 85 (1) of the Treaty.
[20] Where the national legislation restricts the business of insurance, including the decision concerning the compensation of accident victims, exclusively to insurers, the adoption of that optional clause would enable the foreign insurer to evade the said legislation by means of a loss adjuster. Furthermore, where the national legislation specifies that liability to persons injured is always borne by the Handling Bureau, the abandonment of the handling and settlement of a claim to an organisation which is not a member of the bureau and which does not do the business of an insurer would run contrary to the national legislation. On the other hand there is nothing in the Agreement between Bureaux to exclude the collaboration of loss adjusters in their normal auxiliary business of the settlement of claims in respect of accidents caused by foreign vehicles.
[21] Consequently in this respect the agreement does not infringe either Article 85 or Article 86 of the Treaty.
[22] A national provision or an agreement between national bureaux established in the context of the green card system which declares that the national bureau bears sole responsibility for the settlement of claims for damage caused in the territory of that member-State by vehicles insured by foreign insurance

companies but which still allows the national bureau or its members to rely on undertakings whose business consists solely in the settlement of accident claims on behalf of insurers in the sense of the handling and investigation of claims, is not incompatible with Article 90 (1) of the Treaty in conjunction with Articles 85 and 86.

Decisions and concerted practices

[23] As such national legislation is not incompatible with the provisions of the Treaty relating to competition the refusal of the Handling Bureau, in implementation of such legislation, to accept the optional clause in its entirety, and in particular subclause (b) (iii) of that clause, cannot constitute an infringement of **Articles 85** and **86** of the Treaty. Furthermore, neither such legislation nor the fact that the optional clause was not accepted prevents the Handling Bureau or its members from having recourse, if they deem it necessary, *505 to a loss adjuster for his normal, auxiliary business, that is to say the handling and investigation of accident claims.
[24] A decision or a course of conduct of a national bureau or concerted practices of its members which have the object or effect of excluding undertakings whose business consists solely in the settlement, in the restricted sense referred to above, of accident claims on behalf of insurers, may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition contained in Article 90 of the Treaty in conjunction with Article 86.
[25] It is for the national court to determine whether the conditions for the application of those prohibitions are fulfilled.

The Third question

[26] The third question asks whether Articles 7, 52 and 59 of the Treaty prohibit any provision of national law or any action the effect of which is directly or indirectly to obstruct in a member-State the effective carrying on of the business of a loss adjuster established in that member-State, even if the provision concerns a national insurers' bureau within the meaning of the definition given in Directive 72/166 or when the conduct is attributable to that bureau.
[27] Article 7 of the Treaty prohibits in general terms all discrimination based on nationality. In the respective spheres of the right of establishment and the freedom to provide services Articles 52 and 59 guarantee the application of the principle laid down by **Article 7.** It follows therefore that if rules are compatible with **Articles 52** and **59** they are also compatible with **Article 7.**
[28] **Articles 52** and **59** prohibit directly any discrimination based on nationality. For discrimination to fall under the prohibitions contained in those **Articles** it suffices that such discrimination result from rules of whatever kind which seek to govern collectively the carrying on of the business in question. In that case it is not relevant whether the discrimination originated in measures of a public authority or, on the contrary, in measures attributable to the national insurers'

bureaux, that is to say the bureaux answering to the definition set out in Directive 72/166.
[29] Nevertheless, the fact of reserving to insurance companies or to such a national bureau established in the territory where the accident was caused by a vehicle normally based in another member-State the decision concerning the compensation of the victim does not constitute discrimination within the meaning of Articles 52 and 59 if the exclusion of other categories of undertakings is not based on the criterion of nationality.
[30] Rules or conduct having the effect of reserving to the national bureau of a member-State or to its members or to insurance companies with an establishment there the final decision as to the payment *506 of damages to victims of accidents caused in the territory of that State by vehicles normally based in another member-State are not discriminatory within the meaning of **Articles 52** and **59** of the Treaty.

The fourth question

[31] As the answer to the first question was in the negative the fourth question has lost its purpose.

Costs

[32] The costs incurred by the Italian government and the Commission of the European Communities which submitted observations to the Court are not recoverable and as these proceedings are, 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.

Order

On those grounds, THE COURT, in answer to the questions referred to it by the Tribunale Civile e Penale di Milano by order of 29 April 1976,
HEREBY RULES:
1. Council Directive 72/166/EEC of 24 April 1972, Commission Recommendation 73/185/EEC of 15 May 1973 and Commission Decision 74/166/EEC of 6 February 1974 which seek to abolish checks on the green card at frontiers between member-States cannot be regarded as authorising the existence of national provisions or agreements between national insurance bureaux or their members which are incompatible with the provisions of the Treaty relating to competition, the right of establishment and the freedom to provide services.
2
(a). A national provision or an agreement between national bureaux established in the context of the green card system which declares that the national bureau bears sole responsibility for the settlement of claims for damage caused in the territory of that member-State by vehicles insured by foreign insurance companies but which still allows the national bureau or its members to rely on

undertakings whose business consists solely in the settlement of accident claims on behalf of insurers in the sense of the handling and investigation of claims, is not incompatible with Article 90 (1) of the Treaty in conjunction with Articles 85 and 86.
(b) A decision or a course of conduct of a national bureau or concerted practices of its members which have the *507 object or effect of excluding undertakings whose business consists solely in the settlement, in the restricted sense referred to above, of accident claims on behalf of insurers, may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition contained in Article 90 of the Treaty in conjunction with Article 86.
3. Rules or conduct having the effect of reserving to the national bureau of a member-State or to its members or insurance companies with an establishment there the final decision as to the payment of damages to victims of accidents caused in the territory of that State by vehicles normally based in another member-State are not discriminatory within the meaning of Articles 52 and 59 of the Treaty.

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