JUDGMENT OF THE COURT (Second Chamber)

9 March 2006 *

In Case C-174/05,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 19 April 2005, received at the Court on the same day, in the proceedings

Stichting Zuid-Hollandse Milieufederatie,

Stichting Natuur en Milieu

v

College voor de toelating van bestrijdingsmiddelen,

Joined party:

Bayer CropScience BV,

* Language of the case: Dutch.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, R. Schintgen, P. Kūris and J. Klučka (Rapporteur), Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Stichting Zuid-Hollandse Milieufederatie, by J. Rutteman, acting as Agent,

— the College voor de toelating van bestrijdingsmiddelen, by R.J.M. van den Tweel, advocaat,

— Bayer CropScience BV, by D. Waelbroeck, avocat,

— the Netherlands Government, by H.G. Sevenster, acting as Agent,

— the Belgian Government, by M. Wimmer, acting as Agent,

— the Greek Government, by G. Kanellopoulos and S. Papaïoannou, acting as Agents,

— the Council of the European Union, by F.P. Ruggeri Laderchi, Z. Kupčová and B. Driessen, acting as Agents,

— the Commission of the European Communities, by B. Doherty and M. van Heezik, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the validity of Article 2(3) of Council Decision 2003/199/EC of 18 March 2003 concerning the non-inclusion of aldicarb in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2003 L 76, p. 21).

2 This reference has been made in the course of proceedings between the Stichting Zuid-Hollandse Milieufederatie and the Stichting Natuur en Milieu (hereinafter referred to together as 'the foundations') and the College voor de toelating van bestrijdingsmiddelen (Board for the Authorisation of Pesticides) (hereinafter 'the Board') regarding the decision given by the latter on 20 February 2004.

3 By that decision, the Board rejected as unfounded the objection made against its decision of 11 July 2003, as amended by that of 1 August 2003, by which, pursuant to Decision 2003/199, it withdrew the authorisation to place all the plant protection products containing the active substance 'aldicarb' on the market, with the exception of authorisations issued for essential uses of those products.

Legal context

Directive 91/414

4 The first and fourth subparagraphs of Article 8(2) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) are worded as follows:

'By way of derogation from Article 4 and without prejudice to paragraph 3 or to Directive 79/117/EEC, a Member State may, during a period of 12 years following the notification of this Directive, authorise the placing on the market in its territory

of plant protection products containing active substances not listed in Annex I that are already on the market two years after the date of notification of this Directive.

...

During the 12-year period referred to in the first subparagraph it may, following examination by the Committee referred to in Article 19 of such active substance, be decided by the procedure laid down in that Article that the substance can be included in Annex I and under which conditions, or, in cases where the requirements of Article 5 are not satisfied or the requisite information and data have not been submitted within the prescribed period, that such active substance will not be included in Annex I. The Member States shall ensure that the relevant authorisations are granted, withdrawn or varied, as appropriate, within a prescribed period.'

5 Under Article 8(4) and '[b]y way of further derogation from Article 4, in special circumstances a Member State may authorise for a period not exceeding 120 days the placing on the market of plant protection products not complying with Article 4 for a limited and controlled use if such a measure appears necessary because of an unforeseeable danger which cannot be contained by other means. In this case, the Member State concerned shall immediately inform the other Member States and the Commission of its action. It shall be decided without delay, in accordance with the procedure laid down in Article 19, whether and under which conditions the action taken by the Member State may be extended for a given period, repeated, or revoked'.

Decision 2003/199

6 The ninth recital in the preamble to Decision 2003/199 states:

'Measures should be taken to ensure that existing authorisations for plant protection products containing aldicarb are withdrawn within a prescribed period and will not be renewed and that no new authorisations for such products are granted.'

7 According to the tenth recital in the preamble to that decision:

'In the light of the information before the Council it appears that, in the absence of efficient alternatives for certain limited uses in certain Member States, there is a need for further use of the active substance so as to enable the development of alternatives. It is therefore justified in the present circumstances to prescribe under strict conditions aimed at minimising risk ... a longer period for the withdrawal of existing authorisations for the limited uses considered as essential for which no efficient alternatives appear currently to be available for the control of harmful organisms.'

8 Article 1 of Decision 2003/199 provides that the active substance 'aldicarb' is not to be included in Annex I to Directive 91/414.

