JUDGMENT OF THE COURT (Fifth Chamber)
3 December 1998 *

In Case C-67/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Kriminalret i Frederikshavn (Denmark) for a preliminary ruling in the criminal proceedings before that court against

Ditlev Bluhme,

on the interpretation of Article 30 of the EC Treaty and Article 2 of Council Directive 91/174/EEC of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC (OJ 1991 L 85, p. 37),

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, L. Sevón (Rapporteur) and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: Danish.

after considering the written observations submitted on behalf of:

— Mr Bluhme, by Uffe Baller, of the Århus Bar,

— the Danish Government, by Peter Biering, Head of Division in the Ministry of Foreign Affairs, acting as Agent,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by Francesca Quadri, Avvocato dello Stato,

— the Norwegian Government, by Jan Bugge-Mahrt, Deputy Director General in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by Hans Støvlbæk, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Bluhme, represented by Uffe Baller, the Danish Government, represented by Jørgen Molde, Head of Division at the Ministry of Foreign Affairs, acting as Agent, the Italian Government, represented by Francesca Quadri, and the Commission, represented by Hans Støvlbæk at the hearing on 30 April 1998,

after hearing the Opinion of the Advocate General at the sitting on 16 June 1998,

gives the following

Judgment

1 By order of 3 July 1995, received at the Court on 17 February 1997, the Kriminalret i Frederikshavn (Criminal Court, Frederikshavn) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of Article 30 of the EC Treaty and Article 2 of Council Directive 91/174/EEC of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC (OJ 1991 L 85, p. 37, hereinafter 'the Directive').

2 The questions have been raised in criminal proceedings brought against Ditlev Bluhme for infringement of Danish legislation prohibiting the keeping on the island of Læsø of bees other than those of the subspecies *Apis mellifera mellifera* (Læsø brown bee).

3 Article 1 of the Directive provides:

'For the purposes of this Directive "pure-bred animal" shall mean any animal for breeding covered by Annex II to the Treaty the trade in which has not yet been the subject of more specific Community zootechnical legislation and which is entered or registered in a register or pedigree record kept by a recognised breeders' organisation or association.'

4 Article 2 of the Directive provides:

'Member States shall ensure that:

— the marketing of pure-bred animals and of the semen, ova and embryos thereof is not prohibited, restricted or impeded on zootechnical or pedigree grounds,

— in order to ensure that the requirement provided for in the first indent is satisfied, the criteria for approval and recognition of breeders' organisations or associations, the criteria for entry or registration in pedigree records or registers, the criteria for approval for reproduction of pure-bred animals and for the use of their semen, ova and embryos, and the certificate to be required for their marketing should be established in a non-discriminatory manner, with due regard for the principles laid down by the organisation or association which maintains the register or pedigree record of the breed in question.

Pending the implementation of detailed rules for application as provided for in Article 6, national laws shall remain applicable with due regard for the general provisions of the Treaty.'

5 Article 6 of the Directive provides that the detailed rules for application of the Directive are to be adopted in accordance with the so-called 'committee' procedure. No such rules have been adopted in relation to bees.

6 In Denmark, Article 14a of Law No 115 of 31 March 1982 on beekeeping (lov om biavl), introduced by Law No 267 of 6 May 1993, authorises the Minister for Agri-

culture to enact provisions to protect certain species of bee in certain areas defined by him, and in particular provisions concerning the removal or destruction of swarms of bees regarded as undesirable for protection reasons. Article 1 of Decision No 528 of 24 June 1993 on the keeping of bees on the island of Læsø (Bekendtgørelse om biavl på Laesø, hereinafter 'the Decision'), which was adopted pursuant to that enabling provision, prohibits the keeping on Læsø and certain neighbouring islands of nectar-gathering bees other than those of the subspecies *Apis mellifera mellifera* (Læsø brown bee).

7 The Decision also provides, in Article 2, for the removal or destruction of those other swarms or the replacement of their queen by one of the Læsø brown bee subspecies. Article 6 prohibits the introduction onto Læsø or neighbouring islands of living domestic bees, whatever their stage of development, or of reproductive material for domestic bees. Finally, Article 7 of the Decision provides for full State compensation in respect of any loss duly proved to have resulted from the destruction of a swarm pursuant to the Decision.

8 Mr Bluhme, who is being prosecuted for keeping on Læsø bees other than those of the subspecies *Apis mellifera mellifera* (Læsø brown bee), in breach of the Decision, argues inter alia that Article 30 of the Treaty precludes the national legislation.

9 Taking the view that resolution of the dispute before it depended on the interpretation of Community law, the Kriminalret decided to stay the proceedings and to refer the following questions to the Court:

' I — Concerning the interpretation of Article 30 of the EC Treaty:

(1) Can Article 30 be interpreted as meaning that a Member State may, under certain circumstances, introduce rules prohibiting the

keeping — and consequently the importation — of all bees other than bees belonging to the species *Apis mellifera mellifera* (Læsø brown bee) with regard to a specific island in the country in question, for example, an island of 114 km^2, one half of which consists of country villages and small ports, and is used for purposes of tourism or agriculture, while the other half consists of uncultivated land, that is to say, plantations, moorland, meadows, tidal meadows, beaches and dunes, which had on 1 January 1997 a population of 2 365, and which is an island on which opportunities for gainful activity are in general limited but where beekeeping constitutes one of the few forms of gainful activity by reason of the island's special flora and high proportion of uncultivated and extensively used land?

(2) If a Member State can introduce such rules, the Court is requested to describe in general the conditions governing those rules and in particular to answer the following questions:

(a) Can a Member State introduce such rules as described in (1) on the ground that the rules concern solely such an island as described and that the effect of the rules is therefore geographically limited?

(b) Can a Member State introduce such rules as described in (1) if the reason for those rules lies in the desire to protect the bee strain *Apis mellifera mellifera* against eradication, an objective which, in the Member State's opinion, can be attained by excluding all other bee strains from the island in question?

In the criminal proceedings underlying this order for reference, the accused:

— disputes that there is at all any such bee strain as *Apis mellifera mellifera* and submits that the bees at present to be found on Læsø are a mixture of different bee strains;

— submits that the brown bees to be found on Læsø are not unique but are found in many parts of the world; and

— submits that those bees are not threatened with eradication.

In its response, the Court is therefore requested to indicate whether it is sufficient that the Member State in question considers it appropriate or necessary to introduce the rules as a step in preserving the bee population in question, or whether it must be regarded as a further condition that the bee strain exists, and/or that it is unique, and/or that it is threatened with eradication if the import ban is not valid or cannot be enforced.

(c) If the grounds set out in (a) or in (b) cannot make it lawful to introduce such rules, can a combination of those grounds make it so lawful?

II — Concerning Council Directive 91/174/EEC of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC:

(1) Under what circumstances can a bee be a pure-bred animal within the meaning attached to those words by Article 2 of Directive 91/174? Is a golden bee, for example, a pure-bred animal?

(2) What constitutes a zootechnical ground (Article 2)?

(3) What constitutes a pedigree ground (Article 2)?

(4) Must Directive 91/174 be understood as meaning that a Member State may, notwithstanding the Directive, ban the importation onto an island such as that described in Question 1 of Part I and the existence there of all bees other than bees belonging to the strain *Apis mellifera mellifera*?

If a Member State can do so under certain conditions, the Court is requested to set out those conditions.'

Part II of the questions

10 By its questions the national court is essentially asking the Court to give an interpretation of Article 1 and the first paragraph of Article 2 of the Directive.

11 It should however be pointed out that, as the Danish Government and the Commission have rightly observed, no detailed rules for applying the Directive in relation to bees have been adopted under the procedure provided for by Article 6 of the Directive.

12 Therefore, pursuant to the second paragraph of Article 2 of the Directive, national laws remain applicable, subject, however, to due regard for the general provisions of the Treaty.

13 It is therefore in relation to Articles 30 and 36 of the EC Treaty that legislation such as that at issue in the main proceedings must be examined.

Part I of the questions

14 By its questions the national court is essentially asking whether national legislation prohibiting the keeping of any species of bee on an island such as Læsø other than the subspecies *Apis mellifera mellifera* (Læsø brown bee) constitutes a measure having equivalent effect to a quantitative restriction within the meaning of Article 30 of the Treaty and whether, if that is the case, such legislation may be justified on the ground of the protection of the health and life of animals.

Existence of a measure having equivalent effect

15 Mr Bluhme and the Commission consider that a prohibition on the keeping on the island of Læsø of bees other than those belonging to the Læsø brown species involves a prohibition on importation, and thus constitutes a measure having equivalent effect contrary to Article 30 of the Treaty. Mr Bluhme considers that the legislation at issue in the main proceedings effectively precludes the importation onto the island of Læsø of bees from Member States. The Commission adds in that respect that Article 30 also applies to measures that concern only part of the territory of a Member State.

16 The Danish, Italian and Norwegian Governments, on the other hand, maintain that the establishment of pure breeding areas for a given species in a delimited geographical area within a Member State does not affect trade between Member States.

The Danish and Norwegian Governments further maintain that the prohibition on importing onto the island of Læsø bees other than Læsø brown bees does not constitute discrimination in respect of bees originating in other Member States, is not intended to regulate trade between Member States, and has effects on trade that are too hypothetical and uncertain to be regarded as a measure likely to obstruct it.

17 The Danish Government also argues that, since the national legislation does not concern the access of bees as goods to the Danish market, but merely regulates the conditions under which bees may be kept within that Member State, it falls outside the scope of Article 30 of the Treaty.

18 On that point, the Court observes that its case-law has long established that all measures capable of hindering intra-Community trade, whether directly or indirectly, actually or potentially, constitute measures having an effect equivalent to quantitative restrictions (Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5).

19 In so far as Article 6 of the legislative measure at issue in the main proceedings involves a general prohibition on the importation onto Læsø and neighbouring islands of living bees and reproductive material for domestic bees, it also prohibits their importation from other Member States, so that it is capable of hindering intra-Community trade. It therefore constitutes a measure having an effect equivalent to a quantitative restriction.

20 That conclusion is not altered by the fact that the measure in question applies to only part of the national territory (on this point, see Joined Cases C-1/90 and C-176/90 *Aragonesa de Publicidad and Publivía* v *Departamento de Sanidad* [1991] ECR I-4151, paragraph 24; Joined Cases C-277/91, C-318/91 and C-319/91 *Ligur Carni and Others* [1993] ECR I-6621, paragraph 37).

21 Moreover, contrary to the Danish Government's argument that the prohibition on keeping certain bees on the island of Læsø must be regarded as a regulation on selling arrangements within the meaning of the judgment in Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097, this Court finds, on the contrary, that the legislation in question concerns the intrinsic characteristics of the bees. In those circumstances, its application to the facts of the case cannot be a matter of a selling arrangement within the meaning of the judgment in *Keck and Mithouard* (Case C-368/95 *Familiapress* v *Heinrich Bauer Verlag* [1997] ECR I-3689, paragraph 11).

22 Finally, as the Advocate General points out at point 19 of his Opinion, since the Decision prohibits the importation of bees from other Member States onto a part of Danish territory, it has a direct and immediate impact on trade, and not effects too uncertain and too indirect for the obligation which it lays down not to be capable of being regarded as being of such a kind as to hinder trade between Member States.

23 It follows that a legislative measure prohibiting the keeping on an island such as Læsø of any species of bee other than the subspecies *Apis mellifera mellifera* (Læsø brown bee) constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.

Justification for legislation such as that at issue in the main proceedings

24 Mr Bluhme argues that the legislation in question cannot be justified on any ground, especially since, in his submission, there is no subspecies *Apis mellifera mellifera* (Læsø brown bee) that is genetically distinct and unique to the island of Læsø. Moreover, since such legislation does not fall within the scope of health policy, he submits that it cannot be justified under Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and

imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC (OJ 1992 L 268, p. 54).

25 The Danish Government considers that, should the Court regard the prohibition laid down by the Decision as a measure having an effect equivalent to a quantitative restriction, it is a measure applying to bees indiscriminately whatever their State of provenance which is justified by the aim of protecting biological diversity, such aim being recognised, *inter alia*, by Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) and by the Convention on Biological Diversity signed at Rio de Janeiro on 5 June 1992, approved on behalf of the European Community by Council Decision 93/626/EEC of 25 October 1993 (OJ 1993 L 309, p. 1; hereinafter 'the Rio Convention'). The Danish Government goes on to explain that the subspecies *Apis mellifera mellifera* (Læsø brown bee) is disappearing and can be preserved only on the island of Læsø, so that the measure adopted is necessary to prevent the disappearance of the species and is proportionate to the aim pursued. Moreover, the Decision does not affect the possibility of carrying on bee-keeping on the island but merely regulates the species of bee which may be used.

26 The Danish Government concludes by referring to numerous scientific studies establishing the particular nature of that subspecies of bee in relation to others.

27 As its main argument, the Norwegian Government submits that the Danish legislation is justified on environmental protection grounds in accordance with Article 30 of the Treaty and the judgment in Case 120/78 *REWE-Zentral* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649 ('*Cassis de Dijon*'), paragraph 8.

28 In the alternative, like the Italian Government and the Commission, it considers that the preservation of a rare and threatened species falls within the protection of the health and life of animals referred to in Article 36 of the Treaty.

29 In the Norwegian Government's submission, the establishment of pure breeding areas is the only means of preserving the Læsø brown bee.

30 The Commission maintains that the same ground of justification should be upheld if the species were not rare and threatened, but it was desirable on scientific grounds to breed a pure strain.

31 On the question of the existence of a disappearing subspecies *Apis mellifera mellifera* (Læsø brown bee), the Commission considers that this is an evidential matter which is therefore one for the national court to determine. It maintains that the prohibition should not extend to the keeping of brown bees of the species *Apis mellifera mellifera* from other Member States or from non-member countries in the absence of a valid reason to justify such a restriction, and points out that such a prohibition must not constitute a means of arbitrary discrimination or be aimed at protecting certain occupational interests.

32 The Italian Government states that there are several subspecies of *Apis mellifera mellifera*, identifiable as strains and within the latter as ecotypes, representing the result of a natural process of adaptation to environmental conditions and various territories.

33 On this question, the Court considers that measures to preserve an indigenous animal population with distinct characteristics contribute to the maintenance of biodiversity by ensuring the survival of the population concerned. By so doing, they are aimed at protecting the life of those animals and are capable of being justified under Article 36 of the Treaty.

34 From the point of view of such conservation of biodiversity, it is immaterial whether the object of protection is a separate subspecies, a distinct strain within any given species or merely a local colony, so long as the populations in question have characteristics distinguishing them from others and are therefore judged worthy of protection either to shelter them from a risk of extinction that is more or less imminent, or, even in the absence of such risk, on account of a scientific or other interest in preserving the pure population at the location concerned.

35 It does, however, have to be determined whether the national legislation was necessary and proportionate in relation to its aim of protection, or whether it would have been possible to achieve the same result by less stringent measures (Case 124/81 *Commission* v *United Kingdom* [1983] ECR 203, paragraph 16).

36 Conservation of biodiversity through the establishment of areas in which a population enjoys special protection, which is a method recognised in the Rio Convention, especially Article 8a thereof, is already put into practice in Community law [in particular, by means of the special protection areas provided for in Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), or the special conservation areas provided for in Directive 92/43].

37 As for the threat of the disappearance of the Læsø brown bee, it is undoubtedly genuine in the event of mating with golden bees by reason of the recessive nature of the genes of the brown bee. The establishment by the national legislation of a protection area within which the keeping of bees other than Læsø brown bees is prohibited, for the purpose of ensuring the survival of the latter, therefore constitutes an appropriate measure in relation to the aim pursued.

38 The answer to be given must therefore be that a national legislative measure prohibiting the keeping on an island such as Læsø of any species of bee other than the

subspecies *Apis mellifera mellifera* (Læsø brown bee) must be regarded as justified, under Article 36 of the Treaty, on the ground of the protection of the health and life of animals.

Costs

39 The costs incurred by the Danish, Italian and Norwegian Governments 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 (Fifth Chamber),

in answer to the questions referred to it by the Kriminalret i Frederikshavn by order of 3 July 1995, hereby rules:

1. **A national legislative measure prohibiting the keeping on an island such as Læsø of any species of bee other than the subspecies *Apis mellifera mellifera* (Læsø brown bee) constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the EC Treaty.**

2. A national legislative measure prohibiting the keeping on an island such as Læsø of any species of bee other than the subspecies *Apis mellifera mellifera* (Læsø brown bee) must be regarded as justified, under Article 36 of the Treaty, on the ground of the protection of the health and life of animals.

Puissochet Moitinho de Almeida Gulmann

Sevón Wathelet

Delivered in open court in Luxembourg on 3 December 1998.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber