Article 8(2) and (3) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, and Article 5(1) of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils;

2. *Orders the Republic of Finland to pay the costs;*

3. *Orders the Kingdom of Sweden to bear its own costs.*

(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 27 November 2003

In Joined Cases C-34/01 to C-38/01 (Reference for a preliminary ruling from the Corte Suprema di Cassazione): Enirisorse SpA v Ministero delle Finanze (1)

(Public undertakings — Transfer to public undertakings of a proportion of port charges paid to the State — Competition — Abuse of a dominant position — State aid — Charge having equivalent effect — Internal taxation — Free movement of goods)

(2004/C 21/06)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Joined Cases C-34/01 to C-38/01: Reference to the Court under Article 234 EC by the Corte Suprema di Cassazione (Italy) for a preliminary ruling in the proceedings pending before that court between Enirisorse SpA and Ministero delle Finanze, on the interpretation of Article 12 of the EC Treaty (now, after amendment, Article 25 EC), Article 13 of the EC Treaty (repealed by the Treaty of Amsterdam), Article 30 of the EC Treaty (now, after amendment, Article 28 EC), Articles 86 and 90 of the EC Treaty (now Articles 82 EC and 86 EC), Article 92 of the EC Treaty (now, after amendment, Article 87 EC), Article 93 of the EC Treaty (now Article 88 EC) and Article 95 of the EC Treaty (now, after amendment, Article 90 EC), the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C. W. A. Timmermans, A. Rosas, D. A. O. Edward and S. von Bahr (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 27 November 2003, in which it has ruled:

1. *A measure by which a Member State allocates to a public undertaking a significant proportion of charges, such as the port charges at issue in the main proceedings, must be classified as State aid within the meaning of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC), in so far as it affects trade between Member States, if:*

   — *the allocation of the charges is not linked to clearly defined public-service duties, and/or*

   — *the compensation allegedly necessary in order for those duties to be performed has not been calculated on the basis of parameters established in advance in an objective and transparent manner, so as to prevent that compensation from conferring an economic advantage which might favour the recipient undertaking over competing undertakings.*

   Not only the allocation of a proportion of the charges to a public undertaking, but also the collection from users of the proportion corresponding to the amount so allocated, may constitute State aid incompatible with the common market. If the aid has not been notified, it is for the national court to take all measures necessary, under its national law, to prevent both the allocation of a proportion of the charges to the recipient undertakings and the collection of that proportion of the charges;

   The fact that the collection and allocation of a proportion of the charges may be unlawful concerns only that proportion of the charges paid to the public undertaking in question and does not affect the charges as a whole.

2. *Charges, such as the port charges at issue in the main proceedings, constitute internal taxation within the meaning of Article 95 of the EC Treaty (now, after amendment, Article 90 EC) not falling within the ambit of Article 12 or Article 30 of the EC Treaty (now, after amendment, Articles 25 EC and 28 EC). In the absence of any unequal treatment discriminating against goods from other Member States, the measure by virtue of which a Member State provides for the collection of those charges and the allocation of a significant proportion thereof to a public undertaking, when the sum so allocated corresponds to a service actually provided by that undertaking, does not infringe Article 95.*

(1) OJ C 79 of 10.3.2001.