JUDGMENT OF THE COURT (Sixth Chamber)
8 May 2003 *

In Case C-14/02,

REFERENCE to the Court under Article 234 EC by the Conseil d'État (Belgium) for a preliminary ruling in the proceedings pending before that court between

ATRAL SA

and

État belge,

on the interpretation of Articles 28 and 30 EC, of Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (OJ 1973 L 77, p. 29), as amended by Council Directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-

* Language of the case: French.

water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits) (OJ 1993 L 220, p. 1), of Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (OJ 1989 L 139, p. 19), as amended by Directive 93/68, and of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10),

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— ATRAL SA, by E. de Cannart d'Hamale and B. Raevens, avocats,

— the Belgian State, by L. Defalque and X. Leurquin, avocats,

— the Commission of the European Communities, by R. Tricot and R. Amorosi, acting as Agents, assisted by B. van de Walle de Ghelcke, avocat,

having regard to the Report for the Hearing,

after hearing the oral observations of ATRAL SA, represented by E. de Cannart d'Hamale and B. Raevens, the Belgian State, represented by L. Defalque, of the French Government, represented by R. Loosli-Surrans, acting as Agent, and the Commission, represented by X. Lewis, acting as Agent, assisted by B. van de Walle de Ghelcke, at the hearing on 3 October 2002,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2002,

gives the following

Judgment

1 By judgment of 8 January 2002, received at the Court on 22 January 2002, the Conseil d'État (Council of State) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Articles 28 and 30 EC, Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (OJ 1973 L 77, p. 29), as amended by Council

Directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits) (OJ 1993 L 220, p. 1), Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (OJ 1989 L 139, p. 19), as amended by Directive 93/68, and Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10).

2 Those questions were raised in proceedings between ATRAL SA ('ATRAL'), established in Crolles (France), and the Belgian State concerning the marketing in Belgium of certain alarm systems manufactured by that company in France.

Legal framework

Community legislation

3 Directive 73/23 applies, according to Article 1 thereof, to electrical equipment designed for use with a voltage rating of between 50 and 1 000 V for alternating current and between 75 and 1 500 V for direct current other than the equipment listed in Annex II.

4 Article 2 of Directive 73/23 provides:

'1. The Member States shall take all appropriate measures to ensure that electrical equipment may be placed on the market only if, having been constructed in accordance with good engineering practice in safety matters in force in the Community, it does not endanger the safety of persons, domestic animals or property when properly installed and maintained and used in applications for which it was made.

2. The principal elements of the safety objectives referred to in paragraph 1 are listed in Annex I.'

5 Article 3 of Directive 73/23 provides:

'The Member States shall... ensure that if electrical equipment is of such a nature as to comply with the provisions of Article 2, subject to the conditions laid down in Articles 5, 6, 7 and 8, the free movement thereof within the Community shall not be impeded for reasons of safety.'

6 Article 8(1) of Directive 73/23 provides:

'Before being placed on the market, the electrical equipment referred to in Article 1 must have affixed to it the CE marking provided for in Article 10 attesting to its conformity to the provisions of this directive, including the conformity assessment procedure described in Annex IV.'

7 Article 1(1) of Directive 89/336 defines 'apparatus', for the purposes of that directive, as 'all electrical and electronic appliances together with equipment and installations containing electrical and/or electronic components'.

8 The first subparagraph of Article 2(1) of directive 89/336 states:

'This directive applies to apparatus liable to cause electromagnetic disturbance or the performance of which is liable to be affected by such disturbance.'

9 Article 3 of Directive 89/336 provides:

'Member States shall take all appropriate measures to ensure that the apparatus referred to in Article 2 may be placed on the market or taken into service only if it bears the CE marking provided for in Article 10 indicating its conformity to all the provisions of this directive, including the conformity assessment procedures laid down in Article 10, when it is properly installed and maintained and when it is used for the purposes for which it is intended.'

10 Article 5 of Directive 89/336 continues:

'Member States shall not impede for reasons relating to electromagnetic compatibility the placing on the market and the taking into service on their territory of apparatus covered by this directive which satisfies the requirements thereof.'

11 Article 1 of Directive 1999/5 establishes a regulatory framework for the placing on the market, free movement and putting into service in the Community of radio equipment and telecommunications terminal equipment.

12 Article 2(c) of Directive 1999/5 defines 'radio equipment', for the purposes of that directive, as 'a product, or relevant component thereof, capable of communication by means of the emission and/or reception of radio waves utilising the spectrum allocated to terrestrial/space radiocommunication'.

13 Article 3 of Directive 1999/5 states that a number of essential requirements, which it lists, are applicable to all apparatus. It further provides that radio equipment is to be so constructed that it effectively uses the spectrum allocated to terrestrial or space radio communication so as to avoid harmful interference.

14 Article 5(1) of Directive 1999/5 provides that, where apparatus meets the relevant harmonised standards, compliance with the essential requirements referred to in Article 3 thereof is to be presumed.

15 Article 6(1) of Directive 1999/5 provides:

'Member States shall ensure that apparatus is placed on the market only if it complies with the appropriate essential requirements identified in Article 3 and the other relevant provisions of this directive when it is properly installed and maintained and used for its intended purpose. It shall not be subject to further national provisions in respect of placing on the market.'

16 Article 7(1) of Directive 1999/5 further provides:

'Member States shall allow the putting into service of apparatus for its intended purpose where it complies with the appropriate essential requirements identified in Article 3 and the other relevant provisions of this directive.'

17 Article 8(1) of Directive 1999/5 is worded as follows:

'Member States shall not prohibit, restrict or impede the placing on the market and putting into service in their territory of apparatus bearing the CE marking referred to in Annex VII, which indicates its conformity with all provisions of this directive, including the conformity assessment procedures set out in Chapter II. This shall be without prejudice to Articles 6(4), 7(2) and 9(5).'

18 According to the first subparagraph of Article 19(1) of Directive 1999/5:

'Member States shall not later than 7 April 2000 adopt and publish the laws, regulations and administrative provisions necessary to comply with this directive. They shall forthwith inform the Commission thereof. They shall apply these provisions as from 8 April 2000.'

19 Article 21 of Directive 1999/5 provides that it was to enter into force on the day of its publication in the Official *Journal of the European Communities*, that is 7 April 1999.

The national legislation

20 Article 12 of the Belgian Law of 10 April 1990 on caretaking firms, security firms and internal caretaking services (*Moniteur belge* of 29 May 1990, p. 10963, 'the 1990 Law'), until its amendment by the Law of 9 June 1999, which entered into force on 1 November 1999 (*Moniteur belge* of 29 July 1999, p. 28316) provided as follows:

'The alarm systems and networks referred to in Article 1(4) and their components may be marketed or otherwise made available to users only after prior approval has been granted under a procedure to be laid down by royal decree.

The conditions for installing, maintaining and using the alarm systems and networks referred to in Article 1(4) and their components shall also be determined by royal decree.'

21 The first subparagraph of Article 19(1) of the 1990 Law provides:

'A fine of BEF 1 000 to BEF 1 000 000 may be imposed on any natural or legal person contravening this Law or any of its implementing decrees, with the exception of the offences mentioned in Article 18.'

22 On 23 April 1999 a royal decree was adopted on the basis of the first paragraph of Article 12 of the 1990 Law laying down the procedure for approving alarm systems and networks referred to in the Law of 10 April 1990 on caretaking

firms, security firms and internal caretaking services (*Moniteur belge* of 19 June 1999, p. 23217, 'the 1999 decree').

23 Article 1(2) of the 1999 decree defines 'equipment' as 'the alarm systems and networks intended to prevent or record crimes against persons or property'.

24 Article 2 of the 1999 decree provides:

'1. No manufacturer, importer, wholesaler or any other natural or legal person may market new equipment or otherwise make it available to users in Belgium if it has not been previously approved by a committee established for that purpose (the "equipment committee").

2. The equipment committee shall issue in respect of each equipment prototype which is approved an approval certificate, in conformity with the model set out in Annex 1 to this decree, to be kept by the applicant.

The applicant shall affix to the equipment, at his own cost, a label of conformity corresponding to the prototype to be marketed or made available to users.

...

The departments responsible for monitoring the application of the abovementioned 1990 Law and of its implementing decrees may require compliance of the equipment marketed or made available to users to be checked by one of the bodies mentioned in Article 4(1) of this decree. Such a body shall forward an examination report to the equipment committee which, on the basis of such a report, shall declare whether the equipment is in compliance.

The cost of examination shall be borne by the person who commissions approval tests which may lead to approval.'

25 Article 4(1) of the 1999 decree provides:

'The Minister for Home Affairs, after hearing the opinion of the equipment committee, shall draw up a list of bodies specialising in carrying out the tests which may lead to the equipment being approved or in verifying the reports mentioned in Article 9 of this decree.

Applications for approval of the equipment must be sent directly to one of those bodies, which alone are competent to carry out the tests.'

26 Article 5 of the 1999 decree is worded as follows:

'Before conducting the tests themselves, the laboratories must examine the equipment.

The examination shall consist in:

1. identifying the equipment;

2. checking electrical circuits against the documents submitted by the manufacturer;

3. checking the minimum required functions, as described in Annex 3 to this decree.

...'

27 Article 6 of the 1999 decree provides:

'The tests carried out on the equipment concern:

1. functional adequacy

2. mechanical aspects;

3. mechanical and/or electronic reliability;

4. sensitivity to false alarms;

5. protection against fraud or attempts to disable the equipment;

To that end, the equipment shall undergo the tests listed in Annexes 3 and 4 to this decree. Those tests may be applied to the various types of components.

Equipment which uses radio transmission is, moreover, subject to the tests listed in Annex 6.'

28 According to Article 7 of the 1999 decree:

'The laboratories of the bodies referred to in Article 4(1) shall verify whether the equipment submitted meets the requirements listed in Annex 7.

To that end, the applicant must provide the abovementioned laboratories with all the documents relevant to such examination.'

29 Article 9 of the 1999 decree states:

'Certificates and test reports drawn up by bodies approved in other Member States of the European Union and in Member States of the European Free Trade Association, contracting parties to the Agreement on the European Economic Area, are acceptable for the purposes of approving alarm systems and networks imported from those States in so far as they attest to the compliance of those systems and networks with technical standards or rules which guarantee a level of protection equivalent to that provided by this decree.'

30 Article 12 of the 1999 decree provides:

'The operating and administrative costs entailed by the application procedure, tests and compliance verification shall be borne by the applicant.'

31 Under Article 16 thereof, the 1999 decree entered into force on 19 June 1999.

The dispute in the main proceedings and the questions referred for a preliminary ruling

32 ATRAL, a company incorporated under French law, manufactures and markets alarm systems and networks using radio transmission (commonly referred to as

'wireless' alarm systems). Since 1996 it has been marketing alarm systems and networks in Belgium, mainly through large-scale retailers.

33 Until the entry into force of the 1999 decree, the sale of ATRAL products was not subject to regulation, since the legislation then in force — namely the Royal Decree of 31 March 1994 laying down the procedure for approving alarm systems and networks referred to in the Law of 10 April 1990 on caretaking firms, security firms and internal caretaking services — applied only to 'wired-link' alarm systems and networks. Since the entry into force of the 1999 decree, ATRAL has been unable to market its products without previously obtaining approval therefor by the equipment committee.

34 By application lodged on 16 August 1999 at the Conseil d'État, ATRAL sought the annulment of the 1999 decree.

35 ATRAL argued before the Conseil d'État that the 1999 decree infringes Article 28 EC. It claimed that the decree regulates in all essential respects the matters which are the subject of Community harmonisation measures under Directives 73/23, 89/336 and 1999/5 and concluded that the Belgian State was not entitled to impose preventive control of the conformity of alarm systems and networks to the essential requirements laid down by those directives when those directives only authorise subsequent controls, conformity with the aforementioned requirements being attested by the 'CE' marking. According to ATRAL, the Belgian State was entitled to regulate only the non-harmonised areas of that field in accordance with the EC Treaty, in particular Article 28 EC. It submitted, in that regard, that the 1999 decree, in particular Article 9, is not compatible with the principle of mutual recognition inasmuch as such recognition is limited to the tests required in order to obtain prior approval and does not concern mutual recognition of the products themselves. It also contended that the legislation in question is not justified by overriding reasons relating to the public interest since the Belgian State fails to demonstrate specifically what are the essential requirements not already taken into account by the abovementioned directives.

