JUDGMENT OF THE COURT

21 January 2003 *

In Case C-318/00,

REFERENCE to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

Bacardi-Martini SAS,

Cellier des Dauphins

and

Newcastle United Football Company Ltd,

on the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC),

* Language of the case: English.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet and M. Wathelet (Presidents of Chambers), C. Gulmann, D.A.O. Edward, P. Jann (Rapporteur), V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Bacardi-Martini SAS and Cellier des Dauphins, by N. Green QC and M. Hoskins, Barrister, instructed by Townleys and subsequently by Hammond Suddards Edge, Solicitors,

— the United Kingdom Government, by R.V. Magrill and subsequently G. Amodeo, acting as Agents, and K. Beal, Barrister,

— the French Government, by G. de Bergues and R. Loosli-Surrans, acting as Agents,

— the Commission of the European Communities, by K. Banks, acting as Agent,

having regard to the national court's reply to a request for clarification pursuant to Article 104(5) of the Rules of Procedure, received at the Court on 26 February 2002,

having regard to the Report for the Hearing,

after hearing the oral observations of Bacardi-Martini SAS and Cellier des Dauphins, represented by N. Green and M. Hoskins; the United Kingdom Government, represented by G. Amodeo and K. Beal; the French Government, represented by R. Loosli-Surrans; and the Commission, represented by H. van Lier, acting as Agent, at the hearing on 14 May 2002,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2002,

gives the following

Judgment

1 By order of 28 July 2000, received at the Court on 14 August 2000, the High Court of Justice of England and Wales, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC).

2 The questions were raised in proceedings between Bacardi-Martini SAS and Cellier des Dauphins ('the claimants') and Newcastle United Football Company Ltd ('Newcastle') for compensation for the damage allegedly suffered as a result of Newcastle's interference in the performance of contracts they had concluded with Dorna Marketing (UK) Ltd ('Dorna') for the display of advertisements.

Legal background

3 The French Loi No 91/32 relative à la lutte contre le tabagisme et l'alcoholisme (Law No 91/32 on combating smoking and alcoholism) of 10 January 1991 (*Journal officiel de la République française* (JORF), 12 January 1991, p. 615, 'the Loi Évin') amended Article L.17 of the Code des débits de boissons (Code of licensed premises), subsequently Article L.3323-2 of the Code de la santé publique (Code of Public Health).

4 That provision authorises certain forms, listed exhaustively, of direct or indirect promotion or advertising for alcoholic drinks.

5 Under the Loi Évin, all advertising for alcoholic drinks, defined as drinks whose alcohol content exceeds 1.2 degrees, which is not expressly authorised is prohibited. Since the advertising of alcoholic drinks on television is not expressly authorised, it is prohibited.

6 That prohibition is confirmed by Article 8 of Decree No 92-280 of 27 March 1992 applying Article 27(1) of the Law of 30 September 1986 relating to freedom

of communication and defining the general principles concerning the rules applicable to advertising and sponsorship (JORF, 28 March 1992, p. 4313), which provides:

'Advertising relating to products the advertising of which on television is prohibited by law and to the following products and economic sectors shall be prohibited:

— drinks having an alcohol content greater than 1.2°;

...'

The Conseil supérieur de l'audiovisuel (CSA) is an independent administrative authority responsible for guaranteeing the exercise of freedom of communication. Among other things, it monitors advertisements broadcast by audiovisual communication services. The CSA can impose administrative penalties on broadcasters who fail to comply with their obligations under the Loi Évin.

7 In 1995 the CSA adopted a code of conduct containing principles relating to the television broadcasting on French stations of sporting events taking place in France or abroad at which advertisements for alcoholic drinks appear. The principles set out in the code, which has been amended on several occasions, have no legislative force but, as stated in the preamble to the code, are accepted as an interpretation voluntarily agreed in good faith.

8 According to the CSA's code of conduct, as worded at the material time, French producers and advertisers may not be treated differently from their foreign competitors, subject only to any limits imposed by the national law of the place of the event.

9 The code proceeds from the principle that the broadcaster must refrain from adopting an indulgent approach to advertisements for alcoholic drinks.

10 To that end, it distinguishes between 'multinational events' and 'other events' taking place abroad.

11 In the case of 'multinational events', pictures of which are transmitted in a large number of countries and thus cannot be regarded as aimed principally at a French audience, where French broadcasters broadcast pictures whose conditions of filming are not within their control, they cannot be accused of an indulgent approach to the advertisements concerned even if they appear on the screen.

12 In the case of 'other events', where the law of the host country allows the advertising of alcoholic drinks at sporting venues but the transmission is aimed specifically at a French audience, it is for all the parties negotiating contracts with the holder of the transmission rights to use all available means to prevent brand names relating to alcoholic drinks from appearing on the screen.

13 The British Code of Advertising does not prohibit the advertising of alcoholic drinks, nor does it restrict the means of advertising them. However, it limits the permitted content of the advertisements in several respects.

The main proceedings and the questions referred for a preliminary ruling

14 The claimants are companies incorporated under French law which *inter alia* produce and market alcoholic drinks. Newcastle is a company incorporated under English law which owns and manages a football club and stadium.

15 In the context of an agreement concluded in 1994 between a football association and several football clubs, including Newcastle, of the one part and Dorna of the other part, Dorna was appointed to sell and display advertisements around the touchline of the clubs' pitches for each home match played by the clubs' first teams.

16 Under two contracts concluded in November 1996 between the claimants and Dorna, Dorna undertook to provide the claimants with advertising time on its electronic revolving display system during a match between Newcastle and Metz, a French football club, which was to be played in Newcastle on 3 December 1996 in the third round of the UEFA Cup (Union of European Football Associations).

17 That match was to be televised in the United Kingdom and France. Newcastle had undertaken, by an agreement with CSI Ltd ('CSI'), a company incorporated under English law which *inter alia* sells television broadcasting rights for sporting events, to permit and/or procure the live broadcast of the match on French television.

18 The advertisements for alcoholic drinks which were to be shown during the match in accordance with the contracts between the claimants and Dorna complied with the requirements of English law.

19 Shortly before the start of the match, Newcastle became aware that Dorna had sold the claimants advertising space in order to display advertisements for alcoholic drinks during the match. Newcastle consequently informed Dorna that, since the match was to be broadcast by a French television station, the French legislation restricting the advertising of alcoholic drinks applied, and that Dorna should therefore remove the advertisements for the claimants from its display panels in order to comply with that legislation.

20 Since the advertisements in question could no longer be removed from the revolving displays so shortly before the start of the match, the display system was programmed in such a way that during the match they appeared for only one to two seconds on each occasion instead of the 30 seconds provided for in the contracts. The match was broadcast live on French television, as CSI had sold the transmission rights to the French television station Canal +.

21 On 23 July 1998 the claimants brought proceedings against Dorna and Newcastle in the High Court of Justice of England and Wales, Queen's Bench Division, seeking *inter alia* damages and injunctions. The proceedings against Dorna were subsequently withdrawn.

22 In support of the claims against Newcastle, the claimants argue that breach of the contracts concluded between themselves and Dorna is attributable to Newcastle, that Newcastle's interference with those contracts cannot be justified by the relevant provisions of the Loi Évin because those provisions are not compatible with Article 59 of the Treaty, and that Newcastle is therefore liable for the damage caused to the claimants on the ground of inducing breach of contract.

23 The claimants consider that the relevant provisions of the Loi Évin, in particular as interpreted and applied by the CSA, infringe Article 59 of the Treaty in that

they constitute a restriction on the cross-border provision of services, since they restrict advertising for alcoholic drinks at sporting events taking place in Member States other than France where those events are televised in France, and/or prohibit or restrict the televising in France of sporting events taking place in other Member States where advertisements for alcoholic drinks are displayed at the venue of the event.

24 According to the claimants, the public interest which the provisions of the Loi Évin seek to safeguard is adequately protected by the rules on the advertising of alcoholic drinks applicable in the United Kingdom.

25 The claimants submit, moreover, that the restrictions imposed in accordance with the provisions of the Loi Évin are disproportionate for several reasons.

26 In its defence, Newcastle submits *inter alia* that instructing Dorna to remove the advertisements for the claimants on the basis of the provisions of the Loi Évin was justified because those provisions are compatible with Article 59 of the Treaty.

27 The High Court observes, first, that various French courts have given divergent decisions on the applicability of the Loi Évin to cross-border broadcasts of sporting events. Second, it refers to an expert report submitted to it on the effects in practice of the relevant provisions of the Loi Évin. It appears in particular that

matches preceding the quarter-finals of the UEFA Cup are regarded as 'other events' within the meaning of the CSA code of conduct.

28 Having satisfied itself that the issues raised before it did not have to be examined from the point of view of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), the High Court considered that the provision of Community law which applied was Article 59 of the Treaty.

29 However, it found it inappropriate, as an English court, to make a definitive ruling on the lawfulness of a French law with respect to Article 59 of the Treaty, particularly without the French Government having been able to submit observations on the point.

30 In those circumstances, the High Court decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Are Articles L.17 to L.21 of the Code des débits de boissons (the so-called "Loi Évin" provisions), Article 8 of Decree No 92-280 of 27 March 1992 and the provisions of the code of conduct of 28 March 1995 contrary to Article 59 of the EC Treaty (now, after amendment, Article 49 EC) in so far as they prevent or restrict

(a) the advertising of alcoholic drinks at sporting events taking place in Member States other than France when the events are to be televised in France and

(b) the broadcasting in France of sporting events taking place in other Member States at which there is advertising of alcoholic beverages?

2. If not, is the manner in which these provisions are interpreted and applied in practice by the Conseil supérieur de l'audiovisuel contrary to Article 59 of the EC Treaty (now, after amendment, Article 49 EC) in so far as they prevent or restrict

(a) the advertising of alcoholic drinks at sporting events taking place in Member States other than France when the events are to be televised in France and

(b) the broadcasting in France of sporting events taking place in other Member States at which there is advertising of alcoholic beverages?'

31 Since it considered that it was not clear on the basis of the documents submitted to the Court why an answer to the questions referred was necessary to enable the national court to give judgment in the main proceedings, the Court, pursuant to Article 104(5) of the Rules of Procedure, requested the national court to explain more fully the basis on which Newcastle could rely on the Loi Évin — assuming it to be compatible with Article 59 of the Treaty — as a defence to the claim against it.

32 In answer to that request, the High Court stated that the claims brought against Newcastle were based on 'the tort of inducing breach of contract'. It was well

established in English law that a party could submit that such an interference with a contract was justified. The question of what constitutes justification in this context was a matter for the national court to decide, taking account of all the circumstances.

33 In the present case, Newcastle had submitted that it was entitled to give instructions to remove the advertisements in the stadium, *inter alia* because 'such instructions were given in the reasonable anticipation that a failure to give them would result in a breach of French law'.

34 The claimants for their part submitted that this defence was unacceptable as a matter of Community law, since the Loi Évin was in any event contrary to Article 59 of the Treaty.

35 The High Court therefore considered that it was appropriate to seek a preliminary ruling from the Court on the issue of Community law raised.

Admissibility

Observations submitted to the Court

36 The French Government and the Commission submit that the questions referred are inadmissible. According to the French Government, there is no extra-terri-

torial application of French law. It is the French television station which bought the television rights which would have had to answer for a possible breach of French law when the match which was played in England was broadcast in France. In relying on the application of French law, Newcastle's sole motive was the fear of losing the payment for the television rights.

37 The Commission adds that the High Court has not explained whether and how such financial considerations could justify inducing a breach of contract. More generally, the High Court has given the Court no indication of how the answers to the questions referred could help it to decide the case before it.

38 According to the claimants, on the other hand, the admissibility of the reference for a preliminary ruling derives from the fact that the national court must examine all the justifications put forward. It is not disputed that Newcastle's decision was motivated by the existence and effects of the French law. The claimants submit that this attempt at justification is invalid in that the Loi Évin is incompatible with Article 59 of the Treaty.

39 The United Kingdom Government agrees with that argument and adds that, if it were an express or implied term of the contract between Newcastle and CSI that the broadcast of the match would comply with French law, the compatibility of the French law with Article 59 of the Treaty would indeed be of relevance for the main proceedings. In any event, the requirement imposed on the French broadcaster to negotiate compliance with the Loi Évin when matches taking place abroad are broadcast gives that law extraterritorial effect.

Findings of the Court

40 It is settled case-law that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59; Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38; and Case C-153/00 *Der Weduwe* [2002] ECR I-11319, paragraph 31).

41 However, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court (see, to that effect, *PreussenElektra*, paragraph 39). The spirit of cooperation which must prevail in preliminary ruling proceedings requires the national court for its part to have regard to the function entrusted to the Court of Justice, which is to contribute to the administration of justice in the Member States and not to give opinions on general or hypothetical questions (*Bosman*, paragraph 60, and *Der Weduwe*, paragraph 32).

42 Thus the Court has held that it has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious that the interpretation or the assessment of the validity of a provision of Community law sought by that court bears no relation to the actual facts of the main action or its purpose, or where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see *Bosman*, paragraph 61; Case C-437/97 *EKW and*

Wein & Co [2000] ECR I-1157, paragraph 52; and Case C-36/99 *Idéal Tourisme* [2000] ECR I-6049, paragraph 20).

43 In order that the Court may perform its task in accordance with the Treaty, it is essential for national courts to explain, when the reasons do not emerge beyond any doubt from the file, why they consider that a reply to their questions is necessary to enable them to give judgment (Case 244/80 *Foglia* [1981] ECR 3045, paragraph 17). Thus the Court has held that it is essential that the national court should give at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and of the link it establishes between those provisions and the national legislation applicable to the dispute (order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 16).

44 Moreover, the Court must display special vigilance when, in the course of proceedings between individuals, a question is referred to it with a view to permitting the national court to decide whether the legislation of another Member State is in accordance with Community law (*Foglia*, paragraph 30).

45 In the present case, as the questions referred are intended to enable the national court to assess the compatibility with Community law of the legislation of another Member State, the Court must be informed in some detail of that court's reasons for considering that an answer to the questions is necessary to enable it to give judgment.

46 It appears from the High Court's account of the legal context that it has to apply English law in the main proceedings. It nevertheless considers that 'the issue of the legality of the Loi Évin provisions is central to resolution of the proceedings

before [it]'. It does not, however, state positively that an answer to that question is necessary to enable it to give judgment.

47 On being requested by the Court to explain more fully the basis on which Newcastle could rely on the Loi Évin, the High Court has essentially confined itself to repeating the defendant's argument that it could reasonably anticipate that a failure to give instructions to remove the advertisements in the stadium would result in a breach of French law.

48 On the other hand, the High Court has not said whether it itself considered that Newcastle could reasonably suppose that it was obliged to comply with the French legislation, and there is nothing else to that effect before the Court.

49 The United Kingdom Government has contended that the premiss for concluding that the questions referred are material could be the existence of an obligation on the part of Newcastle, in terms of its contract with CSI for the broadcast of the Newcastle-Metz match by a French television station, to comply with the French legislation. On this point, it suffices to state that the national court has not mentioned the existence of any such contractual obligation.

50 Furthermore, as the Advocate General rightly observes in point 34 of his Opinion, even if the national court were to consider that Newcastle could reasonably suppose that compliance with the French legislation required it to intervene in the contracts in question, it is not clear why that would no longer be

the case if the provision with which Newcastle wished to ensure compliance turned out to be contrary to Article 59 of the Treaty.

51 The order for reference contains no information on this point either.

52 In those circumstances, the conclusion must be that the Court does not have the material before it to show that it is necessary to rule on the compatibility with the Treaty of legislation of a Member State other than that of the court making the reference.

53 The questions referred to the Court for a preliminary ruling are therefore inadmissible.

Costs

54 The costs incurred by the United Kingdom and French 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 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 High Court of Justice of England and Wales, Queen's Bench Division, by order of 28 July 2000, hereby rules:

The reference for a preliminary ruling made by the High Court of Justice of England and Wales, Queen's Bench Division, by order of 28 July 2000 is inadmissible.

Rodríguez Iglesias	Puissochet	Wathelet
Gulmann	Edward	Jann
Skouris	Macken	Colneric
von Bahr	Cunha Rodrigues	

Delivered in open court in Luxembourg on 21 January 2003.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President