JUDGMENT OF THE COURT (Sixth Chamber)

12 October 2000 *

In Case C-3/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal de Commerce de Bruxelles for a preliminary ruling in the proceedings pending before that court between

Cidrerie Ruwet SA

and

Cidre Stassen SA,

HP Bulmer Ltd,

on the interpretation of Article 30 of the EC Treaty (now, after amendment, Article 28 EC), and on the validity and interpretation of Council Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids (OJ 1975 L 42, p. 1), amended by Council Directive 79/1005/EEC of 23 November 1979 (OJ 1979 L 308, p. 25), Council Directive 85/10/EEC of 18 December 1984 (OJ 1985 L 4, p. 20), Council Directive 88/316/EEC of 7 June 1988 (OJ 1988 L 143, p. 26) and Council Directive 89/676/EEC of 21 December 1989 (OJ 1989 L 398, p. 18),

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, J.-P. Puissochet and R. Schintgen, Judges,

Advocate General: N. Fennelly,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Cidre Stassen SA and HP Bulmer Ltd, by E. Deltour, A. Puts and P.-M. Louis, of the Brussels Bar,

— the Belgian Government, by A. Snoecx, Adviser in the Ministry of Foreign Affairs, Foreign Trade and Development Cooperation, acting as Agent,

— the German Government, by W.-D. Plessing, Ministerialrat in the Federal Ministry of Finance, and C.-D. Quassowski, Regierungsdirektor in that Ministry, acting as Agents,

— the United Kingdom Government, by M. Ewing, of the Treasury Solicitor's Department, acting as Agent, and D. Bethlehem, Barrister,

— the Council of the European Union, by M.C. Giorgi, Legal Adviser, and F. Anton, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by H. van Lier, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Cidrerie Ruwet SA, represented by K. Carbonez, of the Brussels Bar; Cidre Stassen SA and HP Bulmer Ltd, represented by A. Puts and P.-M. Louis; the United Kingdom Government, represented by A. Robertson, Barrister; the Council, represented by F. Anton; and the Commission, represented by H. van Lier, at the hearing on 10 February 2000,

after hearing the Opinion of the Advocate General at the sitting on 23 March 2000,

gives the following

Judgment

1 By judgment of 28 December 1998, received at the Court on 7 January 1999, the Tribunal de Commerce (Commercial Court), Brussels, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Article 30 of the EC Treaty (now, after amendment, Article 28 EC), and on the validity and interpretation of Council Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids (OJ 1975 L 42, p. 1), amended by Council Directive 79/1005/EEC of

23 November 1979 (OJ 1979 L 308, p. 25), Council Directive 85/10/EEC of 18 December 1984 (OJ 1985 L 4, p. 20), Council Directive 88/316/EEC of 7 June 1988 (OJ 1988 L 143, p. 26) and Council Directive 89/676/EEC of 21 December 1989 (OJ 1989 L 398, p. 18).

2 Those questions have arisen in proceedings between, on the one hand, Cidrerie Ruwet SA ('Ruwet'), a company registered in Belgium, and, on the other, Cidrerie Stassen SA ('Stassen'), also registered in Belgium, and HP Bulmer Ltd ('HP Bulmer'), a company registered in the United Kingdom, concerning a request by Ruwet that Stassen be ordered to cease all marketing in Belgium of bottles of cider having a nominal volume of 0.33 l.

The legal framework

Community law

3 Article 30 of the EC Treaty provides:

'Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.'

4 Paragraph (1) of Article 1 of Directive 75/106, as amended by Directives 79/1005, 88/316 and 89/676, provides that Directive 75/106 relates to prepackages containing the liquid products listed in Annex III, which include, *inter alia*, wines, ciders, beers, spirits, liqueurs, vinegars, edible oils, milk, waters,

lemonades and fruit or vegetable juices. Article 1(2) sets out a number of exceptions which are not material to the present case.

5 The first and fourth recitals in the preamble to Directive 75/106 state:

'... in most of the Member States the conditions of presentation for sale of liquids in prepackages are the subject of mandatory regulations which differ from one Member State to another, thereby hindering trade in such prepackages; ... such provisions must therefore be approximated;

...

... it is necessary to reduce as far as possible the number of volumes of contents that are too close to others of the same product and which consequently are liable to mislead the consumer; ... however, in view of the extremely high stocks of prepackages in the Community such a reduction can only be undertaken gradually'.

6 Directive 75/106 requires, *inter alia*, Member States to authorise the marketing, within their territory, of prepackages containing the nominal volumes indicated in its Annex III.

7 In its original version, Article 5 of Directive 75/106 provided:

'Member States may not refuse, prohibit or restrict the placing on the market of prepackages which satisfy the requirements ... laid down in this Directive for reasons concerning the volume of the contents, the determination of such volume ...'.

8 Following its amendment by, in particular, Directives 79/1005 and 85/10, Article 5 of Directive 75/106 is now worded as follows:

'1. Member States may not refuse, prohibit or restrict the placing on the market of prepackages which satisfy the requirements of this Directive on grounds related to the determination of their volumes ... or the nominal volumes where these are set out in Annex III, column I.

...'

9 Furthermore, Article 4 of Directive 75/106, as originally worded, excluded all prepackages other than those indicated in Annex III.

10 Article 4(1) and (2), as originally worded, provided as follows:

'1. All prepackages referred to in Article 3 must in accordance with Annex I bear an indication of the volume of liquid, called the "nominal volume of the contents", which they are required to contain.

2. For such prepackages only the nominal volumes of the contents indicated in Annex III shall be permitted.'

11 Article 4(2) was amended by Directive 79/1005 in such a way as to remove the exclusion which it laid down. The sixth recital in the preamble to amending Directive 79/1005 points out that:

'... certain Member States will find it difficult to reduce the number of nominal volumes [undertaken by Directive 75/106]; ... therefore, provisions should be made for a transitional period for these Member States which does not, however, impede intra-Community trade in the products in question or jeopardise implementation of this Directive in the other Member States'.

12 However, Article 5(3) of Directive 75/106, as amended by Directive 89/676, prohibited, on the expiry of periods which have already elapsed, the marketing of prepackages containing the products listed in points 1(a) and (b), 2(a) and 4 of Annex III (in particular, wines, spirits, liqueurs and other spirituous drinks) in nominal volumes which differ from those listed in column I of Annex III.

13 Column I of Annex III, which, as amended by Directives 79/1005, 85/10, 88/316 and 89/676, defines the nominal volumes that are finally permitted, does not list the volume of 0.33 l in the case of cider. In respect of non-sparkling cider, it provides, at point 1(c), for nine nominal volumes: 0.10 l — 0.25 l — 0.375 l — 0.50 l — 0.75 l — 1 l — 1.5 l — 2 l — 5 l. In the case of sparkling cider, it sets out, at point 2(b), seven nominal volumes: 0.10 l — 0.20 l — 0.375 l — 0.75 l — 1 l — 1.5 l — 3 l.

The Belgian legislation

14 The Royal Decree of 16 February 1982 relating to the ranges of nominal quantities and nominal volumes of contents authorised for certain prepackaged products (*Moniteur Belge* of 12 March 1982) ('the Royal Decree') is designed to transpose Directive 75/106, as amended by Directive 79/1005, into Belgian law. It includes only the nominal volumes authorised by Directive 75/106. So far as cider is concerned, bottles containing 0.33 l may therefore not be marketed in Belgium.

The dispute in the main proceedings

15 Ruwet, Stassen and HP Bulmer produce and market a range of cider products intended both for sale on national markets and for export.

16 Notwithstanding the prohibition laid down in the Royal Decree, Stassen began to sell on the Belgian market 0.33 l bottles of cider intended for consumers.

17 By letters of 29 May 1998 and 16 June 1998, Ruwet formally requested Stassen to cease such marketing.

18 By letters of 12 and 19 June 1998, Stassen replied that it was unable to accede to that request. It argued that Directive 75/106, as amended by Directive 79/1005, had not been correctly transposed into Belgian law, that it did not prohibit the sale of cider in volumes which differed from those specifically mentioned in Annex III thereto, that, by prohibiting the marketing of cider in 0.33 l packaging, the Royal Decree infringed the principle of proportionality, and that, if Directive 75/106, as amended by Directive 79/1005, had in fact prohibited such marketing, this would have been contrary to Article 30 of the Treaty.

19 On 26 June 1998 Ruwet instituted proceedings against Stassen before the Tribunal de Commerce de Bruxelles in which it sought an order restraining Stassen from marketing the products at issue in Belgium. HP Bulmer intervened in those national proceedings in support of the defendant.

