JUDGMENT OF THE COURT (Sixth Chamber)
25 June 1997 *

In Case C-114/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Police, Luxembourg, for a preliminary ruling in the criminal proceedings before that court against

René Kieffer and Romain Thill

on the interpretation and validity of Council Regulation (EEC) No 3330/91 of 7 November 1991 on the statistics relating to the trading of goods between Member States (OJ 1991 L 316, p. 1),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini (Rapporteur), President of the Chamber, J. L. Murray and P. J. G. Kapteyn, Judges,

Advocate General: M. B. Elmer,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: French.

after considering the written observations submitted on behalf of:

— Mr Kieffer and Mr Thill, by Marc Thewes, of the Luxembourg Bar, and Alain Schumacher, special representative,

— the Luxembourg Government, by Nicolas Schmit, Director of Economic Relations and Cooperation in the Ministry of Foreign Affairs, acting as Agent,

— the Council of the European Union, by Cristina Giorgi, Legal Adviser, and Frédéric Anton, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by Jürgen Grunwald, Legal Adviser, assisted by Jean-Francis Pasquier, a national civil servant on secondment to its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Kieffer and Mr Thill, represented by Marc Thewes, the Luxembourg Government, represented by Alain Lorang, of the Luxembourg Bar, the Council, represented by Frédéric Anton, and the Commission, represented by Jürgen Grunwald, assisted by Jean-Francis Pasquier, at the hearing on 16 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 27 February 1997,

gives the following

Judgment

1 By judgment of 2 April 1996, received at the Court on 9 April 1996, the Tribunal de Police (Local Criminal Court), Luxembourg, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation and validity of Council Regulation (EEC) No 3330/91 of 7 November 1991 on the statistics relating to the trading of goods between Member States (OJ 1991 L 316, p. 1; hereinafter 'the Regulation').

2 Those questions were raised in criminal proceedings brought against René Kieffer and Romain Thill on charges of failing in 1993 and 1994 to provide the information relating to statistical declarations required under the Regulation.

The Regulation

3 Under the first subparagraph of Article 3(1) of the Regulation, 'All goods which move from one Member State to another shall be the subject of statistics relating to the trading of goods between Member States.' In this connection, a permanent system for collection of statistics, called the 'Intrastat system', is set up by Article 6 of the Regulation.

4 Under the first paragraph of Article 5 of the Regulation, private individuals are exempt from the obligations implied by the preparation of the statistics referred to in Article 4. The first sentence of the second paragraph of Article 5 provides:

'This exemption shall also apply to the party responsible for providing information who, being liable to account for VAT, qualifies, in the Member State in which he is responsible for providing information, for one of the special schemes provided for by Articles 24 and 25 of Directive 77/388/EEC.'

5 The first paragraph of Article 8 of the Regulation provides that the obligation to supply the information required by the system is incumbent on any natural or legal person who is involved in the trading of goods between Member States.

6 The statistical information required by the Intrastat system is to be covered, under Article 13(1) of the Regulation, by periodical declarations to be sent by the party responsible for providing the information to the competent national departments, by deadlines and under conditions which the Commission is to lay down, using the management committee procedure. Under Article 14, a party responsible for providing information who fails to fulfil his obligations under the Regulation is to be liable to penalties laid down by the Member States in accordance with their national provisions.

7 Under Article 20(5) of the Regulation, the party responsible for providing the information who is referred to in Article 8 is the natural or legal person who:

'(a) residing in the Member State of dispatch:

— has concluded the contract, with the exception of transport contracts, giving rise to the dispatch of goods or, failing this,

— dispatches or provides for the dispatch of the goods or, failing this,

— is in possession of the goods which are the subject of dispatch;

(b) residing in the Member State of arrival:

— has concluded the contract, with the exception of transport contracts, giving rise to the delivery of goods or, failing this,

— takes possession or provides for possession to be taken of the goods or, failing this,

— is in possession of the goods which are the subject of the delivery'.

8 Article 21 of the Regulation provides that, on the statistical data medium to be transmitted to the competent departments, without prejudice to Article 34, goods are to be designated in such a way as to permit easy and precise classification in the finest relevant subdivision of the version of the combined nomenclature in force at the time, and that the eight-digit code number of the corresponding subdivision of the combined nomenclature is also to be given for each type of goods.

9 Article 23(1) and (2) reads as follows:

'1. For each type of goods, the statistical data medium to be transmitted to the competent departments must provide the following data:

(a) in the Member State of arrival, the Member State of consignment of the goods, within the meaning of Article 24(1);

(b) in the Member State of dispatch, the Member State of destination of the goods, within the meaning of Article 24(2);

(c) the quantity of goods, in net mass and supplementary units;

(d) the value of the goods;

(e) the nature of the transaction;

(f) the delivery terms;

(g) the presumed mode of transport.

2. Member States may not prescribe that data other than those listed in paragraph 1 be provided on the statistical data medium, except for the following:

(a) in the Member State of arrival, the country of origin; however, this item may be required only as allowed by Community law;

(b) in the Member State of dispatch, the region of origin; in the Member State of arrival, the region of destination;

(c) in the Member State of dispatch, the port or airport of loading; in the Member State of arrival, the port or airport of unloading;

(d) in the Member State of dispatch and in the Member State of arrival, the presumed port or airport of transhipment situated in another Member State provided the latter prepares transit statistics;

(e) where appropriate, statistical procedure.'

10 Under Article 28(1) of the Regulation, statistical thresholds are defined as limits expressed in terms of value, at which level the obligations incumbent on parties responsible for providing information are suspended or reduced. Exclusion thresholds are to apply to the parties required to provide information referred to in the second subparagraph of Article 5.

11 Under the first and second subparagraphs of Article 28(4) of the Regulation, assimilation thresholds exempt parties required to provide information from the obligation to supply the declarations referred to in Article 13(1); they fulfil that

obligation by the periodic tax declaration which they make as parties liable to account for VAT. Those thresholds are to be set by the Member States at higher levels than the exclusion thresholds. Under Article 28(5), simplification thresholds permit parties required to provide information to state, in the declarations referred to in Article 13(1), for each type of goods only the eight-digit code number of the corresponding subdivision of the combined nomenclature identifying the type of goods, the Member State of consignment or destination, and the value of the goods. The first subparagraph of Article 28(6) prescribes that assimilation and simplification thresholds are to be expressed in annual values of intra-Community trade operations.

12 The third subparagraph of Article 28(6) provides that assimilation and simplification thresholds are to apply separately to intra-Community operators at the dispatch stage and intra-Community operators at the arrival stage.

13 Under Article 28(8), the simplification thresholds are to be set at ECU 100 000 for dispatch and ECU 100 000 for arrival. The Commission may raise them, using the management committee procedure.

14 Member States may, under Article 28(9), set their thresholds at higher levels. If Member States' application of the assimilation and simplification thresholds affects the quality of intra-Community trade statistics, bearing in mind the data supplied by the Member States, or increases the burden on parties required to provide information, so that the objectives of the Regulation are compromised, Article 28(10) empowers the Commission to adopt provisions which restore the conditions needed to ensure that quality or ease that burden.

15 Lastly, Article 34 of the Regulation prescribes:

'1. In respect both of goods subject to the Intrastat system and of other goods, the Commission may, for the purpose of facilitating the task of the parties responsible for providing information, establish in accordance with Article 30 simplified data collection procedures and in particular create the conditions for increased use of automatic data processing and electronic data transmission.

2. In order to take account of their individual administrative arrangements, Member States may establish simplified procedures other than those referred to in paragraph 1, provided that those responsible for providing information may choose the procedures they will use.'

The national legislation

16 Article 7 of the Luxembourg Law of 9 July 1962 establishing a central statistical and economic research service imposes a fine for failure to comply with the obligation to make declarations under the Regulation. The amount of the fine has been increased several times, most recently by Article IX of the Law of 13 June 1994 on penalties. According to the judgment making the reference, a fine may currently be imposed of LFR 10 001 to 100 000.

17 Such a fine is imposed on any natural person who fails to make the declaration, and the conviction is recorded in Schedules Nos 1 and 2 of his criminal record, with the result that it is brought to the notice of the judicial and administrative authorities and public corporations set out in Article 1 of the Ministerial Order of

22 November 1977 determining the list of administrative authorities and public corporations entitled to Schedule No 2 of the criminal record. It appears from the national court's judgment that non-payment of the fine may result in committal to prison, which may be imposed as an alternative sentence by the criminal courts.

The background to the dispute

18 The defendants in the main proceedings, who are the managers of Établissements Kieffer & Thill, a limited company, operate a garage in Luxembourg with a car repair workshop and also buy and sell accident-damaged cars, secondhand cars, spare parts and all car accessories.

19 They are charged with infringing the obligation under the Regulation to transmit information on imports and exports by their company.

20 They acknowledge that the business conducted by the company they manage exceeds the simplification threshold, which is fixed in Luxembourg at LFR 10 000 000, so that they must submit a detailed declaration each month listing all consignments of goods to another Member State in order to comply with the Regulation.

21 They submit, however, that to comply with those obligations they must, first, either take on staff or have the obligations carried out by third parties, incurring additional expense in either case; they state, second, that the need to incur such expenditure would have the effect of curbing, at least indirectly, their efforts to

export in excess of the annual threshold which triggers the requirement to make the said declarations; lastly, they claim that this impediment would encourage the sale of the goods on the national market.

22 The national court considered that the detailed declaration required by the Regulation constitutes an additional constraint to which traders doing business on the national market alone are not subject. Moreover, it stated that the requirement to make that declaration, and the consequent increase in the obligations to be complied with by the undertakings concerned, could have a deterrent effect on small and medium-sized undertakings in Luxembourg whose activities extend beyond the national territory, having regard to the small extent of Luxembourg territory.

23 In those circumstances, it considered that it should be ascertained whether such an impediment was justified from the point of view of the objectives of the Regulation and whether those objectives could not have been attained by means constituting less of a constraint. It therefore stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. In so far as it requires Member States to obtain from every undertaking exceeding the stipulated exclusion, assimilation and simplification thresholds a detailed declaration of all its intra-Community imports and exports, has Council Regulation (EEC) No 3330/91 of 7 November 1991 introduced a measure having an effect equivalent to a quantitative restriction on trade in goods between Member States prohibited by Articles 30 and 34 of the EEC Treaty?

2. Does the obligation to provide the data required under the Intrastat collection system in both the importing and the exporting country, breach of which is subject to criminal sanctions under Luxembourg law in the event of non-submission of the information requested to the Service Central de la Statistique et des Etudes Economiques, constitute for traders a constraint that is unjustified and disproportionate in relation to the objective of general interest

pursued and is it therefore contrary to the third paragraph of Article 3b of the EEC Treaty as inserted by Article G(5) of the Treaty on European Union signed at Maastricht on 7 February 1992?'

The questions referred for a preliminary ruling

24 By its questions the national court asks essentially whether the Regulation is invalid in so far as it requires Member States to collect from every undertaking exceeding the exclusion, assimilation and simplification thresholds a detailed declaration of all its intra-Community imports and exports. First, the obligations thus imposed on undertakings might constitute a measure having equivalent effect to a quantitative restriction prohibited by Articles 30 and 34 of the EC Treaty. Second, the obligation to provide the information required under the Intrastat collection system in both the Member State of consignment and that of destination of the goods exported might constitute for economic operators a restraint which is unjustified and disproportionate having regard to the objective of general interest pursued, and thereby breach the principle of proportionality.

25 On the first point, the defendants in the main proceedings submit that the Regulation imposes costs and constraints on undertakings, since they are obliged to obtain for each transaction, whatever its value, a whole series of complex data, in particular the eight-digit code from the combined nomenclature. Moreover, having regard to the detailed nature of the declarations required and the fact that it is obligatory in both the Member State of dispatch and that of destination of the goods, they submit that the obligation goes beyond what is necessary.

26 The Luxembourg Government, the Council and the Commission, on the other hand, point out the importance for the internal market of having sufficiently

precise information on intra-Community flows. Moreover, they submit that any restrictive effects which the obligations to make declarations might have on the free movement of goods are too indirect and uncertain to be capable of obstructing intra-Community trade; the new collection system established by the Regulation in fact imposed a lighter burden compared with its predecessor and net benefits for undertakings.

27 It is settled law that the prohibition of quantitative restrictions and of all measures having equivalent effect applies not only to national measures but also to measures adopted by the Community institutions (see in particular to this effect Case 15/83 *Denkavit Nederland* v *Hoofdproduktschap voor Akkerbouwprodukten* [1984] ECR 2171, paragraph 15, and Case C-51/93 *Meyhui* v *Schott Zwiesel Glaswerke* [1994] ECR I-3879, paragraph 11).

28 It is common ground that the detailed nature of the declarations required and the fact that it is obligatory to make a declaration in both the Member State of consignment and that of destination of the goods have restrictive effects with regard to the free movement of goods.

29 However, according to the first recital in its preamble, the aim of the Regulation is to promote completion of the internal market by establishing a satisfactory level of information on the trading of goods between Member States by means not involving checks at internal frontiers. Moreover, it appears from the third recital that certain Community policies must be based on statistical documentation providing the most up-to-date, accurate and detailed view of the internal market.

30 As the Court has already held, barriers to the free movement of goods may be accepted if they are essential in order to obtain reasonably complete and accurate information on movements of goods within the Community (see in particular Case 159/78 *Commission* v *Italy* [1979] ECR 3247, paragraph 7).

31 Consequently, the aim pursued by the Regulation, namely to promote completion of the internal market by establishing statistics on the trading of goods between Member States, appears justified. Moreover, its restrictive effects are commensurate with that aim. It remains to examine whether those restrictive effects are consistent with the principle of proportionality.

32 The Council submits, first, that the risk of additional expense is limited, since the undertakings have all the relevant data available at the time when they carry out their economic operations. Second, the various thresholds were established precisely in order to enable account to be taken of the interests of those responsible for providing information. Third, undertakings have available to them free of charge modern data-processing tools such as, at Community level, the IDEP/CN8 data-capture software developed by the Commission.

33 According to the Court's case-law, in order to establish whether a Community measure complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (Case C-426/93 *Germany* v *Council* [1995] ECR I-3723, paragraph 42).

34 While the obligation to make declarations under the Regulation does specifically affect cross-frontier trade, and drawing up the declarations takes time and involves expense, particularly for small and medium-sized undertakings, it does not necessarily follow that those restrictive effects are disproportionate to the aim pursued.

35 First, even though undertakings are obliged to make declarations in respect of all transactions, different thresholds have been established precisely in order to enable account to be taken of their interests and not to impose a burden on them which is disproportionate to the results which users of the statistics are entitled to expect.

36 Second, as the Council has *inter alia* observed, the Community institutions have made available free of charge to undertakings modern data-processing tools such as the IDEP/CN8 data-capture software.

37 In view of the above considerations, it does not appear that the obligation to make declarations imposed by the Regulation goes beyond what is necessary to achieve the objective pursued, especially since, as the Court has frequently stated, the Community legislature enjoys a discretion in the framework of its powers of harmonization (see *inter alia* the *Meyhui* judgment, paragraph 21).

38 With respect to the second point raised by the national court's questions, it follows precisely from paragraphs 33 to 37 of this judgment that the obligation to make declarations under the Regulation is proportionate to the objective of general interest pursued.

39 The answer to the national court's questions must therefore be that examination of the Regulation has not disclosed any factor of such a kind as to cast doubt on its validity.

Costs

40 The costs incurred by the Luxembourg Government, the Council of the European Union and the Commission of the European Communities, 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 Police, Luxembourg, by judgment of 2 April 1996, hereby rules:

Examination of Council Regulation (EEC) No 3330/91 of 7 November 1991 on the statistics relating to the trading of goods between Member States has not disclosed any factor of such a kind as to cast doubt on its validity.

Mancini Murray Kapteyn

Delivered in open court in Luxembourg on 25 June 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber