JUDGMENT OF THE COURT
9 August 1994 *

In Case C-51/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Rechtbank van koophandel, Bruges, for a preliminary ruling in the proceedings pending before that court between

Meyhui NV

and

Schott Zwiesel Glaswerke AG,

on the validity and interpretation of Council Directive 69/493/EEC of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass (OJ, English Special Edition 1969 (II), p. 599),

THE COURT,

composed of: O. Due, President, G. F. Mancini (Rapporteur) (President of Chamber), C. N. Kakouris, F. A. Schockweiler, G. C. Rodríguez Iglesias, P. J. G. Kapteyn and J. L. Murray, Judges,

* Language of the case: Dutch.

Advocate General: C. Gulmann,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Schott Zwiesel Glaswerke AG, by Peter Klima, Rechtsanwalt of Munich and of the Paris Bar, and Mr Wulf-Rudiger Sefzig, Rechtsanwalt of Frankfurt,

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry of the Economy, and Claus-Dieter Quassowski, Regierungsdirektor in that Ministry, acting as Agents,

— the French Government, by Philippe Pouzoulet, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, and Jean-Louis Falconi, Foreign Affairs Secretary, acting as Deputy Agent,

— the Council of the European Union, by Jill Aussant, Adviser in the Legal Service, and Hessel Daalder, of the Legal Service, acting as Agents,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Schott Zwiesel Glaswerke AG, the French Government, represented by H. Duchêne, Foreign Affairs Secretary at the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, the Council and the Commission at the hearing on 8 February 1994,

after hearing the Opinion of the Advocate General at the sitting on 15 March 1994,

gives the following

Judgment

1 By order of 18 February 1993, received at the Court on 26 February 1993, the Rechtbank van koophandel (Commercial Court), Bruges, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the validity and interpretation of Council Directive 69/493/EEC of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass (OJ, English Special Edition 1969 (II), p. 599).

2 Those questions were raised in a dispute between Schott Zwiesel Glaswerke AG ('Schott') of Zwiesel (Germany), a crystal glass producer and Meyhui NV ('Meyhui'), of Kortrijk (Belgium), a company which imports, *inter alia*, Schott's products, regarding Schott's refusal to affix to its products their description in the languages of the Member State in which they are marketed, in this instance Belgium.

3 Directive 69/493 lays down definitions and rules regarding the composition, characteristics of manufacture and labelling of crystal glass products and all forms of publicity for those products.

4 The first three recitals in the preamble to that directive state:

'... with regard to the use of a special description for crystal glass products and the consequent obligation concerning the composition of such products, there are differences between the rules of certain Member States; ... those differences hinder trade in such products and can lead to distortions in competition within the Community;

... those obstacles to the establishment and proper functioning of the common market can be eliminated by adoption of the same requirements by all the Member States;

... with regard to the descriptions laid down for the various categories of crystal glass and to the characteristics of those categories, the purpose of the Community provisions to be adopted is to protect both the buyer against fraud and the manufacturer who complies with those provisions'.

5 Under Article 3 of the directive the Member States are to take all necessary steps to prevent the descriptions in column (b) of Annex I from being used commercially for products which do not have the corresponding characteristics specified in columns (d) to (g) of Annex I.

6 In Annex I, column (a) divides crystal glass products into four categories, the descriptions of which are set out in column (b). The characteristics of those categories, such as the metal-oxide content (expressed as a percentage), the density, refractive index, and surface hardness are set out in columns (d) to (g).

7 In column (c) headed 'Explanatory Notes', it is indicated that, for categories 1 and 2, the descriptions given in column (b) may be freely used, whatever the country of destination. For categories 3 and 4, crystal glass and crystalline, however, the note specifies that 'Only the description in the language or languages of the country in which the goods are marketed may be used'.

8 Schott refused to affix descriptions in French, Dutch and German to its goods which were to be marketed in Belgium, and Meyhui therefore brought an action before the Rechtbank van Koophandel, Bruges, relying on the Explanatory Note in column (c) relating to categories 3 and 4 of crystal glass. The Rechtbank van koophandel expressed doubts as to the validity of that note with regard to Article 30 of the EEC Treaty and as to its interpretation and stayed proceedings in order to refer the following questions to the Court for a preliminary ruling:

'(1) Is the Council Directive of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass compatible with Article 30 of the EEC Treaty where, for the purposes of the description of glass products in categories 3 and 4 of Annex I, it allows only the language or languages of the country in which the product is marketed to be used, without leaving open the possibility of using another language easily comprehensible to the purchaser or of informing the purchaser by other means?

(2) If the directive is compatible with Article 30 of the EEC Treaty, must the words "pays ou la marchandise est commercialisée" and "Land, in den die Ware in den Verkehr gebracht wird" be construed as meaning the country of final marketing or the country of initial marketing of the goods?'

Question 1

9 By its first question the national court is asking the Court to rule on the validity with regard to Article 30 of the Treaty of the Explanatory Note in column (c) of Annex I to the directive which, for products in categories 3 and 4, requires that only the descriptions in the language or languages of the country in which the goods are marketed are to be used.

10 Article 30 prohibits obstacles to the free movement of goods resulting from rules that lay down requirements to be met by such goods (such as requirements as to designation, form, size, weight, composition, presentation, labelling or packaging), even if those rules apply without distinction to all national and imported products, unless their application can be justified by a public-interest objective taking precedence over the free movement of goods (see in particular Case C-315/92 *Verband Sozialer Wettbewerb* v *Clinique Laboratories and Estée Lauder* [1994] ECR I-317, paragraph 13). Where such justification exists, the measure in question must, in any event, be proportionate to the goal pursued.

11 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 Case 15/83 *Denkavit Nederland* v *Hoofdproduktschap voor Akkerbouwprodukten* [1984] ECR 2171, paragraph 15).

12 In this instance, the explanatory notes in question are part of a directive which is designed, as is clear in particular from the first three recitals in the preamble thereto, to eliminate obstacles to trade caused by differences between the rules of the Member States concerning the composition and description of crystal glass products by means of the adoption of common requirements.

13 However, the prohibition on affixing to crystal glass products in categories 3 and 4 of Annex I to Directive 69/493 their description in a language other than the language or languages of the Member State in which those goods are marketed constitutes a barrier to intra-Community trade in so far as products coming from other Member States have to be given different labelling causing additional packaging costs.

14 It is therefore necessary to determine whether, in the context of the harmonization sought by the directive, such an obstacle is justified.

15 According to the actual wording of the third recital, 'the purpose of the Community provisions to be adopted is to protect both the buyer against fraud and the manufacturer who complies with those provisions'.

16 Crystal glass products in categories 1 and 2 (full lead crystal and lead crystal) are characterized by a high lead-oxide content (a minimum of 30% and 24% respectively) whereas in products in categories 3 and 4 (crystal glass and crystalline) the minimum content of lead oxide, on its own or mixed with zinc oxide, barium oxide or potassium oxide, is only 10%. Together with the fineness of the glass and the quality of the cut, the lead content is a preponderant factor in differentiating the quality of products and hence prices.

17 It may accordingly be considered that, in the case of the first two categories, consumers are adequately protected by the fact that in all the descriptions adopted by the directive (cristal supérieur 30%, cristallo superiore 30%, hochbleikristall 30%, volloodkristal 30%, full lead crystal 30%, krystal 30%, κρυσταλλα υψηλης

περιεκτικοτητας σε μολυβδο 30%, cristal superior 30%, cristal de chumbo superior 30%, cristal au plomb 24%, cristallo al piombo 24%, bleikristall 24%, loodkristal 24%, lead crystal 24%, krystal 24%, μολυβδουχα κρυσταλλα 25%, μολυβδουχα κρυσταλλα 24%, cristal al plomo 24%, cristal de chumbo 24%) the word 'crystal' is easily recognizable and, moreover, is always accompanied by an indication of the percentage of lead.

18 In the case of the lower two categories, on the other hand (cristallin, vetro sonoro superiore, kristallglass, kristallynglas, sonoorglas, crystal glass, crystallin, vidrio sonoro superior, vidro sonoro superior, verre sonore, vetro sonoro, vidrio sonoro, vidro sonoro, υαλοκρυσταλλα), the difference in the quality of the glass used is not easily discernible to the average consumer for whom the purchase of crystal glass products is not a frequent occurrence. It is therefore necessary for him to be given the clearest information possible as to what he is buying so that he does not confuse a product in categories 3 and 4 with a product in the higher categories and consequently that he does not pay too much.

19 The fact that consumers in a Member State in which the products are marketed are to be informed in the language or languages of that country is therefore an appropriate means of protection. In this regard it should be held that the hypothesis referred to by the national court that another language may be easily comprehensible to the purchaser is of only marginal importance.

20 Finally, the measure chosen by the Community legislature in order to protect consumers does not appear disproportionate to the goal pursued. There is nothing in the file to suggest that there might conceivably be some different measure which could achieve the same goal while being less constrictive for producers.

21 It is apparent from the foregoing that the requirement that 'Only the description in the language or languages of the country in which the goods are marketed may be used' is necessary for the protection of consumers and the Council has, therefore, not exceeded the limits of its discretion in the framework of its powers of harmonization by adopting the explanatory notes in question (see in particular Case 37/83 *REWE-Zentrale* v *Landwirtschaftskammer Rheinland* [1984] ECR 1229, paragraph 20).

22 It should therefore be stated in reply to the first question that consideration of the explanatory note in column (c) of Annex I to Directive 69/493 which, for products in categories 3 and 4, requires that only the descriptions in the language or languages of the country in which the goods are marketed are to be used has revealed no factor of such a kind as to affect its validity.

Question 2

23 By its second question, the national court asks whether the words 'country in which the goods are marketed' used in the explanatory note in column (c) of Annex I to Directive 69/493 with regard to categories 3 and 4 of crystal glass refers to the Member State in which the goods are first marketed or that of their final marketing.

24 In view of the justification for the linguistic requirement in question which has been recognized above, compliance with that requirement must necessarily be assessed with regard to the final consumer, irrespective of the place where the goods are first marketed.

25 It should therefore be stated in answer to the second question that the words 'country in which the goods are marketed' used in the explanatory note in column (c) of Annex I to Directive 69/493 with regard to categories 3 and 4 of crystal glass refers to the Member State in which the goods are finally marketed.

Costs

26 The costs incurred by the French and German Governments, 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Rechtbank van koophandel, Bruges, by order of 18 February 1993, hereby rules:

1. **Consideration of the explanatory note in column (c) of Annex I to Directive 69/493/EEC of the Council of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass (OJ, English**

Special Edition 1969 (II), p. 599) which, for products in categories 3 and 4, requires that only the descriptions in the language or languages of the country in which the goods are marketed are to be used has revealed no factor of such a kind as to affect its validity.

2. The words 'country in which the goods are marketed' used in the explanatory note in column (c) of Annex I to Directive 69/493 with regard to categories 3 and 4 of crystal glass refers to the Member State in which the goods are finally marketed.

Due Mancini Kakouris Schockweiler

Rodríguez Iglesias Kapteyn Murray

Delivered in open court in Luxembourg on 9 August 1994.

R. Grass

Registrar

O. Due

President