JUDGMENT OF THE COURT (Third Chamber)
23 March 2000 *

In Case C-246/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Arrondissementsrechtbank te Arnhem, Netherlands, for a preliminary ruling in the criminal proceedings before that court against

Berendse-Koenen M.G. en Berendse H.D. Maatschap,

on the interpretation of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75), and Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC),

THE COURT (Third Chamber),

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

* Language of the case: Dutch.

Advocate General: P. Léger,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by M.A. Fierstra, Deputy Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Irish Government, by M.A. Buckley, Chief State Solicitor, acting as Agent,

— the Commission of the European Communities, by H. van Vliet, of its Legal Service, and M. Schotter, a national civil servant on secondment to that service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Berendse-Koenen M.G. en Berendse H.D. Maatschap, represented by L.J.L. Heukels, of the Haarlem Bar, of the Netherlands Government, represented by M.A. Fierstra, of the Irish Government, represented by M.A. Buckley, assisted by C. Daly, of the Office of the Attorney General, and P. Charleton, SC, and D. Barniville, BL, and the Commission, represented by H. van Vliet, at the hearing on 27 October 1999,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2000,

gives the following

Judgment

1 By order of 2 April 1998, received at the Court on 9 July 1998, the Arrondissementsrechtbank te Arnhem (District Court, Arnhem) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75; 'Directive 83/189'), and Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC).

2 Those questions were raised in the course of criminal proceedings against Berendse-Koenen M.G. en Berendse H.D. Maatschap for keeping cattle to which sympathicomimetic substances containing clenbuterol were administered.

3 Under Article 30 of the Treaty, quantitative restrictions on imports and all measures having equivalent effect are prohibited between Member States. Under Article 36 of the Treaty, prohibitions or restrictions on imports which are justified on grounds of protecting the health and life of persons and animals are authorised provided they do not constitute either a means of arbitrary discrimination or a disguised restriction on trade between Member States.

4 Directive 83/189 is aimed at preventing any technical barriers to intra-community trade in products resulting from diversity between the laws of the various Member States. For that purpose, it lays down a procedure requiring Member States to give the Commission prior notification of technical standards and rules.

5 Council Directive 86/469/EEC of 16 September 1986 concerning the examination of animals and fresh meat for the presence of residues (OJ 1986 L 275, p. 36) is designed, as stated in the third and fourth recitals in its preamble, to facilitate the free movement of goods by approximating the divergent rules of the Member States which lead to major obstacles in intra-Community trade and to a distortion in the conditions of competition between products that are the subject of common organisations of the market. According to the ninth recital in its preamble, the directive is, in particular, designed to establish common control measures in order to ascertain and eliminate the causes of residues in animals and fresh meat, and to ensure that meat showing residues which exceed the permitted level is excluded from consumption. Article 9(3)(b) of Directive 86/469 thus requires the competent authorities to ensure that, where examination of an official sample 'reveals the presence of prohibited substances, the animals may not be placed on the market for human or animal consumption'.

6 Directive 86/469 lists, in Annex I, the groups of residues which fall within its scope. Clenbuterol falls within Point B headed 'Specific Groups', Group I: 'Other medicines', sub-group (c): 'Other veterinary medicines'.

7 The Verordening Stoffen met sympathico mimetische werking (PVV) 1991 (Regulation on sympathicomimetic substances; referred to below as 'the Verordening'), adopted by the Produktschap voor Vee en Vlees (Cattle and Meat Board, a body governed by public law) and approved by the Minister for Agriculture, includes, in Article 1, a definition of sympathicomimetic substances. It is common ground that Clenbuterol is one of those substances.

8 Article 2 of the Verordening provides: 'It is prohibited to administer sympathicomimetic veterinary medicinal products containing Clenbuterol to fattening cattle over 14 weeks old or to authorise the administration of such products to such fattening cattle.'

9 Article 3(1) of the Verordening provides: 'It is prohibited to keep or to have in stock, to buy or to sell fattening cattle to which sympathicomimetic substances referred to therein have been administered contrary to Article 2.'

10 The presence of Clenbuterol was recorded in urine samples taken from cattle on the farm of the defendants in the main proceedings. The Public Prosecutor thereupon brought criminal proceedings against them for breach of the Verordening.

11 At the hearing, the defendants, citing the judgment in Case C-194/94 *CIA Security* v *Signalson and Securitel* [1996] ECR I-2201, submitted, first, that, since the Verordening had not been notified to the Commission, it could not be taken into consideration.

12 Secondly, they maintained that the fact that medicines containing clenbuterol are authorised in certain Member States constituted a distortion of competition prohibited by Community law.

13 In that respect, the Arrondissementsrechtbank te Arnhem found that, at the time when the Verordening was drawn up, the basic provisions of Community law regarding substances with anabolic effect, of which clenbuterol is one, were contained in Council Directive 81/851/EEC of 28 September 1981 on the

approximation of the laws of the Member States relating to veterinary medicinal products (OJ 1981 L 317, p. 1), as amended by Council Directive 90/676/EEC of 13 December 1990 (OJ 1990 L 373, p. 15). Since that directive places products with anabolic effect under a special regime, but does not prohibit all transactions involving cattle and meat to which substances with anabolic effect have been administered, the national court raised the question whether Articles 2 and 3 of the Verordening constituted an obstacle to freedom of trade for the purposes of Article 30 of the Treaty.

14 The Arrondissementsrechtbank te Arnhem therefore decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does the Verordening Stoffen met sympathico mimetische werking (PVV) 1991 and, more particularly, Articles 2 and 3 thereof, contain technical regulations which, pursuant to Article 8 of Directive 83/189/EEC, as it stood at the time when the Verordening came into force, should have been notified to the Commission beforehand?

2. Does the Verordening Stoffen met sympathico mimetische werking (PVV) 1991 and, more particularly, Articles 2 and 3 thereof, contain provisions which constitute obstacles to freedom of trade for the purposes of Article 30 of the EC Treaty?'

15 By letter of 11 June 1999, the national court indicated to the Court of Justice that, in the light of the judgment of 11 May 1999 in Joined Cases C-425/97 to C-427/97 *Albers and Others* [1999] ECR I-2947, it no longer wished to maintain the first question.

16 It is therefore necessary to reply to the question whether Article 30 of the Treaty precludes a national rule such as that laid down in Article 3(1) of the Verordening, read in conjunction with Article 2 thereof.

17 Berendse-Koenen M.G. en Berendse H.D. Maatschap maintain that clenbuterol is a substance used in a number of veterinary medicinal products such as Ventipulmin, which, when prescribed for therapeutic purposes, allows effective treatment of certain specific ailments of cattle. The cattle under investigation had received that type of veterinary treatment, so that the presence of clenbuterol in the urine samples taken was caused by the administration of that medicinal product, specifically prescribed for treating the illness from which those animals were suffering.

18 They further argue that the Verordening has the effect of prohibiting the use of that type of veterinary medicinal product, whereas other Member States impose no such prohibition. That inequality of treatment between Netherlands operators and the other Community operators has, they submit, the effect of creating distortions of competition prohibited by Community law.

19 The Netherlands Government contends that, since the rules contained in the Verordening are necessary for the effective protection of the health of persons, those measures are in any event justified under Article 36 of the Treaty.

20 The Irish Government submits that the Verordening cannot reasonably be regarded as a measure having equivalent effect to a quantitative restriction. The provisions of the Verordening concern the administering of clenbuterol to cattle, and the holding and sale of cattle, or meat from cattle, to which clenbuterol had

been administered. The Verordening does not affect the importation of clenbuterol.

21 The Commission states that this case does not concern a unilateral measure enacted by a Member State. Directive 86/469 requires the Kingdom of the Netherlands to take all necessary measures to ensure that animals in which the presence of prohibited substances has been detected cannot be placed on the market. Thus, the provisions of Directive 86/469 are not enacted by each Member State in order to protect an interest of its own. Such measures cannot therefore be regarded as unilateral measures hindering trade, but rather as operations designed to promote the free movement of goods, especially by neutralising the obstacles which might result from national measures taken in accordance with Article 36.

22 In that regard, and without there being any need to decide the question whether Netherlands cattle breeders may rely on Article 30 of the Treaty, which prohibits hindrances to intra-Community trade, as a defence against the application in their regard of a Netherlands rule such as that at issue in this case, it should be borne in mind that, according to the third and fourth recitals in the preamble of Directive 86/469, the purpose of that directive is to harmonise control measures for residues and to fix common maximum tolerance levels for the presence of such residues in fresh meat, the exceeding of those levels automatically entailing prohibition on marketing the meat in question. The directive thus pursues a twofold objective, which is both to ensure the protection of human health and to facilitate the free movement of goods.

23 Furthermore, it should be pointed out that, in issuing the prohibition on administering clenbuterol to fattening cattle over 14 weeks old and holding, having in stock, buying or selling fattening cattle over 14 weeks old to which that substance has been administered, the Netherlands authorities discharged their obligations under Directive 86/469 (*Albers*, paragraph 23).

24 A national rule such as that laid down by Article 3(1) of the Verordening, read in conjunction with Article 2 thereof, does not therefore constitute a unilateral measure designed to protect individual interests of the Member State which enacted it, but is adopted in order to comply with a directive of the Council in the general interest of the Community (Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5, paragraphs 28 and 29).

25 That being so, a rule such as that at issue in the main proceedings, whereby a Member State discharges its obligations under Directive 86/469, cannot be characterised as a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the Treaty.

26 In the light of the above, the answer to the question referred must be that Article 30 of the Treaty does not preclude a national rule such as that laid down by Article 3(1) of the Verordening, read in conjunction with Article 2 thereof.

Costs

27 The costs incurred by the Netherlands and Irish 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 before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Arrondissementsrechtbank te Arnhem by order of 2 April 1998, hereby rules:

Article 30 of the EC Treaty (now Article 28 EC) does not preclude a national rule such as that laid down by Article 3(1) of the Verordening Stoffen met sympathico mimetische werking (PVV) 1991, read in conjunction with Article 2 thereof.

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 23 March 2000.

R. Grass
Registrar

J.C. Moitinho de Almeida
President of the Third Chamber