JUDGMENT OF THE COURT (Second Chamber)
25 June 1986 *

In Case 130/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven, The Hague, for a preliminary ruling in the administrative proceedings brought by

Groothandel in, Im- en Export van Eieren en Eiprodukten Wulro BV, Weert

appellant,

against a disciplinary decision of the Tuchtgerecht of the Stichting Scharreleieren-Controle [Disciplinary Board of the Deep-Litter Eggs Supervisory Agency]

on the interpretation of Council Regulation (EEC) No 2772/75 of 29 October 1975 on marketing standards for eggs (Official Journal 1975, L 282, p. 56),

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of the Chamber, O. Due and F. Schockweiler, Judges,

Advocate General: G. F. Mancini
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

the Netherlands Government, by I. Verkade, Secretary-General at the Ministry for Foreign Affairs, and D. van Heukelom, acting as Agents,

* Language of the Case: Dutch.

the Commission of the European Community by R. C. Fischer, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 24 April 1986,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By order dated 16 April 1985, which was received at the Court on 30 April 1985, the College van Beroep voor het Bedrijfsleven [Administrative court of last instance in matters of trade and industry] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Council Regulation (EEC) No 2772/75 of 29 October 1975 on marketing standards for eggs in order to decide whether the Landbouwkwaliteitsbesluit Scharreleieren [Quality of Agricultural Produce (Deep-Litter Eggs) Order], Staatsblad 1978, p. 636, which entered into force on 17 January 1979 (hereinafter referred to as 'the Order'), and other provisions of Netherlands law authorizing and protecting the use of the marking 'scharrelei' or 'scharreleieren' (deep-litter egg or eggs) are compatible with that regulation.

2 That question was raised in disciplinary proceedings brought against the company De Groothandel in, Im- en Export van Eieren en Eiprodukten Wulro BV (hereinafter referred to as 'Wulro') for contravention of the Order. It was accused of having marketed, between 1 January 1983 and 31 March 1983, eggs on which, or on the packaging of which, appeared the words 'scharrelei' or 'scharreleieren' although the eggs had not been produced in accordance with the provisions of the Order regarding the use of those markings.

3 Article 2 (1) of the Order prohibits the use of those markings unless the eggs meet the requirements laid down in Article 3 which relate to the poultry enterprises on which they are produced and the conditions in which the hens which lay them are kept.

4 The Order is based on the Landbouwkwaliteitswet [Law on the Quality of Agricultural Produce] (Staatsblad 1971, p. 371), which together with various orders implementing that Law, including the Order in question, form the Netherlands legislation governing the production and marketing of eggs.

5 Detailed rules implementing the Netherlands legislation were laid down in the statutes and regulations of the Stichting Scharreleieren-Controle, (hereinafter referred to as 'the Agency'), a supervisory body governed by private law referred to in Article 8 of the aforesaid Law which is responsible for issuing certain approvals and for supervising the use of the markings 'scharrelei' or 'scharreleieren'. It appears from the Netherlands legislation considered as a whole that only producers affiliated to the Agency, to the exclusion of all other producers, may be authorized to use those markings on eggs or their packaging. With that in view, the preamble to the Order states that '... in order to promote sales, rules must be laid down regarding the production and marking of deep-litter eggs ... '.

6 The Disciplinary Board of the Agency decided that Wulro, a producer affiliated to the Agency, had infringed the provisions of the Order and fined it HFL 7 500.

7 The College van Beroep voor het Bedrijfsleven, to which Wulro appealed against the decision of the Disciplinary Board, investigated of its own motion the question whether the Order and all the related Netherlands legislation was compatible with Community law. It referred in particular to Council Regulation No 2772/75, Article 21 of which states that egg packs shall not bear any indications other than those laid down in the regulation. Furthermore, indications relating to the method of production and the origin of eggs may be affixed only in compliance with the provisions laid down in accordance with the procedure provided for in Article 17 of Council Regulation No 2771/75 of 29 October 1975 on the common organization of the market in eggs (Official Journal 1975, L 282, p. 49). The College van Beroep took the view that the markings 'scharrelei' and 'scharreleieren' might fall within the scope of the restriction laid down by Community law. Considering that the disciplinary proceedings required an interpretation of the relevant Community legislation, the College van Beroep decided that it was necessary to refer the following question to the Court for a preliminary ruling:

'Must Council Regulation (EEC) No 2772/75 be interpreted as meaning that national provisions authorizing and protecting the use of the marking 'scharrelei' or 'scharreleieren' on eggs or their packaging (so that the use of those markings is prohibited unless certain requirements relating partly to the undertakings on which the eggs are produced and partly to the hens which lay them are satisfied) are incompatible with that regulation so long as no Community provisions concerning such a marking have been adopted under the procedure provided for in Article 17 of Council Regulation (EEC) No 2771/75?'

