JUDGMENT OF THE COURT (Sixth Chamber)

17 September 1998 *

In Case C-400/96,

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

Jean Harpegnies

on the interpretation of Article 30 of the EC Treaty,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, G. F. Mancini, J. L. Murray (Rapporteur), G. Hirsch and K. M. Ioannou, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

* Language of the case: French.

after considering the written observations submitted on behalf of:

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, and Helen Davies, Barrister, and

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

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 19 February 1998,

gives the following

Judgment

1 By judgment of 21 October 1996, received at the Court on 17 December 1996, the Tribunal Correctionnel (Criminal Court), Charleroi, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 30 of that Treaty.

2 That question was raised in criminal proceedings instituted against a farmer, Mr Harpegnies, who is accused of having placed on the market plant protection products which had not previously been approved and of having manufactured, imported or packaged such products without first being authorised for that purpose by the Minister of Agriculture. Mr Harpegnies is also charged with having fraudulently

destroyed or misappropriated, in his own interests, 210 litres of a herbicide called Printagal, 700 grammes of a herbicide called Allie and four empty five-litre cans which had contained a herbicide called Madit Dispersion.

3 Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1; hereinafter 'the Directive'), as amended on a number of occasions, is intended in particular to lay down uniform rules governing the conditions and procedures for the authorisation of plant protection products and to protect humans, animals and the environment against the risks and hazards arising from poorly controlled use of those products. The Directive also seeks to eliminate barriers to the free movement of plant protection products.

4 Article 2 of the Directive provides, *inter alia*:

'For the purposes of this Directive the following definitions shall apply:

1. "plant protection products"

active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

1.1. protect plants or plant products against all harmful organisms or prevent the action of such organisms, in so far as such substances or preparations are not otherwise defined below;

1.2. influence the life processes of plants, other than as a nutrient, (e. g. growth regulators);

1.3. preserve plant products, in so far as such substances or products are not subject to special Council [or] Commission provisions on preservatives;

1.4. destroy undesired plants; or

1.5. destroy parts of plants, check or prevent undesired growth of plants'.

5 Article 3(1) of the Directive provides: 'Member States shall prescribe that plant protection products may not be placed on the market and used in their territory unless they have authorised the product in accordance with this Directive ...'.

6 Article 4 of the Directive lays down the conditions which a plant protection product must meet in order for it to be authorised. One of those conditions is that its active substances must be listed in Annex I. As yet no substance has been entered in that annex.

7 Article 8(1) of the Directive provides for transitional measures and derogations which diverge from the provisions of Article 4.

8 Both the procedure established by Article 4 and that established by Article 8 are concerned solely with the first application in a Member State for authorisation of a plant protection product which has not yet been authorised in that Member State.

9 Article 4 of the Belgian Royal Decree of 5 June 1975 on the storing, marketing and use of pesticides and plant protection products prohibits plant protection products which have not previously been approved by the minister responsible for agriculture from being marketed, acquired, offered, put on display or sale, kept, prepared, transported, sold, disposed of for valuable consideration or free of charge, imported or used. Under Article 8(1) of that royal decree and Article 8(1) to (5) of the Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and stock-farming, breaches of that prohibition are punishable by a fine and/or imprisonment.

10 In those circumstances, the national court decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Is Belgian legislation, in so far as it still requires authorisation by the Belgian authorities of plant protection products marketed in another Member State, in breach of the rules on the free movement of goods in the Community, as laid down in Article 30 of the EEC Treaty?'

11 When addressing that question, it must be borne in mind that the Court has consistently held that it has no jurisdiction, in the context of the application of Article 177 of the Treaty, to decide whether a national provision is compatible with Community law. It may, however, extract from the wording of the question formulated by the national court, having regard to the facts stated by it, those elements which concern the interpretation of Community law, for the purpose of enabling that

court to resolve the legal problem before it (see, *inter alia*, Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia and Others* v *Ente Nazionale Risi* [1994] ECR I-711, paragraph 19, and Case C-15/96 *Schöning-Kougebetopoulou* v *Freie und Hansestadt Hamburg* [1998] ECR I-47, paragraph 9).

12 It is clear here that the national court's question seeks to ascertain, in substance, whether Article 30 of the Treaty precludes legislation of a Member State under which a plant protection product must be authorised before it is placed on the market of that State even when that product has already been authorised by the competent authorities of another Member State.

13 A preliminary point to be noted is that the national court has not described precisely the products covered by the question asked. It is apparent from the documents in the main proceedings that various brands of product are involved.

14 According to the United Kingdom Government, the products at issue in the main proceedings are pesticides, and thus covered by the Directive.

15 The Commission, however, considers that, since the order for reference refers to the Royal Decree of 5 June 1975, which was also at the centre of Case C-293/94 *Brandsma* [1996] ECR I-3159, and since that case, in its view, unquestionably related to the conditions for placing plant protection products for non-agricultural use on the market, the products at issue in the main proceedings in this case too are plant protection products and thus not covered by the Directive.

16 While proceeding from different assumptions as regards the facts and the legal consequences which result therefrom, both the United Kingdom and the Commission

reach the conclusion that it is compatible with Community law for the requirement for prior authorisation to be retained.

17 In that regard, it should be noted that the provisions of the Royal Decree of 5 June 1975 which concern the prior authorisation of plant protection products were originally applied without distinction both to plant protection products for agricultural use and to plant protection products for non-agricultural use.

18 Following the transposition of the Directive into the national law of the Member States, pesticides — as plant protection products for agricultural use — are covered by harmonised legislation at Community level. They fall within the definition of plant protection products in Article 2, point 1, of the Directive, set out in paragraph 4 above.

19 Certain other plant protection products used for non-agricultural purposes are not covered by the Directive, including certain biocides.

20 As Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1) had not been adopted at the time of the facts in the main proceedings, it was for the competent authorities of each Member State to lay down provisions governing the importation and authorisation of those products in national territory.

21 Since it is not made clear what type of product is at issue in the main proceedings, the question raised should be answered as if those proceedings were concerned with both pesticides and biocidal products.

22 The question must therefore be split into two separate parts. First, it is necessary to examine whether the Directive requires prior authorisation, granted pursuant to either Article 4 or Article 8, to be obtained from the competent authority of each Member State in which a pesticide covered by the Directive is placed on the market when that product has already been authorised by the competent authorities of another Member State. Second, it is necessary to examine whether Article 30 of the Treaty precludes legislation of a Member State which requires a biocidal product to be authorised before it is placed on the market of that State even though that product has already been authorised in another Member State.

23 First, with regard to pesticides, to which the Directive applies, one of the principal objectives of the Directive is to lay down uniform rules governing the conditions and procedures for the authorisation of plant protection products.

24 In order to achieve that objective, the Member States are required under Article 3(1) of the Directive to ensure that plant protection products covered by the Directive are not placed on the market in their territory without first having been authorised by the competent authority. The rules governing that authorisation are laid down in particular by Article 4 of the Directive, which requires the Member States to ensure that a plant protection product is authorised only under certain conditions.

25 While Article 8 of the Directive provides for transitional measures and derogations, the prior authorisation required by the Directive remains mandatory even where the pesticide in question has been authorised, in accordance with the Directive, by the competent authority of another Member State.

26 The answer to the first part of the question must therefore be that the Directive requires prior authorisation, granted pursuant to either Article 4 or Article 8, to be

obtained from the competent authority of each Member State in which a pesticide covered by the Directive is placed on the market.

27 As regards biocidal products, the Directive does not apply to such products and there are no harmonised rules at Community level covering either their production or their marketing.

28 The compatibility of legislation such as that in the main proceedings must therefore be assessed by reference to Article 30 of the Treaty.

29 Under Article 30 quantitative restrictions on imports and all measures having equivalent effect are prohibited in trade between Member States. The Court has consistently held that all trading rules enacted 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 effect equivalent to quantitative restrictions (see, in particular, Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5). However, Article 36 of the Treaty provides that Article 30 is not to preclude prohibitions or restrictions on imports justified, *inter alia*, on grounds of the protection of human health, provided that those prohibitions or restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

30 A legal provision of a Member State prohibiting biocidal products which have not been previously authorised from being marketed, acquired, offered, put on display or sale, kept, prepared, transported, sold, disposed of for valuable consideration or free of charge, imported or used, constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty (see *Brandsma*, cited above, paragraph 6).

31 It is therefore necessary to establish whether national legislation such as that in the main proceedings may be justified in the light of the derogations referred to in Article 36 of the Treaty.

32 Since biocidal products are used to combat organisms harmful to human or animal health and organisms liable to damage natural or manufactured products, they inevitably contain dangerous substances (*Brandsma*, paragraph 11).

33 It is settled case-law that, in the absence of harmonising rules, it is for the Member States to decide on their intended level of protection of human health and life and on whether to require prior authorisation for the marketing of such products (*Brandsma*, paragraph 11).

34 Nevertheless, the principle of proportionality which underlies the last sentence of Article 36 of the Treaty requires that the power of the Member States to prohibit imports of products from other Member States should be restricted to what is necessary to achieve the objectives of protection being legitimately pursued (see, to that effect, Case 174/82 *Sandoz* [1983] ECR 2445, paragraph 18).

35 As the Court has previously held (see Case 272/80 *Frans-Nederlandse Maatschappij voor Biologische Producten* [1981] ECR 3277, paragraph 14), whilst a Member State is free to require a biocidal product which has already received approval in another Member State to undergo a fresh procedure of examination and approval, the authorities of the Member States are nevertheless required to assist in bringing about a relaxation of the controls existing in intra-Community trade and to take account of technical or chemical analyses or laboratory tests which have already been carried out in another Member State (see *Brandsma*, paragraph 12).

36 The answer to the second part of the question must therefore be that national legislation which prohibits a biocidal product not previously authorised by the competent authority from being placed on the market constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty which is justified under Article 36 of the Treaty, even if that product has already been authorised in another Member State, provided that technical or chemical analyses or laboratory tests are not unnecessarily required when the same analyses and tests have already been carried out in that other Member State and their results are available to the competent authorities of the importing Member State or can, at their request, be made available to them.

Costs

37 The costs incurred by the United Kingdom Government and 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 (Sixth Chamber),

in answer to the question referred to it by the Tribunal Correctionnel, Charleroi, by judgment of 21 October 1996, hereby rules:

1. Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market requires prior authorisation, granted pur-

suant to either Article 4 or Article 8, to be obtained from the competent authority of each Member State in which a pesticide covered by that directive is placed on the market.

2. National legislation which prohibits a biocidal product not previously authorised by the competent authority from being placed on the market constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the EC Treaty which is justified under Article 36 of that Treaty, even if that product has already been authorised in another Member State, provided that technical or chemical analyses or laboratory tests are not unnecessarily required when the same analyses and tests have already been carried out in that other Member State and their results are available to the competent authorities of the importing Member State or can, at their request, be made available to them.

Ragnemalm Mancini Murray

Hirsch Ioannou

Delivered in open court in Luxembourg on 17 September 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber