JUDGMENT OF THE COURT (Second Chamber)
24 January 1991 *

In Case C-339/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de commerce (Commercial Court, Paris) for a preliminary ruling in the proceedings pending before that court between

Alsthom Atlantique SA

and

Compagnie de construction mécanique Sulzer SA,

Union des assurances de Paris, party served with third-party notice,

on the interpretation of Articles 2, 3(f), 34 and 85 of the EEC Treaty,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: W. Van Gerven
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of:

Compagnie de construction mécanique Sulzer SA, by Michel Normand, of the Paris Bar,

* Language of the case: French.

Union des assurances de Paris, by Alain Tinayre, of the Paris Bar,

the Commission of the European Communities, by J. Currall, a member of its Legal Department, assisted by H. Lehman, a French civil servant placed at the disposal of the Commission's Legal Department, acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument on behalf of the Compagnie de construction mécanique Sulzer, represented by Mr Normand and Mr Holleaux, of the Paris Bar, the Union des assurances de Paris and the Commission at the hearing on 2 October 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 November 1990,

gives the following

Judgment

1 By judgment of 10 May 1989, which was received at the Court Registry on 3 November 1989, the Tribunal de commerce, Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 2, 3(f), 34 and 85(1) of the EEC Treaty.

2 Those questions were raised in a dispute between Alsthom Atlantique SA (hereinafter referred to as 'Alsthom') and Compagnie de construction mécanique Sulzer SA (hereinafter referred to as 'Sulzer'), the latter serving third-party notice on the Union des assurances de Paris, in connection with the defective functioning of ships' engines supplied by Sulzer to Alsthom and fitted in two cruise vessels delivered to the Dutch company Holland and America Tours ('hereinafter referred to as 'HAT').

3 One of the main issues which arose before the national court concerns Article 1643 of the French Civil Code, which is worded as follows:

'The vendor shall be liable for any latent defects, even if he is unaware of those defects, unless he stipulates that he shall not be liable.'

4 In its case-law the French Court of Cassation has interpreted that article as raising an irrebuttable presumption that a manufacturer or trader is aware of any defects in the goods sold which he can avoid only if the contract is concluded with a trader in the same specialized field.

5 In the proceedings instituted before the national court by Alsthom for payment of the costs incurred to remedy the latent defects in the engines sold by Sulzer, the latter argues that there is no case-law similar to that of the French Court of Cassation in any other Member State and that such case-law may distort competition and hinder the free movement of goods.

6 Taking the view that the dispute raised a number of questions concerning the interpretation of Articles 2, 3(f), 34 and 85(1) of the EEC Treaty, the Tribunal de commerce, Paris, decided to refer the following question to the Court for a preliminary ruling:

'Are the provisions of Articles 2 and 3(f), read together with those of Articles 85(1) and 34, of the EEC Treaty to be interpreted as prohibiting the application of a Member State's case-law which, by not allowing persons selling goods by way of trade to prove that on the date on which the goods were delivered they were unaware of a defect in the goods, has the effect of preventing them from relying on Article 1643 of the French Civil Code, which allows them to limit their liability when unaware of the defect, in the same way as their competitors in the other Member States may do under the provisions of their own national law?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 It should be borne in mind first of all that Article 2 of the Treaty describes the task of the European Economic Community. The aims laid down in that provision are concerned with the existence and functioning of the Community and are to be achieved through the establishment of the Common Market and the progressive approximation of the economic policies of Member States, which are also aims whose implementation is the essential object of the Treaty (see, to that effect, the judgment in Case 126/86 *Gimenez Zaera* v *Instituto Nacional de la Seguridad Social* [1987] ECR 3697, at paragraph 10).

9 Those aims, on which the establishment of the Community is based, and more particularly the aim of promoting a harmonious development of economic activities throughout the Community, cannot have the effect either of imposing legal obligations on the Member States or of conferring rights on individuals. It follows that the provisions of Article 2 of the Treaty cannot be relied upon by an individual before a national court.

10 The institution of a system ensuring that competition in the Common Market is not distorted, as envisaged by Article 3(f) of the Treaty, is an objective specified more closely in several other provisions relating to the rules of competition (see to that effect in particular the judgments in Case 85/76 *Hoffman-La Roche* v *Commission* [1979] ECR 461, and in Case 322/81 *Michelin* v *Commission* [1983] ECR 3461, at paragraph 29), including Article 85 of the Treaty, which prohibits agreements and concerted practices between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the Common Market.

11 It must be borne in mind that, as the Court has consistently held (see, in particular, the judgment in Case 311/85 *Vereniging van Vlaamse Reisbureaus* v *Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten* [1987] ECR 3801, at paragraph 10), Articles 85 and 86 of the Treaty concern the conduct of undertakings and not measures adopted by the authorities of the Member States. Nevertheless the Treaty imposes a duty on Member States not to adopt or maintain in force any measure which could deprive those provisions of their effectiveness. That would be the case, in particular, if national case-law were to favour the adoption of agreements, decisions or concerted practices contrary to Article 85 of the Treaty or to reinforce their effects.

12 With regard to this case, it must be stated that the irrebuttable presumption that a trader is aware of any defects in the goods sold, to which the national court refers, has been developed in the case-law for reasons connected with the protection of buyers and is unlikely to favour or facilitate the adoption of agreements contrary to Article 85.

13 According to Article 34 of the Treaty, quantitative restrictions on exports and all measures having equivalent effect are prohibited between Member States.

14 As the Court has consistently held (see, most recently, the judgment in Case C-9/89 *Spain* v *Council* [1990] ECR 1383, at paragraph 21), Article 34 of the Treaty concerns only those measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for its domestic market at the expense of the production or of the trade of other Member States.

15 It must be held that the case-law of the French Court of Cassation, to which reference is made in this case, applies without distinction to all commercial relations governed by French law and does not have as its specific object or effect the restriction of patterns of exports thereby favouring domestic production or the domestic market. Furthermore, the parties to an international contract of sale are generally free to determine the law applicable to their contractual relations and can thus avoid being subject to French law.

16 In the light of all those considerations, the answer to the question submitted for a preliminary ruling must be that the provisions of Articles 2 and 3(f) of the EEC Treaty, read together with those of Articles 34 and 85(1) thereof, must be interpreted as meaning that they do not prohibit the application of a Member State's case-law which, by not allowing persons selling goods by way of trade to prove that on the date on which the goods were delivered they were unaware of a defect in the goods, has the effect of preventing them from relying on provisions of national legislation which allow them to limit their liability when unaware of the defect, in the same way as their competitors in the other Member States may do.

Costs

17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Second Chamber),

in answer to the question referred to it by the Tribunal de commerce, Paris, by judgment of 10 May 1989, hereby rules:

The provisions of Articles 2 and 3(f) of the EEC Treaty, read together with those of Articles 34 and 85(1) thereof, must be interpreted as meaning that they do not prohibit the application of a Member State's case-law which, by not allowing persons selling goods by way of trade to prove that on the date on which the goods were delivered they were unaware of a defect in the goods, has the effect of preventing them from relying on provisions of national legislation which allow them to limit their liability when unaware of the defect, in the same way as their competitors in the other Member States may do.

O'Higgins Mancini Schockweiler

Delivered in open court in Luxembourg on 24 January 1991.

J.-G. Giraud
Registrar

T. F. O'Higgins
President of the Second Chamber