8 The Netherlands Government takes the view that the Netherlands legislation in question encourages egg producers to keep hens in better conditions and that it imposes only minimal restrictions on the production and marketing of eggs whilst giving consumers full information about their origin. The marking 'scharrelei', authorized and protected by the Agency, on eggs and their packaging is an official inspection mark and is protected under Article 6b of the Paris Convention for the Protection of Industrial Property of 20 March 1883.

9 The Netherlands Government further considers that the rules in question are justified on the grounds referred to in Article 36 of the Treaty, in particular the protection of health and life of animals and the protection of industrial property.

10 As regards the period prior to 1 December 1984, the Netherlands Government also points out that Regulations Nos 2771/75 and 2772/75 had not deprived the Member States of their power to adopt rules on aspects quite different from those governed by the common organization of the market in eggs. In the absence of Community provisions concerning the conditions in which hens are kept and markings on eggs or their packaging relating to those conditions, the Member States could therefore adopt and maintain rules such as those in question. It adds that the Agency's inspection mark is akin to a collective trade mark, which is allowed under Article 18 of Regulation No 2772/75.

11 As regards the period after 1 December 1984, the Netherlands Government refers to the amendments made to Regulation No 2772/75 by Council Regulation (EEC)

No 1831/84 of 19 June 1984 amending Regulation (EEC) No 2772/75 on marketing standards for eggs (Official Journal 1984, L 172, p. 2), by Council Regulation (EEC) No 3341/84 of 28 November 1984 amending Regulation (EEC) No 2772/75 on marketing standards for eggs and laying down special provisions for the application of Regulation (EEC) No 1831/84 (Official Journal 1984, L 312, p. 7) and by Commission Regulation (EEC) No 1943/85 of 12 July 1985 amending Regulation (EEC) No 95/69 as regards certain marketing standards for eggs (Official Journal 1985, L 181, p. 34). By those amendments the Community legislature authorized the use of the markings 'scharrelei' and 'scharreleieren' on eggs and their packaging. Since that date, the power to adopt provisions governing the marking of eggs and their packaging with information about how they were produced has passed to the Community. The Netherlands Government draws the conclusion that the national rules could remain in force until those amendments took effect.

12 The Commission points out that Articles 15 and 21 of Regulation No 2772/75 state categorically that eggs and their packs must not bear any marks or indications other than those provided for in the regulation. Since the indication 'scharreleieren' is meant for the consumer and may affect competition and trade, it was not authorized by the Community legislature until the indications and the methods of production to which they relate had been defined in Community provisions, which was done in Regulation No 1943/85. The matters governed by the Netherlands legislation are therefore matters within the Community province. An intention to protect consumers of deep-litter eggs against misleading information cannot be pleaded as a ground for removing national provisions from the sphere of application of Regulation No 2772/75.

13 As regards the question whether the indication 'scharreleieren' may be regarded as a trade mark, the Commission takes the view that 'scharrelei' is a generic term which indicates that the eggs concerned have not been produced in batteries. As such, it cannot therefore be regarded as the trade mark of one or more undertakings.

14 The Court must observe first of all that it has no jurisdiction to rule on the question raised in the written and oral procedure as to whether the indications 'scharrelei' or 'scharreleieren' on eggs or their packaging constitute a trade name or a trade mark within the meaning of Article 11 (1) (f) of Regulation No 2772/75

or whether they are protected by the Paris Convention for the Protection of Industrial Property. However, it must be pointed out that the terms 'trade name' and 'trade mark' in Article 11 (1) (f) do not refer to markings which, without distinguishing the undertaking which marketed the eggs, indicate compliance with certain marketing standards or the type of farming and production or the conditions in which the hens laid the eggs.

15 The question raised is in substance whether Council Regulation No 2772/75, in the version in force until amended by Council Regulations Nos 1831/84 and 3341/84, must be interpreted as precluding national provisions authorizing and protecting the indications 'scharrelei' or 'scharreleieren' on eggs or their packaging.

16 In answering that question it should be borne in mind that Council Regulation No 2771/75, which codifies the basic provisions concerning the organization of the market in eggs, provides in Article 2 (2) that marketing standards are to be adopted for eggs.

17 The first recital in the preamble to Regulation No 2772/75, in the version in force at the material time, namely the first quarter of 1983, states that 'Regulation (EEC) No 2771/75 provides for fixing marketing standards which may relate in particular to trading by quality and weight, packing, . . . presentation and marking of eggs'. Articles 11 and 12 of that regulation list the marks which eggs may bear. Article 15 states that: 'Eggs shall not bear any marks other than those provided for in this Regulation', namely those listed in Articles 11 and 12. Finally, it may be deduced from the 12th and 15th recitals of the preamble to Regulation No 2772/75 that the purpose of affixing marks is to enable the consumer to distinguish between eggs of different categories whereas any other markings other than those authorized by the regulation 'might affect trading conditions in the Community'.

18 As regards the packaging of eggs, Articles 17 and 18 of Regulation No 2772/75, in the version in force in the first quarter of 1983, specify the information which

may appear on packs, whilst Article 21 provides that: 'Packs shall not bear any indications other than those laid down in this Regulation'.

19 That version of Regulation No 2772/75 therefore precluded national rules authorizing and protecting the affixing on eggs or their packaging of marks or markings to indicate how they were produced or the conditions in which the hens were kept.

20 The Netherlands Government takes the view that, in the absence of Community provisions on the conditions in which hens are kept and on the marking on eggs or their packaging of information regarding those conditions, the Member States were empowered to adopt and maintain rules such as the Netherlands rules in question.

21 That argument cannot be upheld. The Court has consistently held that, once the Community has adopted regulations establishing a common organization of the market for certain products, the Member States must refrain from adopting any measure which might undermine or create exceptions to it (judgment of 26 June 1979 in Case 177/78 *Pigs and Bacon Commission* v *McCarren and Company Limited* [1979] ECR 2161). Articles 15 and 21 of Regulation No 2772/75 require Member States to refrain from adopting any rules authorizing the affixing of any marks or indications on eggs and their packaging other than those provided for in that regulation. It is quite clear from Regulation No 2772/75, without its being necessary to ascertain whether the Member States have retained the power, after the adoption of the regulations on the common organization of the market in eggs, to adopt rules regarding the conditions in which hens are kept, that the Member States no longer had any power to regulate markings on eggs or their packaging indicating such information.

22 The argument of the Netherlands Government that the Netherlands system served as the model for the provisions adopted by the Commission in Regulation No 1943/85 and that therefore the Netherlands legislation was retroactively endorsed by the Community legislature must also be rejected.

23 It is true that in Regulation No 1831/84 the Council authorized the use of indications on packs concerning the type of farming and the origin of the eggs in accordance with the rules laid down under the procedure provided for in Article 17 of Regulation No 2771/75 (Article 1 (5)). Pursuant to that provision and in view of the fact that Article 21 (c) of Regulation No 2772/75, as amended by Regulation No 1831/84, provides that indications concerning the type of farming and the origin of the eggs may be used only in accordance with rules adopted at the Community level, in Regulation No 1943/85, the Commission authorized the use of the indication 'scharreleieren' on egg packs where the appropriate conditions were met. However, it is clear from the fourth recital of the preamble to Regulation No 1943/85 and from the Commission's explanations in its written and oral observations that those amendments could not be made until indications regarding the method by which eggs were produced and their origin had been standardized at the Community level. In those circumstances, the fact that certain elements of national legislation appear in Regulation No 1943/85 provides no retroactive justification for such legislation which was adopted in breach of Community law.

24 The answer to the question raised by the national court therefore must be that Regulation No 2772/75, in the version in force until amended by Council Regulations Nos 1831/84 and 3341/84, must be interpreted as precluding national provisions authorizing and protecting the affixing of the indications 'scharrelei' or 'scharreleieren' to eggs or packs of eggs.

Costs

25 The costs incurred by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the action are concerned, in the nature of 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 (Second Chamber),

in answer to the question referred to it by the College van Beroep voor het Bedrijfsleven by judgment of 16 April 1985,

hereby rules:

Regulation No 2772/75, in the version in force until amended by Council Regulations Nos 1831/84 and 3341/84, must be interpreted as precluding national provisions authorizing and protecting the affixing of the indications 'scharrelei' or 'scharreleieren' to eggs or packs of eggs.

Bahlmann Due Schockweiler

Delivered in open court in Luxembourg on 25 June 1986.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber