JUDGMENT OF THE COURT
16 December 1992 *

In Case C-306/88,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Queen's Bench Division of the High Court of Justice of England and Wales for a preliminary ruling in the proceedings pending before that court between

Rochdale Borough Council

and

Stewart John Anders

on the interpretation of Articles 30 and 36 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: W. Van Gerven,
Registrar: D. Triantafyllou, Administrator,

* Language of the case: English.

after considering the written observations submitted on behalf of:

— Rochdale Borough Council, by M. Beloff QC and S. Sauvain, Barrister,

— Stewart John Anders, by D. Vaughan QC and W. Elland, Barrister,

— the United Kingdom, by S. J. Hay, of the Treasury Solicitor's Department, assisted by N. Paines, Barrister, acting as Agents,

— the Commission of the European Communities, by E. White, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Rochdale Borough Council, Stewart John Anders, the United Kingdom, represented by S. L. Hudson, of the Treasury Solicitor's Department, assisted by Sir Nicholas Lyell QC, Attorney General, acting as Agents, the Commission, represented by A. Ridout, a national civil servant seconded to its Legal Department, at the hearing on 2 June 1992,

after hearing the Opinion of the Advocate General at the sitting on 8 July 1992,

gives the following

Judgment

1 By order of 28 June 1988, which was received at the Court on 19 October 1988, the Queen's Bench Division of the High Court of Justice of England and Wales referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 30 and 36 of the Treaty.

2 The questions were raised in proceedings brought by Rochdale Borough Council against Mr Anders for contravening sections 47 and 59 of the Shops Act 1950 by opening his shops on Sundays for commercial transactions other than those listed in the Fifth Schedule to that Act.

3 The Fifth Schedule to the Shops Act 1950 contains a list of items which, by way of exception, may be sold in shops on Sundays. They include, in particular, intoxicating liquors, certain foodstuffs, tobacco, newspapers, and other products of everyday consumption.

4 Before the national court, Mr Anders contended that the provisions of the Shops Act constituted a measure having an effect equivalent to a quantitative restriction on imports within the meaning of Article 30 of the Treaty, which could not be justified under Article 36 since the prohibition of Sunday retail trading restricted intra-Community trade to a greater extent than was necessary to secure protection of the principles mentioned in Article 36 of the Treaty.

5 Faced with those arguments, the Queen's Bench Division of the High Court of Justice stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

1. Where a Member State prohibits retail premises from being open on Sunday for the sale of goods to customers, save in respect of certain specified items sales of which are permitted, and where the effect of the prohibition is to reduce in absolute terms the sales of goods in those premises including goods manufactured in other Member States, and correspondingly to reduce the volume of imports of

goods from other Member States, is such a prohibition a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the Treaty?

2. If the answer to Question 1 is in the affirmative, does such a measure benefit from any of the exceptions to Article 30 contained in Article 36, or from any other exception recognized by Community law?

3. Is the answer to Question 1 or Question 2 above affected by any factor so as to render the measure in question a means of arbitrary discrimination or a disguised restriction on trade between Member States or a measure lacking in proportionality or otherwise unjustified?

4. If the prohibition referred to in Question 1 contravenes Article 30 and is not justified under Article 36, is it totally unenforceable against a trader in the Member State or only unenforceable to the extent that it prohibits transactions involving goods manufactured in or imported from other Member States?

6 After the order for reference was made, the Court of Justice ruled, in its judgment in Case 145/88 *Torfaen Borough Council* v *B&Q* [1989] ECR 3851, that Article 30 of the Treaty must be interpreted as meaning that the prohibition which it lays down does not apply to national rules prohibiting retailers from opening their premises on Sunday where the restrictive effects on Community trade which may result therefrom do not exceed the effects intrinsic to rules of that kind.

7 Subsequently, in its judgments in Case C-312/89 *Union Départementale des Syndicats CGT de l'Aisne* v *Conforama* [1991] ECR I-997 and Case 332/89 *Marchandise* [1991] ECR I-1027, the Court ruled that Article 30 of the Treaty must be interpreted as meaning that the prohibition which it lays down does not apply to national legislation prohibiting the employment of staff on Sundays.

8 After being notified of those three judgments, the national court informed the Court of Justice, by letter of 13 June 1991, that, in view of the judgment in *Torfaen Borough Council* in particular, the first three questions had become devoid of purpose but that a decision on the fourth question was still required.

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant legislation, 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.

10 It must be pointed out that in a judgment delivered today in Case C-169/91 *Council of the City of Stoke-on-Trent and Norwich City Council* v *B&Q*, which is concerned with rules substantially similar to those in question in the present case, the Court has ruled that Article 30 of the Treaty is to be interpreted as meaning that the prohibition which it lays down does not apply to national legislation prohibiting retailers from opening their premises on Sundays.

11 It follows that it is likewise unnecessary to reply to the fourth question.

Costs

12 The costs incurred by the United Kingdom Government and the Commission of the European Communities, 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,

in answer to the questions referred to it by the Queen's Bench Division of the High Court of Justice of England and Wales by order of 28 June 1988, hereby rules:

It is not necessary to reply to the questions raised.

Due Kakouris Rodríguez Iglesias Murray

Mancini Joliet Diez de Velasco Kapteyn Edward

Delivered in open court in Luxembourg on 16 December 1992.

J.-G. Giraud — Registrar

O. Due — President