OPINION OF ADVOCATE GENERAL COSMAS

delivered on 15 January 1998 *

I — Introduction

The Court is asked in this case to give a preliminary ruling on a question referred to it by the German Bundesverwaltungsgericht (Federal Administrative Court) concerning the interpretation, first, of Council Directive 80/51/EEC of 20 December 1979 on the limitation of noise emissions from subsonic aircraft, [1] as amended by Council Directive 83/206/EEC of 21 April 1983 [2] (hereinafter 'the Directive'), and, secondly, of Article 30 of the EC Treaty.

II — Facts and procedure

1. The applicant for review on a point of law in the main proceedings, the company Aher-Waggon GmbH (hereinafter 'Aher-Waggon'), is the owner of a propeller-driven Piper PA 28-140 aeroplane which it purchased used in Denmark. That aeroplane had been registered in Denmark since 2 August 1974. In July 1992 Aher-Waggon applied to the competent German authority, the Luftfahrt-Bundesamt (Federal Office of Aviation), for the aeroplane to be registered in the German register. That application was refused on the ground that it exceeded the noise emission limits in force in Germany, which is true. It should be noted that the Directive laid down maximum noise emission limits, which the aeroplane at issue does not exceed, but allows the Member States to impose stricter requirements.

2. Aher-Waggon brought an action before the competent German administrative courts but was unsuccessful both at first instance and on appeal. It then applied to the Bundesverwaltungsgericht for review on a point of law, contending that the ordinary administrative courts had wrongly rejected its claim that the competent German administrative authorities be required to issue a preliminary decision allowing the aircraft to be registered in Germany notwithstanding its operating noise. It submitted in that regard that the refusal by the German authorities to register the aircraft because it exceeded the national noise emission limits infringed Community law. It pointed out that the registration of aircraft of the same type already on the

* Original language: Greek.

1 — OJ 1980 L 18, p. 26.

2 — OJ 1983 L 117, p. 15.

German register remained valid even though they exceed the noise limits in force today in that country.

3. When the referring court heard the case it considered that it could not decide it without referring a question on the interpretation of the Community legislation at issue to the Court of Justice for a preliminary ruling. The referring court is not uncertain as to the interpretation of the provisions of pure Community aviation law but questions whether the refusal to issue the preliminary decision sought by Aher-Waggon could be considered in any event to offend against the principles of the free movement of goods under Article 30 of the EC Treaty. In particular, in the opinion of the referring court it needs to be settled whether the refusal to register in Germany a Danish aircraft which complies with the Community, but not the stricter German, noise limits could constitute an obstacle to trade or a measure having equivalent effect when account is also taken of the following factual position. Aher-Waggon's aircraft has been registered in Denmark since 1974 but can no longer be registered in Germany because of the above-mentioned national limits. By contrast, the registration of aircraft of the same construction type and having the same noise specifications which had been registered in Germany before the national limits were adopted remains valid without restrictions even though those aircraft exceed the noise-pollution limits now laid down by German legislation. According to the referring court, it is therefore necessary to settle whether in the above situation an unlawful distinction is drawn on the basis of the State of registry, contrary to Article 30 of the Treaty.

In view of all the foregoing considerations, the Bundesverwaltungsgericht, by order lodged at the Court on 29 November 1996, referred a question on the point at issue to the Court for a preliminary ruling.

III — Question referred for a preliminary ruling

4. 'Is it compatible with the principles of the free movement of goods under Article 30 of the EC Treaty for German law, on the basis of the noise emission limits for aircraft under Directive 80/51/EEC, as amended by Directive 83/206/EEC, which are laid down as minimum requirements, to make the registration of aircraft in the Federal Republic of Germany conditional upon compliance with stricter noise limits, with the result that aircraft registered in another Member State before the said directive was adopted may no longer be granted registration in Germany because they exceed German noise limits, even though aircraft of the same construction which had already obtained German registration beforehand may retain it without restrictions?'

IV — Applicable Community law

5. Article 30 of the Treaty states:

'Quantitative restrictions on imports and all measures having equivalent effect shall ... be prohibited between Member States.'

6. Articles 1, 2 and 3 of Directive 80/501, as amended by Directive 83/206, provide:

'Article 1

Each Member State shall ensure that any civil subsonic jet or propeller-driven aeroplane registered in its territory and falling within one of the categories set out in Volume I (Aircraft Noise) of Annex 16 to the Convention on international civil aviation, as applicable from 26 November 1981, in accordance with Amendment 5, (hereinafter referred to as Annex 16/5) may not be used in the territory of Member States unless it has granted noise certification on the basis of satisfactory evidence that the aeroplane complies with requirements which are *at least equal* [3] to the applicable standards specified in Part II, Chapters 2, 3, 5 or 6 of Volume I of Annex 16/5.

Article 2

1. The documents attesting noise certification within the meaning of Articles 1, 3, 4 and 5 may take the form of a separate noise certificate or a suitable statement contained in another document approved by the State of registry and required by that State to be carried in the aeroplane ...

2. Member States shall recognise the validity of the documents referred to in paragraph 1 issued by the certifying authorities of a State of registry which is also a Member State.

Article 3

1. Each Member State shall ensure that all civil propeller-driven aeroplanes with a

3 — Emphasis added.

maximum certificated take-off mass not exceeding 5 700 kg and all civil subsonic jet aeroplanes if they do not fall within one of the categories set out in Volume I of Annex 16/5, but use aerodromes situated in any Member State, are certificated in accordance with requirements which are *at least equal* to the applicable standards specified in Part II, Chapter 2 or 6 of Volume I of Annex 16/5 *when being newly registered in its territory.* [4]

...'

V — My views

7. Although the question referred for a preliminary ruling focuses on the interpretation of Article 30 of the EC Treaty (B), in order to answer it it is necessary to examine the relevant provisions of secondary Community legislation which lay down noise limits for subsonic aircraft [5] (A).

A — *Interpretation of the specific Community legislation*

8. It should first be noted that the principal objective of the Directive is to protect the environment. Reference is made in its preamble to the 1973 European Communities action programme on the environment. The Directive appears, on the other hand, not to be prompted by any parallel objective of an economic or commercial nature regarding the removal of barriers in the trading of aircraft. [6]

9. Also, as all the parties to the proceedings correctly state, the provisions of the Directive which are at issue merely lay down minimum requirements and allow the Member States to adopt stricter limits in order to combat noise pollution. Germany therefore had the power — which it lawfully exercised — to introduce lower engine noise limits as a condition for the registration of aircraft and the grant of noise certification. In addition, the fact that the aeroplane in question met the minimum Community requirements is not sufficient to found a right to registration

4 — Emphasis added.

5 — The way in which the fundamental principle laid down in Article 30 of the EC Treaty will be interpreted in each case is directly bound up with the specific characteristics of the Community legislation governing the activity at issue. Before the question of the application of Article 30 is raised, it is necessary to examine whether there are specific rules which bind the Member States. See the classic judgment in '*Cassis de Dijon*' (Case 120/78 *Rewe* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649, paragraph 8).

6 — That remark is not without significance. The Court has repeatedly had regard to that teleological criterion when asked to assess whether Community rules are mandatory. See, for example, Case 278/85 *Commission* v *Denmark* [1987] ECR 4069, paragraphs 16 and 22.

in Germany, since it exceeded the lawfully adopted German noise limits.

10. It must also be noted that the Directive governs *first registration* of aircraft in the Member States. In particular, Article 3(1) provides that each Member State is to adopt the necessary measures so that propeller-driven aircraft such as that of Aher-Waggon are registered in their territory for the first time only when it is certified that they at least meet the minimum requirements laid down by the Directive. The restriction of the field of application to the first registration of aircraft has the following consequences.

11. First, it follows from that fact, in conjunction with the fact that the Directive permits the introduction of stricter national noise limits, that the Community legislature does not wish to grant a vested right or even a legal guarantee for aircraft which have already been registered and have corresponding noise certification in one Member State and are the subject of an application for registration lodged in another Member State. That is to say, Community law does not place in another, more favourable, category those aircraft which meet the minimum Community requirements, are already registered in one Member State and are to be registered in another Member State. It is true that Article 2(2) of the Directive establishes mutual recognition of noise certificates between the Member States, but, as the Commission correctly states, that recognition simply means that one Member State may not dispute the accuracy of the contents of a certificate issued by another Member State. It does not mean, however, that the Member States are also obliged to acknowledge that those certificates are substantively equivalent to the certificates which they issue themselves, nor that they give rise in national law to the same legal effects as domestic certificates.

12. If, moreover, it were accepted that an aircraft which is already registered in one Member State and meets the minimum Community requirements may be registered in another Member State even though it does not satisfy the stricter national requirements in that State, the power to adopt stricter national noise limits which the Directive clearly grants would effectively be removed. Specifically, a person wishing to import into Germany an aircraft which does not meet the German requirements could register it in another Member State (which sets higher noise limits) and subsequently rely on that registration in order to obtain a German registration.

13. Secondly, by restricting the scope of the Directive solely to cases of first registration of an aircraft in the register of a Member State, the Community legislature indirectly allows the Member States to retain the registration of aircraft which do not meet the minimum requirements of the Directive or stricter national requirements subsequently adopted in accordance with the Directive.

The restriction of Community harmonisation solely to those aircraft which are registered for the first time in a national register is, as the Commission points out, based on the following philosophy: the Community legislature wanted to limit the noise emissions of new aircraft presented for registration in a national register after the adoption of the Directive because, first, such aircraft constitute the majority of the fleet in each State and, secondly, the aircraft manufacturers were forced in that way to promote technology to combat noise pollution. The Community legislature did not intend, on the other hand, to require the Member States to modernise their existing fleets, by eliminating from the registers aircraft which exceed the lower noise limits laid down by the Directive.

14. Accordingly, an aircraft which does not meet the German requirements and is presented for registration after the Directive entered into force is in fact treated differently from an aircraft which is identical but was already registered in Germany before the intervention of the Community legislature. That difference in treatment was none the less intended by the authors of the Directive who, while wishing to stop the Member States from tolerating aircraft which generate noise exceeding specified minimum limits, did not wish to reduce the noise pollution existing within each State before the Directive was adopted.

15. It is, moreover, a feature of all Community legislation which lays down minimum requirements that it may result in (notional) less favourable treatment of certain products or in the preservation of different conditions of competition. As the Court held in *Gallaher*, 'those consequences are attributable to the degree of harmonisation sought by the provisions in question, which lay down minimum requirements'. [7]

16. It is clear from the foregoing that, under the legal regime introduced by the directives at issue, a Member State may refuse to grant a noise certificate and, as a consequence, to register an aircraft even though the aircraft has been lawfully registered in another Member State and aircraft of the same type already registered in the first Member State are treated as continuing to satisfy the registration conditions. Accordingly, the secondary Community legislation in force cannot form a legal basis for the applications made by Aher-Waggon to the German authorities.

B — *Interpretation of Article 30 of the EC Treaty*

17. In accordance with the judgment in *Dassonville*, [8] all trading or other rules enacted

7 — Case C-11/92 *The Queen* v *Secretary of State for Health* ex parte *Gallaher* [1993] ECR I-3545, paragraph 22.

8 — Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837.

by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an equivalent effect. Contrary to the assertions of Aher-Waggon, in my opinion the question of infringement of Article 30 of the EC Treaty does not arise in this particular case. Germany makes lawful use of the possibilities accorded to it by the specific Community legislation in force which, moreover, does not seek full harmonisation of national law regulating noise emissions from aircraft. Otherwise — that is to say if the refusal to register an aircraft, for which German registration is sought for the first time, on the ground that it exceeds the existing national noise-pollution limits, when an aircraft of the same type is already registered in the German register even though it does not satisfy the national provisions in question, were regarded as caught by the prohibitions in Article 30 of the EC Treaty — the discretion which the Community legislature wished to confer on the national authorities through the provisions of the directives at issue allowing stricter national noise limits to be set would effectively be removed.

18. Moreover, the principle of mutual recognition of national laws, on which the Court relies when interpreting Article 30 of the Treaty, presupposes that those national laws have the same content and quality. Since the Directive itself permits stricter noise limits to be adopted, it is clearly acknowledged that the relevant national laws cannot be equivalent, so that there can be no question of the mutual recognition of those laws.

19. Nor, contrary to the assertions of Aher-Waggon, can there be any question of discrimination based on the nationality of aircraft. The enactment of noise limits covers all aircraft which are to be registered in Germany for the first time. A distinction is drawn only between aircraft, whether German or not, which have already been registered and aircraft of the same type, whatever their nationality, which the German authorities are asked to register for the first time.

20. It should in any event be noted that it cannot be concluded from the facts of this case that noise limits such as those enacted in the German legislation at issue constitute a measure which is disproportionate to the objective being pursued, namely the reduction of noise pollution. I would add that the Court has held that the protection of the environment amounts to a fundamental national objective which may also limit the

application of the prohibitions in Article 30 of the EC Treaty. [9]

21. Furthermore, I do not consider it necessary to examine in greater detail the argument put forward by Germany that, even if it were to be found that the German legislation at issue was caught by the prohibitions in Article 30 of the EC Treaty, those national rules are justified by the need to protect human health as provided for in Article 36 of the EC Treaty.

Conclusion

22. In view of the foregoing, I propose that the Court should answer the question referred to it for a preliminary ruling as follows:

Directive 80/51/EEC, as amended by Directive 83/206/EEC, lays down minimum noise requirements for aircraft engines as a condition for the first registration of aircraft in the Member States but allows the Member States to enact stricter requirements. The introduction by a national measure, pursuant to the abovementioned specific Community legislation, of lower noise emission limits for aircraft whose first registration is applied for is compatible with the principles of the free movement of goods as safeguarded by Article 30 of the EC Treaty, even if it has the consequence of preventing the registration in Germany of an aircraft already registered in another Member State when aeroplanes of the same type registered in the German register before the abovementioned directive was adopted retain their registration.

9 — 'The Court has already held in its judgment of 7 February 1985 in Case 240/83 *Procureur de la République* v *Association de Défense des Brûleurs d'Huiles Usagées* [1985] ECR 531 that the protection of the environment is "one of the Community's essential objectives", which may as such justify certain limitations of the principle of the free movement of goods. That view is moreover confirmed by the Single European Act. In view of the foregoing, it must therefore be stated that the protection of the environment is a mandatory requirement which may limit the application of Article 30 of the Treaty' (Case 302/86 *Commission* v *Denmark* [1988] ECR 4607, paragraphs 8 and 9).