36 The Belgian State contended, on the other hand, that Directives 73/23 and 89/336 do not relate to the matters regulated by the 1999 decree. Directive 1999/5 is not relevant inasmuch as the time-limit for its transposition had not expired on the date which the Conseil d'État must take as material when assessing the validity of that decree, that is 23 April 1999. The Belgian State maintained, therefore, that whether the decree is compatible with Community law must be assessed in the light of Articles 28 to 30 EC alone. In that regard, it stated that, in the present case, a derogation from the general prohibition on measures having equivalent effect is justified both in the interests of consumer protection and by public policy and that it is necessary and proportionate to the aims pursued.

37 Finding that the parties were in dispute as to the application of Directives 73/23 and 89/336 and taking the view that Directive 1999/5 could not be disregarded, the Conseil d'État decided to stay proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Should Directives 73/23, 89/336 and 1999/5 be interpreted:

(a) as applicable to alarm systems and networks, in particular to products of that type which use radio transmission, commonly known as wireless alarm systems,

(b) and, should the answer be in the affirmative, as producing sufficiently significant harmonisation in that field that national provisions governing the same field, such as Article 12 of the 1990 Law and the 1999 decree, must necessarily conform to them?

2. In the event that the reply to the first question is in the affirmative:

(a) Should Article 3 of Directive 73/23, Article 5 of Directive 89/336 and Article 6(1) of Directive 1999/5 be interpreted as prohibiting national provisions which, like Article 12 of the 1990 Law and the 1999 decree, make the placing on the market in a Member State of all alarm systems and networks lawfully produced and/or marketed in another Member State subject to a prior approval procedure relating to components of those alarm systems and networks which satisfy the requirements of the directives referred to?

(b) Secondly, should Directive 73/23, Directive 89/336 and Directive 1999/5 be interpreted as establishing the essential requirements, in relation to alarm systems and networks, for electrical safety, electromagnetic compatibility and radio equipment and, consequently, as precluding national provisions, such as the 1999 decree, which make the placing on the market in Belgium of all alarm systems and networks subject to requirements other than those established in those directives?

(c) Should Articles 28 EC to 30 EC be interpreted as meaning that the prohibition on quantitative restrictions on imports and on measures having equivalent effect applies to national provisions, such as the 1999 decree, which require components of alarm systems and networks not covered by Community harmonisation measures to undergo the same tests in an approved laboratory as equipment placed on the market for the first time?

(d) Should Articles 28 EC to 30 EC be interpreted as meaning that the prohibition on quantitative restrictions on imports and on measures

having equivalent effect allows a Member State to adopt national provisions, such as the 1999 decree, which makes the placing on the market in a Member State of all alarm systems and networks lawfully manufactured and/or marketed in another Member State subject to prior approval and to tests and specific technical requirements, merely relying in the abstract on an overriding reason or requirement, such as consumer protection and/or public policy, which the State considers the Community harmonisation measures do not take into account or, in other words, without specifically demonstrating either that the overriding reason or requirement relied on actually exists or that the Community harmonisation measures do not already take that overriding reason or requirement into account or that the restrictive measure is proportionate to the aim pursued?

3. In the event that the reply to the first question is negative:

(a) Should Articles 28 EC to 30 EC be interpreted as meaning that the prohibition on quantitative restrictions on imports and on measures having equivalent effect applies to national provisions, such as Article 9 of the 1999 decree, which, rather than applying the requirement of mutual recognition to the alarm systems and networks themselves, confine the requirement of mutual recognition to the tests which alarm systems and networks lawfully manufactured and/or marketed in another Member State must undergo in order to obtain authorisation to be placed on the market of a Member State?

(b) Should Articles 28 EC to 30 EC be interpreted as meaning that the prohibition on quantitative restrictions on imports and on measures having equivalent effect applies to national provisions, such as Article 12 of the 1990 Law and the 1999 decree, which impose a prior approval procedure for the placing on the market of a Member State of all alarm systems and networks lawfully manufactured and marketed in another Member State?

(c) Should Articles 28 EC to 30 EC be interpreted as meaning that the prohibition on quantitative restrictions on imports and on measures having equivalent effect applies to national provisions, such as the second paragraph of Article 2 of the 1999 decree, which require the affixing of a national conformity mark to alarm systems and networks lawfully manufactured and/or marketed in another Member State?

(d) Should Articles 28 EC to 30 EC be interpreted as meaning that the prohibition on quantitative restrictions on imports and on measures having equivalent effect applies to national provisions, such as Article 9 of the 1999 decree, which require components of alarm systems and networks to undergo the same tests in an authorised laboratory as equipment being placed on the market for the first time?

(e) Should Articles 28 EC to 30 EC be interpreted as meaning that the prohibition on quantitative restrictions on imports and on measures having equivalent effect applies to national provisions, such as Article 9 of the 1999 decree, which make the placing on the market in a Member State of all alarm systems and networks lawfully manufactured and/or marketed in another Member State subject to prior approval and to tests and specific technical requirements, by merely relying in the abstract on an overriding reason or requirement, such as consumer protection and/or public policy, or, in other words, without specifically demonstrating either that the overriding reason or requirement relied on actually exists or that the restrictive measure is proportionate to the aim pursued?'

The first question

38 By its first question the national court asks whether Directives 73/23, 89/336 and 1999/5 are applicable to alarm systems and networks, in particular to those

which use radio transmission, and whether they produce sufficiently significant harmonisation in the field that national provisions governing the same fields, such as those at issue in the main proceedings, must necessarily conform to them.

39 As Community law now stands, there is no directive specifically harmonising the laws of the Member States in the field of alarm systems and networks.

40 However, Directive 73/23 applies to electrical equipment designed for use with a voltage rating as defined in Article 1, which may be described as low voltage. That directive thus applies to those components of alarm systems and networks which operate at low voltage.

41 Directive 89/336 applies to apparatus liable to cause electromagnetic disturbance or the performance of which is liable to be affected by such disturbance. Alarm systems and networks satisfy the definition of 'apparatus' laid down in Article 1(1) of that directive and are therefore covered by it so far as concerns protection requirements relating to electromagnetic compatibility.

42 Directive 1999/5 establishes a regulatory framework for the placing on the market, free movement and putting into service in the Community of radio equipment and telecommunications terminal equipment. Alarm systems and networks which use radio transmission fall within the definition of 'radio equipment' laid down in Article 2(c) of that directive and are therefore covered by it.

43 The three directives at issue are therefore applicable to alarm systems and networks, in particular to those which use radio transmission, as regards everything concerning the aspects of their operation relating to use of low voltage, protection against electromagnetic disturbances and emission and/or reception of radio waves.

44 It is clear from the wording and the objective of those directives that they each pursue complete harmonisation in their respective fields of application. It follows that, in the fields covered by those directives, the Member States must conform to them in their entirety and cannot maintain national provisions to the contrary.

45 The answer to the first question must therefore be that Directives 73/23, 89/336 and 1999/5 are applicable to alarm systems and networks, in particular to those which use radio transmission, and that, in the fields covered by those directives, national provisions governing the same field must necessarily conform to the abovementioned directives.

The second question

46 Since the first question has been answered in the affirmative, it is appropriate to examine the second question.

47 By questions 2(a) and (b) the national court is asking, essentially, whether Directives 73/23, 89/336 and 1999/5 preclude national provisions, such as those at issue in the main proceedings, which make subject to a prior approval procedure the placing on the market of alarm systems and networks which satisfy the requirements of those directives and which bear the appropriate 'CE' marking.

48 It is clear from the case-file and the hearing that the 1999 decree is contested in so far as it makes equipment bearing the 'CE' marking subject to prior approval and it is not disputed that the intention of ATRAL is to market in Belgium 'CE' marked equipment.

49 Questions 2(a) and (b) concern matters harmonised by directives 73/23, 89/336 and 1999/5. As the Court has consistently held, national measures relating to such matters must be assessed in the light of those directives and not of Articles 28 EC and 30 EC (see, in particular, Case C-99/01 *Linhart and Biffl* [2002] ECR I-9375, paragraph 18).

50 Article 3 of Directive 73/23, Article 5 of Directive 89/336 and Articles 6 and 8 of Directive 1999/5 ensure the free movement of apparatus which satisfy the provisions of those directives.

51 The abovementioned directives confer a presumption of compliance on apparatus bearing the 'CE' marking. That marking attests the conformity of the apparatus with all the provisions of the directive concerned, including the conformity assessment procedures provided for by the directive.

52 Under that scheme, the manufacturer may place products bearing the 'CE' marking on the market without being obliged to subject them to a prior authorisation procedure.

53 It follows that Directives 73/23, 89/336 and 1999/5 preclude national provisions, such as those at issue in the main proceedings, which, in matters harmonised by those directives, make apparatus bearing the 'CE' marking subject to a prior approval procedure.

54 Consequently, that conclusion is also valid with regard to a provision such as Article 9 of the 1999 decree in so far as it applies to a prior approval procedure imposed on apparatus bearing the 'CE' marking.

55 Furthermore, the Belgian State argues that Directive 1999/5 was not in force at the time when the application in the main proceedings was lodged, that is 16 August 1999, since it entered into force on 8 April 2000.

56 In that connection, it must be borne in mind that, by virtue of Article 21 thereof, Directive 1999/5 entered into force on 7 April 1999 and that, under Article 19, the time-limit for transposing that directive expired on 7 April 2000.

57 It is therefore apparent that, when the national court was asked to examine the validity of the 1999 decree, namely on 16 August 1999, the time-limit for transposing Directive 1999/5 had not yet expired.

58 As is clear from case-law, during the period allowed for transposition of a directive, Member States to which it is addressed must refrain from taking any measures liable seriously to compromise achievement of the result prescribed by the directive (see, to that effect, Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 50).

59 Accordingly, since the 1999 decree is liable seriously to compromise achievement of the result prescribed by Directive 1999/5 and since it was adopted during the period allowed for transposition of that directive, the Belgian State could not adopt it in accordance with Community law.

60 In view of the foregoing considerations, the answer to questions 2(a) and (b) must be that Articles 3 of Directive 73/23, 5 of Directive 89/336 and 6 and 8 of Directive 1999/5 preclude national provisions, such as those at issue in the main proceedings, which make subject to a prior approval procedure the placing on the market of alarm systems and networks which satisfy the requirements of those directives and which bear the appropriate 'CE' marking.

61 Question 2(c) relates to components of alarm systems and networks not covered by Community harmonisation measures. The 1999 decree also provides for controls in matters not harmonised by directives 73/23, 89/336 and 1999/5, in particular functionality testing, climatic tests and efficiency testing. That part of the question seeks to ascertain whether Articles 28 EC and 30 EC must be interpreted as meaning that even in the absence of harmonising Community measures, products lawfully manufactured and marketed in a Member State must be able to be marketed in another Member State without being subject to additional controls.

62 As regards the marketing in a Member State of products lawfully manufactured and marketed in another Member State, and in the absence of harmonising Community measures, a national provision which requires that imported products undergo the same tests as products placed for the first time on the market and be approved beforehand constitutes a measure equivalent to a quantitative restriction on imports within the meaning of Article 28 EC (see, to that effect, Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraphs 12, 25 and 29).

63 The same is true of a national provision which, for the purpose of approving alarm systems and networks imported from other Member States, where they are

lawfully manufactured and marketed, accepts only certificates and test reports drawn up by a body approved or accredited in another Member State attesting that those alarm systems and networks guarantee a level of protection equivalent to that provided by the national legislation of the Member State of importation. To impose as a condition the attestation of conformity of imported alarm systems and networks to technical standards or rules which guarantee a level of protection equivalent to that required by the Member State of importation amounts to obliging manufacturers of other Member States to adapt their apparatus and equipment to the requirements of the Member State of importation. Such an obligation is contrary to Article 28 EC.

64 A national provision which is contrary to Article 28 EC may be justified only by one of the public-interest reasons laid down in Article 30 EC or by one of the overriding requirements referred to in the judgments of the Court (see, in particular, Case 120/78 *Rewe-Zentral ('Cassis de Dijon')* [1979] ECR 649, paragraph 8). In either case, the national provision must be appropriate for securing the attainment of that objective and not go beyond what is necessary in order to attain it (see *Canal Satélite Digital*, cited above, paragraph 33, and Joined Cases C-388/00 and C-429/00 *Radiosistemi* [2002] ECR I-5845, paragraphs 40 to 42).

65 In consequence, the answer to question 2(c) must be that Articles 28 EC and 30 EC must be interpreted as meaning that even in the absence of harmonising Community measures, products lawfully produced and marketed in a Member State must be able to be marketed in another Member State without being subject to additional controls. In order to be justified, national legislation imposing such controls must be covered by one of the exceptions provided for in Article 30 EC or one of the overriding requirements recognised by the case-law of the Court and, in either case, must be appropriate for securing the attainment of that objective and not go beyond what is necessary in order to attain it.

66 Question 2(d) concerns the burden of proof in relation to such justification. It seeks, essentially, to ascertain whether a Member State which claims such justification may merely rely on it in the abstract or must specifically demonstrate its genuineness.

67 It is settled case-law that an exception to the principle of the free movement of goods may be justified under Article 30 EC only if the national authorities show that it is necessary in order to attain one or more objectives mentioned in that article and that it is in conformity with the principle of proportionality (Case 227/82 *Van Bennekom* [1983] ECR 3883, paragraph 40, and Case C-358/95 *Morellato* [1997] ECR I-1431, paragraph 14). Such justification can only be specifically demonstrated by reference to the circumstances of the case.

68 The same considerations necessarily apply to exceptions to the free movement of goods based on the overriding requirements recognised by Community case-law. The Court adopts an equally specific approach when assessing that category of derogations (see *Cassis de Dijon*).

69 Accordingly, the answer to question 2(d) must be that it is for the Member State which claims to have a reason justifying a restriction on the free movement of goods to demonstrate specifically the existence of a reason relating to the public interest, the necessity for the restriction in question and that the restriction is proportionate in relation to the objective pursued.

The third question

70 Since the third question was raised only in the event that the first question is being answered in the negative, there is no need to provide an answer.

Costs

71 The costs incurred by the French Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Conseil d'État by judgment of 8 January 2002, hereby rules:

1. **Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use**

within certain voltage limits, as amended by Council Directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits), Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility, as amended by Directive 93/68, and Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity are applicable to alarm systems and networks, in particular to those which use radio transmission. In the fields covered by those directives, national provisions governing the same field must necessarily conform to the abovementioned directives.

2. Article 3 of Directive 73/23, as amended, Article 5 of Directive 89/336, as amended, and Articles 6 and 8 of Directive 1999/5 preclude national provisions, such as those at issue in the main proceedings, which make subject to a prior approval procedure the placing on the market of alarm systems and networks which satisfy the requirements of those directives and which bear the appropriate 'CE' marking.

3. Articles 28 EC and 30 EC must be interpreted as meaning that even in the absence of harmonising Community measures, products lawfully produced and marketed in a Member State must be able to be marketed in another Member State without being subject to additional controls. In order to be

justified, national legislation imposing such controls must be covered by one of the exceptions provided for in Article 30 EC or one of the overriding requirements recognised by the case-law of the Court and, in either case, must be appropriate for securing the attainment of that objective and not go beyond what is necessary in order to attain it.

4. It is for the Member State which claims to have a reason justifying a restriction on the free movement of goods to demonstrate specifically the existence of a reason relating to the public interest, the necessity for the restriction in question and that the restriction is proportionate in relation to the objective pursued.

Puissochet Schintgen Skouris

Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 8 May 2003.

R. Grass — Registrar

J.-P. Puissochet — President of the Sixth Chamber