9 In the words of Article 2 of that decision:

'Member States shall ensure that:

1. authorisations for plant protection products containing aldicarb are withdrawn by 18 September 2003;

2. from 18 March 2003 no authorisations for plant protection products containing aldicarb are granted or renewed under the derogation provided for in Article 8 (2) of Directive 91/414/EEC;

3. in relation to the uses listed in column B of the Annex, a Member State specified in column A may maintain in force authorisations for plant protection products containing aldicarb until 30 June 2007 provided that it:

   (a) ensures that such plant protection products remaining on the market are relabelled in order to match the restricted use conditions;

   (b) imposes all appropriate ... measures to reduce any possible risks in order to ensure the protection of human and animal health and the environment; and

(c) ensures that alternative products or methods for such uses are being seriously sought, in particular, by means of action plans.

The Member State concerned shall inform the Commission on 31 December 2004 at the latest on the application of this Article and in particular on the actions taken pursuant to points (a) to (c) and provide on a yearly basis estimates of the amounts of aldicarb used for essential uses pursuant to this Article.'

The main proceedings and the question referred for a preliminary ruling

10 On 9 April 2004, the foundations lodged an appeal against the decision of 20 February 2004 before the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry). In essence they contend that Decision 2003/199 is inconsistent with Directive 91/414 in so far as that directive prohibited any use of a plant protection product if it was not found to comply with the environmental standards defined by that directive.

11 Bayer CropScience intervened in the case in the main proceedings in support of the Board.

12 The national court observes that Decision 2003/199 refers in particular to the third and fourth subparagraphs of Article 8(2) of Directive 91/414 although Article 8(2) provides for no possibility of authorising the placing on the market of plant protection products containing an active substance for which inclusion in Annex I to that directive has been expressly refused.

13 That court observes that only Article 8(4) of Directive 91/414 allows Member States to authorise, in special circumstances and for a period not exceeding 120 days, the placing on the market of plant protection products not complying with Article 4 of that directive if such a measure appears necessary because of an unforeseeable danger which cannot be contained by other means.

14 Some of those conditions are clearly not fulfilled as regards the active substance 'aldicarb'. In particular, there can be no question of unforseeable danger and the period laid down in Article 2(3) of Decision 2003/199 exceeds 120 days.

15 Consequently, the national court considers that Article 2(3) cannot be based on Article 8 of Directive 91/414 and is therefore inconsistent with it.

16 In those circumstances, the College van Beroep voor het bedrijfsleven decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 2(3) of Decision 2003/199 ... valid?'

The question referred for a preliminary ruling

17 By its question, the national court is essentially asking whether Article 2(3) of Decision 2003/199 is consistent with Article 8 of Directive 91/414.

18 An answer to that question initially calls for the interpretation of Article 2(3) of Decision 2003/199 in order subsequently to determine when that provision is consistent with Article 8(2) of Directive 91/414 and, lastly, if it is consistent with it, the carrying-out of a concrete assessment of the detailed rules and time-limits laid down in that provision.

19 First, as regards the interpretation of Article 2(3) of Decision 2003/199, it must be observed at the outset that the action in the main proceedings is essentially due to divergences between the different language versions of that provision. According to the Dutch version, the Member States concerned may grant ('verstrekken') authorisations to place plant protection products containing the active substance 'aldicarb' on the market whereas, according to the other language versions of that provision, those Member States are only able to maintain such authorisations in force.

20 In this respect, firstly, according to settled case-law, where a provision of Community law is open to several interpretations, preference must be given to that interpretation which ensures that the provision retains its effectiveness (see Case 187/87 *Saarland and Others* [1988] ECR 5013, paragraph 19, and Case C-403/99 *Italy* v *Commission* [2001] ECR I-6883, paragraph 28) and which does not detract from its validity (see *Italy* v *Commission*, paragraph 37). Secondly, the need for a uniform interpretation of Community law makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted in the light of the versions existing in the other official languages (see Case 9/79 *Koschniske* [1979] ECR 2717, paragraph 6, and Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36).

21 As regards Decision 2003/199, it must be observed that in the words of the ninth recital in the preamble to that decision, '[m]easures should be taken to ensure that existing authorisations for plant protection products containing aldicarb are

withdrawn within a prescribed period and will not be renewed and that no new authorisations for such products are granted'. Furthermore, the tenth recital in the preamble to that decision adds that 'in the absence of efficient alternatives for certain limited uses in certain Member States, there is a need for further use of the active substance so as to enable the development of alternatives' and therefore for granting 'a longer period for the withdrawal of existing authorisations for the limited uses considered as essential'.

22 A reading of Article 2(3) of that decision which allows Member States to issue new authorisations to place such products on the market, notwithstanding the refusal to include the active substance 'aldicarb' in Annex I to Directive 91/414, is both inconsistent with the general scheme and aims of that directive and contrary to the fourth subparagraph of Article 8(2) of that directive, which, where there is a decision not to include an active substance in that annex, requires that Member States ensure that the relevant authorisations are withdrawn or varied within a prescribed period.

23 Furthermore, as was observed in paragraph 19 of this judgment, such a reading of Article 2(3) of Decision 2003/199 is inconsistent with the other language versions of that provision, in particular the German ('weiter gelten lassen darf'), English ('may maintain in force'), Polish ('może utrzymać w mocy') and Slovak ('môže zachovať v účinnosti') versions.

24 Article 2(3) of Decision 2003/199 must therefore be interpreted as allowing, under certain conditions, the Member States specified in column A of the annex to that decision to maintain in force until 30 June 2007 authorisations to place plant protection products containing the active substance 'aldicarb' on the market for essential uses.

25 Secondly, as regards the question whether Article 8(2) of Directive 91/414 precludes the Council's allowing Member States to maintain in force authorisations to place on the market plant protection products containing an active substance the inclusion of which in Annex I to that directive has been refused, it must be borne in mind that the directive in the fourth subparagraph of Article 8(2) provides that '[t]he Member States shall ensure that the relevant authorisations are granted, withdrawn or varied, as appropriate, within a prescribed period'. It does not, therefore, itself establish the period within which Member States must ensure that those authorisations are withdrawn or varied, but refers in this connection to a 'prescribed period', namely, to a period to be established, if necessary, by an implementing measure.

26 It is therefore by reason of the implementing power which flows from that provision that Article 2(3) of Decision 2003/199 sets the time-limit for the withdrawal of authorisations to place plant protection products containing the active substance 'aldicarb' on the market.

27 Furthermore, since Directive 91/414 contains no restriction in that regard, the principle of establishing different time-limits for the withdrawal of authorisations to place on the market plant protection products containing an active substance with regard to which inclusion in Annex I to that directive has been refused on the basis of the uses for which those products are intended cannot be considered to be inconsistent with the provisions of that directive.

28 Lastly, with respect to a concrete assessment of the detailed rules and time-limits prescribed for the withdrawal of authorisations to place plant protection products containing the active substance 'aldicarb' on the market, it must be borne in mind that the general principle of proportionality requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in

question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see Case 265/87 *Schräder* [1989] ECR 2237, paragraph 21; Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 13; Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 41; and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 81).

29 It follows from this that, within the context of judicial review of the application of such a principle, having regard to the broad discretion enjoyed by the Council in adopting Decision 2003/199, the legality of that measure can be affected only if the measure is manifestly inappropriate having regard to the objective which the Council seeks to pursue (see, to that effect, *Schräder*, paragraph 22; *Fedesa and Others*, paragraph 14; *Crispoltoni and Others*, paragraph 42; and *Jippes and Others*, paragraph 82).

30 In the present case, it is apparent from the reasons underlying Directive 91/414 that it has the objective, firstly, of removing barriers to intra-Community trade in plant products and of improving plant production and, secondly, of protecting human and animal health and the environment.

31 Furthermore, it is apparent from the seventh and tenth recitals in the preamble to Decision 2003/199 that the information before the Council was not sufficient to demonstrate that, under the proposed conditions of use, plant protection products containing the active substance 'aldicarb' satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414 in particular with regard to their possible impact on non-target organisms like small birds and earthworms, but that, in the absence of efficient alternatives to certain limited uses in certain Member

States, it has appeared necessary to allow, for a limited period and under strict conditions aimed at minimising risk, further essential uses of those products.

32 Thus, the establishing of different time-limits for the withdrawal of authorisations to place on the market plant protection products containing the active substance 'aldicarb' on the basis of the use which is made of those products, the restricted nature of the list of essential uses, the application of that exception to only some Member States and the subjection of those uses to a stringent follow-up and monitoring programme, in accordance with the tenth recital in the preamble to Decision 2003/199, are all factors which show that the Council carried out a global assessment of the advantages and drawbacks of the system to be established and that that system was not on any view manifestly inappropriate in the light of the objectives pursued.

33 It follows from the foregoing that examination of the question referred has not disclosed any factor of such a kind as to affect the validity of Article 2(3) of Decision 2003/199.

Costs

34 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Examination of the question referred has not disclosed any factor of such a kind as to affect the validity of Article 2(3) of Council Decision 2003/199/EC of 18 March 2003 concerning the non-inclusion of aldicarb in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance.

[Signatures]