20 In those circumstances, the Tribunal de Commerce de Bruxelles decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Does Article 30 of the EC Treaty preclude Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids, as amended by Directive 79/1005/EEC of 23 November 1979, which provides for a transitional period, from allowing Member States, even today, some twenty years later and even though during that period of time habits have changed and the 33 cl container has become popular and widely used all over the world, to authorise or not, as they wish, the marketing of containers other than those listed in Annex III, taking account of the fact that this may, and in this case does, give rise to differences between the various national laws, with the result that by this means the Member States which limit the range of

containers, like Belgium which limits the range of containers for cider, have at their disposal a measure whose purpose or effect is to restrict the free movement of goods?

2. Having regard to the principle of the free movement of goods, does Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids, as amended by Directive 79/1005/EEC of 23 November 1979, allow Member States to implement the Directive in such a way that the national legislation prohibits the marketing of containers of a quantity not listed in Annex III to the Directive, in this case the 33 cl container for the marketing of cider?'

The questions submitted for preliminary ruling

21 By its first question, the national court is, in essence, asking the Court whether, in the light of Article 30 of the Treaty, Directive 75/106, amended by Directives 79/1005, 85/10, 88/316 and 89/676, is valid in so far as it authorises Member States to disallow the marketing of prepackaged containers other than those mentioned in Annex III, column I, and thereby create barriers to the free movement of goods.

22 By its second question, the national court is essentially asking whether Directive 75/106 must be construed as allowing Member States to prohibit the marketing of any prepackaged container with a nominal volume not mentioned in Annex III, column I, by means of national legislation such as the Royal Decree.

23 It is appropriate first to consider this second question, since a reply to the first question concerning the validity of the directive at issue will become necessary only if that directive does indeed require to be construed as allowing Member States to impose such a prohibition.

24 In the event of a contrary interpretation, it will be necessary, in light of the observations submitted during the proceedings, to consider whether Article 30 of the Treaty precludes a prohibition of marketing such as that at issue in the main proceedings in this case.

25 Ruwet submits that the dispute in the main proceedings is purely internal inasmuch as it is between two undertakings, namely Stassen and itself, and concerns products manufactured and marketed within Belgium. That being so, it argues that it is unnecessary to consider the question whether the Royal Decree is compatible with Community law.

26 In this regard it is sufficient to note that the national court has, in its judgment, already rejected that argument in finding that the dispute does not concern a purely internal situation, since Stassen does not sell exclusively the cider which it produces, but also cider which it imports.

27 Ruwet goes on to argue that Directive 75/106, as amended by Directive 79/1005, finally allowed the Member States to authorise the marketing of prepackaged nominal volumes other than those mentioned in Annex III thereto, or to refuse to allow marketing of products which did not correspond to the indications set out in that annex. This optional harmonisation, it claims, has the effect of creating two distinct markets in parallel, namely the market in products complying with that directive, which benefit from the free movement of goods, and the market in products which do not so comply and which thus do not benefit from the free movement of goods. The Kingdom of Belgium was therefore entitled to choose

the second of those options, inasmuch as that option guarantees protection of consumers, who would otherwise be faced with a choice between nominal volumes which might have been too close and liable to mislead them.

28 The Belgian Government acknowledges that, in the case of optional harmonisation, importers of products that do not conform to the standards defined by the directive may in principle invoke Article 30 of the Treaty in order to benefit from the free movement of goods. None the less, if the Member State of importation has made the provisions of the directive mandatory and set aside its own national standards, it cannot be required to accept products that are not in conformity with the directive. It would be wrong for manufacturers who have incurred the expense necessary to adapt their production to the standards harmonised on an optional basis not to be rewarded for their efforts, while manufacturers who have not incurred such expense may continue to rely on the principle of free movement of goods for products not in conformity with the directive.

29 Should this argument not be upheld, it would, according to the Belgian Government, be necessary to accept that the barrier to importation resulting from the Royal Decree is justified by an overriding requirement of consumer protection.

30 Stassen and HP Bulmer submit that, according to the line of case-law beginning with the judgment in Case 120/78 *Rewe-Zentral* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649 (the '*Cassis de Dijon*' judgment), the free movement of goods referred to in Article 30 of the Treaty benefits, by virtue of the principle of mutual recognition, all products lawfully manufactured within the territory of a Member State. Directive 75/106, as amended by Directive 79/1005, cannot be construed as authorising a national measure such as the prohibition of marketing at issue in the main proceedings.

31 They contend that, in so far as Directive 75/106 does not bring about full harmonisation, Article 30 et seq. of the Treaty remains applicable. In that regard,

a measure having an effect equivalent to a quantitative restriction would be justified for an overriding reason relating to the general interest only if it complied with the principle of proportionality. That, they submit, is not the position in the case in the main proceedings. The prohibition of prepackaged containers for cider having a nominal volume of 0.33 l, motivated by an objective of consumer protection, prevents price-quantity comparisons with drinks that are in direct competition with cider (beer and non-alcoholic drinks). Further, consumer protection in the matter of price comparisons may be guaranteed by an alternative measure the effects of which on Community trade would be much less restrictive than a prohibition, that is to say, an obligation to indicate the price per unit of measure (by the litre) on shelves where the product is displayed for sale. A prohibition of marketing such as that at issue in the main proceedings is therefore contrary to Article 30 of the Treaty.

32 As regards those products in respect of which Member States are still authorised to admit nominal volumes which differ from those mentioned in Annex III, column I, to the directive, the German Government begins by referring to the judgment in Case 130/80 *Kelderman* [1981] ECR 527, in which the Court held that national legislation establishing a delimitation between various formats and weights of bread intended to prevent consumers from being misled as to the actual quantity of bread being offered to them was not justified on grounds of consumer protection inasmuch as suitable information for consumers could be provided by appropriate labelling, with the result that that legislation was contrary to Article 30 of the Treaty. The German Government goes on to point out that Community law includes provisions on the indication of the quantities of foodstuffs and on combating misleading presentation of prepackaged containers. Finally, it stresses that market transparency will be taken even further following transposition, by 18 March 2000 at the latest, of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ 1998 L 80, p. 27). In the German Government's submission, restrictions on the free movement of goods resulting from Directive 75/106 can no longer, once Directive 98/6 has been transposed, be justified in general on grounds of consumer protection.

33 The United Kingdom Government submits that Directive 75/106, as amended by Directive 79/1005, allows Member States to authorise marketing of prepackaged

nominal volumes which differ from those which it lays down. Member States may restrict marketing of those products within their territory only if they comply with the Court's case-law on Article 30 of the Treaty.

34 According to the United Kingdom Government, it is necessary to take account of related Community instruments, in particular Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1), Council Directive 79/581/EEC of 19 June 1979 on consumer protection in the indication of the prices of foodstuffs (OJ 1979 L 158, p. 19), as amended by Council Directive 88/315/EEC of 7 June 1988 (OJ 1988 L 142, p. 23), and Directive 98/6. The need to restrict the free movement of goods must be assessed in the light of those instruments of Community law and the Court's case-law, and on the basis of the facts.

35 The Council does not intend to comment on whether the Kingdom of Belgium has or has not correctly transposed Directive 75/106, as amended by Directive 79/1005. It does, however, submit that it follows from Article 5 of and Annex III to that directive that, under it, Member States may not prohibit or restrict the marketing of cider in prepackaging having a nominal volume of 0.33 l. Directive 98/6 confirms that Directive 75/106, as amended, cannot be construed as prohibiting the marketing of 0.33 l bottles of cider on grounds of consumer protection.

36 The Commission submits that Directive 75/106, as amended, allows Member States, subject to the exceptions set out in Article 5 (see paragraph 12 of the present judgment), to authorise prepackaging other than that which that directive itself envisages, and which therefore can exist side by side with that prepackaging.

37 According to the Commission, these other types of prepackaging continue to fall under Article 30 of the Treaty, which does not preclude a Member State from protecting its consumers against packaging which is liable to mislead purchasers.

38 The Commission also submits that the risk of confusion falls to be assessed in a concrete manner by the national court, regard being had to the special features of each individual case (judgment in Case 94/82 *De Kikvorsch* [1983] ECR 947). In the present case, the national court should take account of the divergences between the nominal volumes of the ranges provided for by the directive at issue in the main proceedings. Those divergences provide useful indications for determining those which may be treated as protecting consumers against all risk of confusion. In light of those indications, the divergence between prepackaging with a nominal volume of 0.331 and prepackaging with a nominal volume of 0.375l does not present any significant risk of confusion inasmuch as the labelling provides the consumer with sufficient information as to the volume of the prepackaged liquid.

39 The national court could also, in the Commission's submission, take account of factors relating to presentation, such as the nature and particular form of the prepackaging, indication of the unit price, pursuant to Directives 79/581 and 98/6, and the nominal volumes provided for by Directive 75/106, as amended, for competing products or, more generally, for the majority of other liquid foodstuffs.

40 It should be borne in mind that Directive 75/106 was adopted on the basis of Article 100 of the EC Treaty (now Article 94 EC) for the purpose of approximating the laws, regulations and administrative provisions of the Member States that have a direct effect on the establishment or functioning of the common market.

41 It is clear from the first recital in its preamble that Directive 75/106 was intended to overcome the obstacles to the free movement of certain prepackaged liquid

foodstuffs resulting from the existence, in most Member States, of mandatory regulations that differ from one Member State to another. According to the fourth recital in its preamble, that directive was also designed to improve the protection of consumers against the risks of confusion.

42 As originally drafted, Directive 75/106 undertook full harmonisation of the national regulations in question: Article 4(2) excluded the marketing of prepackages of nominal volumes that differed from those indicated in Annex III, while Article 5 prohibited Member States from adopting, in regard to prepackages satisfying the directive's requirements, measures restricting their marketing for reasons concerning their volume or the determination of that volume.

43 Once Article 4(2) had been repealed by Directive 79/1005, Directive 75/106 became a directive of partial harmonisation. Member States were once again authorised to allow marketing of prepackages in nominal volumes which differed from those indicated in Annex III, with the exception of prepackages containing certain products not relevant to the present case (see paragraph 12 of this judgment).

44 Contrary to the submissions of Ruwet and the Belgian Government, prepackages containing nominal volumes not indicated in Annex III, column I, to Directive 75/106, amended by Directives 79/1005, 85/10, 88/316 and 89/676, but authorised in other Member States in compliance with that directive, cannot be deprived of the benefit of free movement of goods guaranteed by Article 30 of the Treaty solely on the ground that a Member State has, as in the situation in the main proceedings in this case, made the Community range of nominal volumes mandatory.

45 According to settled case-law, Article 30 is designed to prohibit all trading rules enacted by Member States which are capable of hindering, directly or indirectly,

actually or potentially, intra-Community trade (see Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5).

46 In the absence of harmonisation of national laws, Article 30 prohibits in particular obstacles to the free movement of goods that are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods, such as those relating, for example, to their presentation, labelling and packaging, even if those rules apply without distinction to national products and to imported products alike (Case C-470/93 *Verein gegen Unwesen in Handel und Gewerbe Köln* v *Mars* [1995] ECR I-1923, paragraph 12).

47 In the case of partial harmonisation such as the situation in point in the main proceedings, this prohibition applies to the ban on the marketing of prepackages that are not the subject of such harmonisation. In such a case, a contrary interpretation would be tantamount to authorising the Member States to partition their national markets in regard to products not covered by the Community rules, contrary to the objective of free movement pursued by the Treaty.

48 Although applicable to national and imported ciders without distinction, a national measure such as that in issue in the main proceedings is liable to hinder intra-Community trade inasmuch as it applies to prepackages having a nominal volume of 0.33 l, lawfully manufactured and marketed in other Member States. It may compel the traders concerned to adjust the presentation of their products according to the place where they are to be marketed and consequently to incur additional packaging costs. Such a prohibition therefore falls within the scope of Article 30 of the Treaty (see, to this effect, the judgment in *Mars*, cited above, paragraphs 13 and 14).

49 The Belgian Government contends that the prohibition of marketing at issue in the main proceedings is justified by an overriding requirement relating to consumer protection.

50 In this regard, it is settled case-law that obstacles to intra-Community trade resulting from disparities between provisions of national law must be accepted in so far as such provisions are applicable to domestic and imported products without distinction and may be justified as being necessary in order to satisfy overriding requirements relating *inter alia* to consumer protection. However, in order to be permissible, such provisions must be proportionate to the objective pursued and that objective must not be capable of being achieved by measures which are less restrictive of intra-Community trade (Case C-313/94 *Graffione* [1996] ECR I-6039, paragraph 17, and the case-law there cited).

51 In the case in the main proceedings, the Kingdom of Belgium is seeking, on the basis of the overriding requirement which it invokes, to prevent consumers from being misled by excessively close nominal volumes.

52 In regard to a national measure such as that challenged in the main proceedings, the national court in the State of importation must determine, for every prepackage having a volume not listed in Annex III, column I, to Directive 75/106, amended by Directives 79/1005, 85/10, 88/316 and 89/676, but lawfully manufactured and marketed in the Member State of exportation, whether there is in fact a risk that consumers will be misled.

53 The national court must in this connection take account of all relevant factors, taking as its reference point the average consumer, reasonably well informed and reasonably observant and circumspect (Case C-220/98 *Estée Lauder Cosmetics* v *Lancaster Group* [2000] ECR I-117, paragraph 30).

54 In particular, the national court may have regard to the obligation to indicate on the labelling the net quantity of liquid contained in the packaging, expressed in units of volume (litre, centilitre or millilitre, as appropriate). This obligation is set out in general for all liquid foodstuffs in Articles 3(1)(4) and 8(1) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29), which consolidated and repealed Directive 79/112. Article 4(1) of Directive 75/106, the wording of which was not amended by Directive 79/1005, also lays down that obligation for prepackages covered by Directive 75/106, amended by Directives 79/1005, 85/10, 88/316 and 89/676. The national court may take account of the corresponding information in so far as it is such as to prevent, in the mind of the reference consumer, any confusion between the two volumes and to enable that consumer to take account of the ascertained difference in volume when comparing the prices of the same liquid presented in two different types of packaging.

55 The national court may also take into consideration the fact that, within the range of nominal volumes which it sets out in column I of Annex III, Directive 75/106, amended by Directives 79/1005, 85/10, 88/316 and 89/676, itself permits, for a variety of liquids (milk, waters, lemonades, fruit and vegetable juices), nominal volumes (0.20 l and 0.25 l) to exist side by side which differ by only 0.05 l, a difference which is hardly greater than that existing between the volume of 0.33 l, at issue in the case in the main proceedings, and 0.375 l, which is included in the Community range of nominal volumes authorised for cider.

56 Finally, the national court may take account of the facts that:

— Article 3(2) of Directive 79/581, introduced by Directive 88/315, laid down an obligation to indicate, at the stage when foodstuffs are sold to the consumer, the unit price (in the case of liquids, in principle in litres), an obligation that applied to, *inter alia*, prepackaged ciders in nominal volumes

not mentioned in Annex III, column I, to Directive 75/106, amended by Directives 79/1005, 85/10, 88/316 and 89/676;

— this obligation was extended, subject to exceptions, to all products, including ciders, offered to consumers, irrespective of the nominal volume of the prepackaged product, by Directive 98/6, national provisions for the transposition of which had to be implemented by 18 March 2000 at the latest — that is to say, prior to the date on which the national court will rule on the application for an order prohibiting the marketing of the products at issue — and which repealed Directive 79/581 with effect from 18 March 2000.

57 The answer to the second question submitted for preliminary ruling must therefore be that:

— Directive 75/106, amended by Directives 79/1005, 85/10, 88/316 and 89/676, must be construed as not allowing Member States to prohibit, by means of legislation such as the Royal Decree, the marketing of any prepackage having a nominal volume which is not mentioned in Annex III, column I, to that directive;

— Article 30 of the Treaty must be construed as precluding a Member State from prohibiting the marketing of a prepackage having a nominal volume not included in the Community range, which is lawfully manufactured and marketed in another Member State, unless such a prohibition is designed to meet an overriding requirement relating to consumer protection, applies without distinction to national and imported products alike, is necessary in order to meet the requirement in question and is proportionate to the objective pursued, and that objective cannot be achieved by measures which are less restrictive of intra-Community trade.

58 In light of that reply, it is unnecessary to answer the first question submitted for preliminary ruling.

Costs

59 The costs incurred by the Belgian, German and United Kingdom Governments and by the Council and 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 Tribunal de Commerce de Bruxelles by judgment of 28 December 1998, hereby rules:

Council Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids, amended by Council Directive 79/1005/EEC of 23 November 1979, Council Directive 85/10/EEC of 18 December 1984, Council Directive

88/316/EEC of 7 June 1988 and Council Directive 89/676/EEC of 21 December 1989, must be construed as not allowing Member States to prohibit, by means of legislation such as the Belgian Royal Decree of 16 February 1982 relating to the ranges of nominal quantities and nominal volumes of contents authorised for certain prepackaged products, the marketing of any prepackage having a nominal volume which is not mentioned in Annex III, column I, to that directive.

Article 30 of the EC Treaty (now, after amendment, Article 28 EC) must be construed as precluding a Member State from prohibiting the marketing of a prepackage having a nominal volume not included in the Community range, which is lawfully manufactured and marketed in another Member State, unless such a prohibition is designed to meet an overriding requirement relating to consumer protection, applies without distinction to national and imported products alike, is necessary in order to meet the requirement in question and is proportionate to the objective pursued, and that objective cannot be achieved by measures which are less restrictive of intra-Community trade.

Gulmann Puissochet Schintgen

Delivered in open court in Luxembourg on 12 October 2000.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber