JUDGMENT OF THE COURT (Second Chamber)

10 November 2005 *

In Case C-316/04,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 22 July 2004, received at the Court on 26 July 2004, in the proceedings

Stichting Zuid-Hollandse Milieufederatie

v

College voor de toelating van bestrijdingsmiddelen,

interveners:

3M Nederland BV and Others,

* Language of the case: Dutch.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, R. Schintgen, G. Arestis and J. Klučka (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 2 June 2005,

after considering the observations submitted on behalf of:

— Stichting Zuid-Hollandse Milieufederatie, by J. Rutteman, acting as Agent,

— 3M Nederland BV and Others, by D. Waelbroeck, avocat,

— the Netherlands Government, by H.G. Sevenster, J.G.M. van Bakel and C.M. Wissels, acting as Agents,

— the Danish Government, by A. Rahbøl Jacobsen, acting as Agent, and by P. Biering, advokat,

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

— the Commission of the European Communities, by B. Doherty and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2005,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of the transitional provisions of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) and those of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1).

2 The request was submitted in proceedings between the Stichting Zuid-Hollandse Milieufederatie ('the Stichting') and the College voor de toelating van bestrijdingsmiddelen ('the College') concerning the procedure and the conditions under Netherlands law for the grant of authorisation to place pesticide products on the market.

Legal context

Community rules

Directive 91/414

3 In accordance with Article 2(1) of Directive 91/414, plant protection products are 'active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user' and are intended principally to protect plants or plant products against harmful organisms. Article 2(4) of that directive defines active substances as 'substances or micro-organisms including viruses, having general or specific action' against harmful organisms or on plants, parts of plants or plant products.

4 According to Article 3(1) of Directive 91/414, plant protection products may not be placed on the market and used in a Member State unless the competent authorities of that State have authorised the product in accordance with that directive.

5 Article 4(1) of that directive provides that Member States are to ensure that a plant protection product is not authorised unless 'its active substances are listed in Annex I and any conditions laid down therein', and those set out in Article 4(1)(b) to (f), are fulfilled.

6 Article 4(5) of Directive 91/414 is worded as follows:

'Authorisations may be reviewed at any time if there are indications that any of the requirements referred to in paragraph 1 are no longer satisfied. In such instances the Member States may require the applicant for authorisation or party to whom an extension of the field of application was granted in accordance with Article 9 to submit further information necessary for the review. The authorisation may, where necessary, be extended for the period necessary to complete a review and provide such further information.'

7 Article 8 of that directive concerns transitional measures and derogations. Article 8 (1) sets out the requirements which must be satisfied before an authorisation may be granted for the placing on the market plant of protection products containing an active substance not listed in Annex I to that directive and not yet available on the market two years after notification of the directive.

8 Article 8(2) of Directive 91/414 reads as follows:

'By way of derogation from Article 4 and without prejudice to paragraph 3 or to Directive 79/117/EEC, a Member State may, during a period of 12 years following the notification of this Directive, authorise the placing on the market in its territory of plant protection products containing active substances not listed in Annex I that are already on the market two years after the date of notification of this Directive.

...'

9 Article 8(3) provides that '[w]here they review plant protection products containing an active substance in accordance with paragraph 2, and before such review has taken place, Member States shall apply the requirements laid down in article 4(1)(b)(i) to (v), and (c) to (f) in accordance with national provisions concerning the data to be provided'.

10 In accordance with Article 13(6) of Directive 91/414, 'for active substances already on the market two years after notification of this Directive, Member States may, with due regard for the provisions of the Treaty, continue to apply previous national rules concerning data requirements as long as such substances are not included in Annex I'.

11 According to Article 23, Directive 91/414 was to be implemented 'within two years following notification thereof'.

Directive 98/8

12 In Article 2(1)(a) of Directive 98/8, biocidal products are defined as '[a]ctive substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to destroy, deter, render harmless, prevent the action of, or otherwise exert a controlling effect on any harmful organism by chemical or biological means'.

13 Under Article 3(1) of that directive, 'Member States shall prescribe that a biocidal product shall not be placed on the market and used in their territory unless it has been authorised in accordance with this Directive'.

14 Article 5(1) of that directive provides that Member States are to authorise a biocidal product only if 'the active substance(s) included therein are listed in Annex I or IA and any requirements laid down in those Annexes are fulfilled' and if a number of other conditions are satisfied.

15 Article 16(1) of Directive 98/8, on transitional measures, provides that 'a Member State may, for a period of 10 years ..., continue to apply its current system or practice of placing biocidal products on the market. It may, in particular, according to its national rules, authorise the placing on the market in its territory of a biocidal product containing active substances not listed in Annex I or IA ...'. However, those active substances must be on the market within not more than 24 months from the date of entry into force of the directive, as active substances of a biocidal product for purposes other than scientific research and development or process-orientated research and development.

16 According to paragraph 5 of that article, '[t]he provisions 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 shall continue to apply during the transitional period referred to in paragraph 2'.

17 Article 34 of that directive provides that the Member States are to bring into force the measures necessary to comply with the directive not later than 24 months after its entry into force. According to Article 35, the directive is to 'enter into force on the 20th day following its publication', that is to say, on 14 May 1998.

National rules

18 Article 2(1) of the Law on pesticides (Bestrijdingsmiddelenwet) of 1962 (Stb. 1962, No 288), in the version applicable at the material time ('the Bmw'), provides:

'It is prohibited to sell, place in stock or store, bring into the Netherlands or use any pesticide which is not shown to be authorised or, in the case of a low-risk biocidal product, registered under this Law.'

19 Article 3(1) of the Bmw is primarily intended to transpose principally Article 4(1) of Directive 91/414. In particular, Article 3(1)(a)(1) to (10) sets out conditions which substantially correspond to those laid down in Article 4(1)(b)(i) to (v) and Article 3 (1)(b) to (d) fixes the conditions which correspond to those laid down in Article 4(1) (c) to (e).

20 Article 3(2)(a) of the Bmw is intended to transpose Article 4(1)(a) of Directive 91/414.

21 Article 4(1) of the Bmw provides that decisions on the authorisation or registration of pesticides are to be taken, on application, by the College.

22 Article 25d of the Bmw is worded as follows:

'1. A pesticide whose active substance or active substances have been designated by the College shall, by way of derogation from the provisions of Articles 3, 3a, 4(1) and 5(1) or the measures adopted to implement those provisions, be authorised or registered by operation of law with effect from the time referred to in paragraph 3.

2. Where an active substance within the meaning of paragraph 1 is designated, regard shall be had to the effects of the active substance concerned referred to in Article 3(1)(a)(3) to (10).

3. The authorisation or registration ... shall, by way of derogation from Article 5(1), be valid until the date by which a Community measure adopted in relation to the active substance concerned, as referred to in Article 3(2)(a), must be implemented, on the understanding that it shall, in any event, remain valid after 26 July 2003 or 15 May 2010 where no Community measure stating whether the active substance concerned may be used as the basis for a plant protection or biocidal product has been adopted by the relevant date.

...'

Main proceedings and questions referred for a preliminary ruling

23 On 12 June 2002, the Stichting lodged a complaint against the decision delivered on the same day, whereby the College drew up a list of active substances pursuant to Article 25d of the Bmw and, by operation of law, granted the authorisations referred to in that article.

24 By decision of 12 May the College declared that the Stichting's objections were unfounded.

25 On 28 May 2004 the Stichting brought an action against that decision before the College van Beroep voor het bedrijfsleven, which, as the problem before it related essentially to the compatibility of Article 25d of the Bmw with the transitional provisions of Directives 91/414 and 98/8, decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. (a) Can Article 8 of [Directive 91/414] be applied by the national court after the period referred to in Article 23 thereof has expired?

(b) Can Article 16 of [Directive 98/8] be applied by a national court after the period referred to in Article 34 thereof has expired?

2. Must Article 16 of [Directive 98/8] be interpreted as having the same meaning as Article 8(2) of [Directive 91/414]?

3. Must Article 16(1) of [Directive 98/8] be interpreted as a standstill obligation?

If the answer to this question is in the negative:

Does Article 16(1) of [Directive 98/8] impose limits on amendments to national rules concerning the placing on the market of biocidal products, and if so what limits?

4. If the answer to Question 2 is in the negative:

(a) Must Article 8(2) of [Directive 91/414] be interpreted as meaning that where a Member State authorises the placing on the market in its territory of plant protection products containing active substances not listed in Annex I to that directive that were already on the market two years after the date of notification of that directive regard must also be had to the provisions of Article 4 thereof?

(b) Must Article 8(2) of [Directive 91/414] also be interpreted as meaning that where a Member State authorises the placing on the market in its territory of plant protection products containing active substances not listed in Annex I to that directive that were already on the market two years after the date of notification of that directive regard must also be had to the provisions of Article 8(3) thereof?

5. Must Article 8(3) of [Directive 91/414] be interpreted as meaning that "a review" must also be construed as including an examination whereby regard is to be had to the effects of an active substance concerned on human and animal health and on the environment and on the basis of which this active substance is

designated, the result of such designation being that plant protection products containing the active substance are authorised or registered by operation of law?

6. Must Article 8(3) of [Directive 91/414] be interpreted as meaning that it contains only rules relating to the provision of data before a review or must it be construed as meaning that the requirements set out therein are also relevant to the way in which a review must be organised and carried out?'

The questions

Admissibility

26 In the observations which it has submitted to the Court, the French Government initially expresses doubts as to the admissibility of a number of the questions.

27 First of all, it observes that the national court refers in the first part of Question 1 to Article 8 of Directive 91/414 as a whole, without specifying which of the paragraphs of that article, which refer to significantly different situations, is at issue. It further submits that Article 23 of that directive concerns only the application of the second indent of Article 10(1) of the directive, on mutual recognition of authorisations in connection with certain requirements of Article 4 of Directive 91/414. Consequently, in the French Government's submission, the first part of Question 1, concerning the interpretation of Article 8 of the directive, is inadmissible on the ground that the answer is not necessary for the resolution of the main proceedings.

28 Last, as regards the second part of Question 1, and also Questions 2 and 3, which concern the interpretation of Directive 98/8, the French Government maintains that they are inadmissible, on the ground that the main proceedings relate to plant protection products and not to biocidal products.

29 In that regard, it must be borne in mind that, in accordance with settled case-law, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC 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 for a preliminary ruling concern the interpretation of Community law, the Court is, in principle, bound to give a ruling (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-35/99 *Arduino* [2002] ECR I-1529, paragraph 24).

30 However, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the facts of the main action or its purpose, 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, inter alia, *Bosman*, paragraph 61, and *Arduino*, paragraph 25).

31 In the present case, it is not 'quite obvious' that the questions submitted by the national court come within one of those examples.

32 First, although the College van Beroep voor het bedrijfsleven did not indicate in the first part of Question 1 the paragraphs of Article 8 of Directive 91/414 to which it meant to refer, it none the less provided the Court with all the material necessary for it to be able to give a useful reply. It is quite clear from the decision for reference that the College van Beroep voor het bedrijfsleven referred to paragraphs 2 and 3 of Article 8, since they relate to plant protection products containing active substances not listed in Annex I to the directive that are already on the market two years after the date of notification of the directive.

33 Second, it cannot be maintained that the interpretation of the directive bears no relation to the facts of the main action or its purpose, or that the problem is hypothetical, since it follows both from the decision for reference and from the observations of the Netherlands Government that Article 25d of the Bmw is intended to transpose not only Article 8(2) of Directive 91/414 but also Article 16(1) of Directive 98/8.

34 All of the questions are therefore admissible.

Substance

Question 3

35 By its third question, which it is appropriate to examine first, the national court asks whether Article 16(1) of Directive 98/8 is to be interpreted as constituting a 'standstill' obligation or whether that article contains other restrictions on the right of Member States to amend their existing authorisation systems during the transitional period.

36 The Stichting submits that the fact that Directive 91/414 does not contain the words 'continue to apply its current system or practice', as found in Article 16 of Directive 98/8, means that the system of authorisations of placing on the market applicable when the latter directive entered into force must be maintained. Amendments are authorised only in so far as they result in a system which is more consistent with Directive 98/8.

37 It must be observed, first of all, that the existence of a 'standstill' obligation cannot be inferred from the actual wording of Article 16(1) of Directive 98/8, which contains no express formulation to that effect.

38 Nor can such a 'standstill' obligation be inferred from recital 18 to Directive 98/8, which states, first, that 'it should be possible for Member States to authorise, for a limited period of time, biocidal products which do not comply with the abovementioned conditions, especially in the event of an unforeseen danger threatening humans, animals or the environment which cannot be contained by other means' and, second, that 'the Community procedure should not prevent Member States from authorising, for a limited period of time for use in their territory, biocidal products containing an active substance not yet entered in the Community list, provided that a dossier meeting Community requirements has been submitted and the Member State concerned believes that the active substance and the biocidal product satisfy the Community conditions set for them'.

39 Furthermore, as 3M Nederland BV and Others ('3M Nederland and Others'), the Netherlands Government and the Commission of the European Communities correctly submit, Article 16(5) of Directive 98/8 provides that the provisions of Directive 83/189 laying down a procedure for the provision of information in the field of technical standards continue to apply during the transitional period. It should also be noted that Article 34(3) of Directive 98/8 places the Member States under an obligation to communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by that directive. In so far as

Article 34(1) provides for specific communication of the domestic measures adopted in order to transpose Directive 98/8, and taking into account the purpose of the provisions of Article 16(5) and 34(3), it is clear that that directive also envisaged amendments to the national systems during the transitional period other than those aimed at transposing it.

40 It follows that the words 'continue to apply its current system or practice of placing biocidal products on the market' in Article 16(1) of Directive 98/8 are not to be interpreted as constituting a 'standstill' obligation.

41 However, the Member States' right to amend their systems for the authorisation of biocidal products cannot be regarded as unlimited.

42 It must be borne in mind that although the Member States are not obliged to adopt measures to transpose a directive before the end of the period prescribed for transposition, it follows from the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC and from the directive itself that during that period they must refrain from taking any measures liable seriously to compromise the result prescribed by that directive (Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 45). The same applies to a transitional period, such as that provided for in the present case in Article 16(1) of Directive 98/8, during which Member States are authorised to continue to apply their national systems, even though they do not comply with that directive.

43 Consequently, it is for the national court to determine whether that is the case of the national provisions the lawfulness of which it is required to examine.

44 The answer to Question 3 must therefore be that Article 16(1) of Directive 98/8 is not to be interpreted as constituting a 'standstill' obligation. However, the second paragraph of Article 10 EC and the third paragraph of Article 249 EC, and Directive 98/8, require that during the transitional period prescribed in Article 16(1) of that directive the Member States refrain from adopting any measures liable seriously to compromise the result prescribed by that directive.

Question 4

45 By its fourth question, which may be divided into two parts, the national court asks whether Article 8(2) of Directive 91/414 is to be interpreted as meaning that where a Member State authorises the placing on the market in its territory of plant protection products containing active substances not referred to in Annex I to that directive and which were already on the market two years after the date of notification of the directive it must comply with the provisions of Article 4 or Article 8(3) of that directive.

46 As a preliminary point, it must be observed that, as 3M Nederland and Others, the Netherlands Government and the Commission correctly submit, Article 8(2) of Directive 91/414 applies by way of derogation from Article 4 of that directive and that, unlike paragraph 1 of Article 8, it does not specify the requirements which must be satisfied before an authorisation to place a product on the market can be granted. It does state, however, that such authorisation is without prejudice to paragraph 3 of Article 8.

47 According to paragraph 3 of Article 8, 'Member States shall apply the requirements laid down in Article 4(1)(b)(i) to (v), and (c) to (f)' when they 'review plant protection products containing an active substance' not referred to in Annex I to Directive 91/414 that is already on the market two years after the date of notification of that directive and are to do so before such review has taken place.

48 Such a review presupposes, as 3M Nederland and Others and the Netherlands Government also maintain, that the plant protection product has already been the subject of an authorisation to place it on the market and that that authorisation is still valid. That may be inferred, in particular, from Article 4(5) of Directive 94/414, which provides that authorisations of plant protection products whose active substances are listed in Annex I to that directive may be reviewed at any time if there are indications that any of the requirements for the grant of such authorisation are no longer satisfied.

49 Furthermore, as the Court held at paragraph 39 of its judgment in Case C-306/98 *Monsanto* [2001] ECR I-3297, it is against the yardstick of the requirements laid down in Article 4(1)(b)(i) to (v), and (c) to (f), of Directive 91/414 that the Member States must decide whether to review plant protection products.

50 Article 8(3) of Directive 91/414 must therefore be interpreted as meaning that the review procedure provided for by that provision includes a preliminary stage, functionally connected with that review, during which the Member States are also required to observe the requirements laid down in Article 4(1)(b)(i) to (v), and (c) to (f), of that directive. However, that stage is distinct from the authorisation procedure provided for in Article 8(2) of that directive.

51 Accordingly, it does not appear that the Member States would be obliged to comply with the provisions of Article 4(1)(b)(i) to (v), and (c) to (d), of Directive 91/414 when they decide to authorise the placing on the market, on their respective territories, of plant protection products containing active substances not referred to in Annex I to that directive and which were already on the market two years after the date of notification of that directive. It is therefore in principle the procedure defined at national level that is applicable for the purpose of granting those authorisations to place the relevant products on the market.

52 However, the Danish and French Governments claim essentially that the obligation, when authorising plant protection products under Article 8(2) of Directive 91/414, to comply with the provisions of Article 4 of that directive, referred to in paragraph 3 of Article 8, results from a reading of the words 'without prejudice to paragraph 3' in conjunction with the words '[w]here they review plant protection products containing an active substance in accordance with paragraph 2', in paragraphs 2 and 3 respectively of Article 8.

53 That argument cannot be accepted.

54 As the Advocate General observed at points 70 to 72 of his Opinion, the reference to Article 8(2) of Directive 91/414 in paragraph 3 of that article is limited to specifying that the plant protection products authorised in accordance with the requirements of domestic law, under paragraph 2, are not immune to the procedure and the specific conditions of review set out in paragraph 3 of Article 8. At the same time, the words '[w]here they review plant protection products containing an active substance in accordance with paragraph 2' mean that the review procedure provided for in Article 8(3) of Directive 91/414 applies to plant protection products containing active substances not referred to in Annex I of that directive, which are already on the market two years after the date of notification of that directive. That procedure therefore covers products authorised in accordance with paragraph 2 of Article 8.

55 That interpretation is consistent with the structure and the purpose of the transitional regime introduced by Directive 91/414, which provides even for plant protection products containing substances not referred to in Annex I thereto and which, consequently, were authorised on the basis of Article 8(2) of that directive, a review procedure which in certain aspects corresponds with the ordinary review procedure, provided for in Article 4(5) of the directive.

56 Furthermore, as regards the requirements concerning the provision of data which an applicant for authorisation to place a plant protection product on the market must satisfy, Article 13(6) of Directive 91/414 provides that Member States may, with due regard for the provisions of the EC Treaty, continue to apply previous national rules concerning data requirements as long as such substances are not included in Annex I to that directive.

57 In the light of the foregoing, the answer to Question 4 must be that Article 8(2) of Directive 91/414 is to be interpreted as meaning that if a Member State authorises the placing on the market on its territory of plant protection products containing active substances not referred to in Annex I to that directive that were already on the market two years after the date of notification of the directive, it is not required to comply with the provisions of Article 4 or Article 8(3) of that directive.

Question 2

58 By its second question, which must be examined next, the national court asks essentially whether, in spite of the different wording, the transitional regimes provided for in Article 16(1) of Directive 98/8 and Article 8(2) of Directive 91/414 have the same meaning.

59 In that regard, it should be observed first of all that, in accordance with recital 20 to Directive 98/8, close coordination should be ensured with other Community legislation and in particular with Directive 91/414.

60 Next, it should be recalled that the purpose of Article 8(2) of Directive 91/414 and of Article 16(1) of Directive 98/8 is to allow the Member States, during the transitional periods defined in those two directives, to apply existing national authorisation procedures for the placing on the market of the products covered by those directives and containing active substances which have not yet been evaluated at Community level.

61 Consequently, there appears to be no indication that the Community legislature's intention was to give those provisions a different meaning.

62 That interpretation is borne out by paragraphs 43 and 44 of *Monsanto*, where the Court held that the transitional regime introduced by Article 8(2) of Directive 91/414 corresponds to the solution adopted in Article 16(1) of Directive 98/8.

63 In the light of the foregoing, the answer to Question 2 must be that Article 16(1) of Directive 98/8 has the same meaning as Article 8(2) of Directive 91/414.

Question 5

64 By its fifth, the national court asks essentially whether by review, as referred to in Article 8(3) of Directive 91/414, it is also appropriate to understand an evaluation for the purposes of Article 25d(2) of the Bmw, an evaluation which may have the consequence that the active substance is designated for the purposes of the authorisation or registration by operation of law of the plant protection products containing it.

65 The Stichting maintains that the designation of active substances, within the meaning of Article 25d of the Bmw, must be regarded as an authorisation within the meaning of Articles 3, 4 and 8 of Directive 91/414. The French Government submits that a review of plant protection products containing an active substance in accordance with Article 8(2) of that directive must cover not only a review of products already authorised to be placed on the market but also a review of new products not yet authorised to be placed on the market which contain an active substance already used in products already authorised under that provision. The Commission claims that, like the procedure for a review of the products provided for in Article 8(3) of Directive 91/414, the evaluation of the active substances referred to in Article 25d of the Bmw is undertaken at the initiative of the national authorities. Consequently, the Stichting, the French Government and the Commission conclude that that evaluation would be a review and should comply with the requirements of Article 8(3).

66 3M Nederland and Others and the Netherlands Government, on the other hand, contend that Article 8(3) of Directive 91/414 and Article 25d of the Bmw have different objects and different applications. They submit that Article 8 of Directive 91/414 applies only in the event of a review of the products still in possession of a valid authorisation, which is consistent with paragraph 34 of *Monsanto*, whereas Article 25d of the Bmw applies only to pesticides whose authorisations are about to expire. Furthermore, in the light of the differences in the definitions of the expressions 'review' and 'verification', neither the automatic extensions of the authorisations nor the evaluation of the active substances, which, under Article 25d of the Bmw, takes account of the effects on human and animal health and also on the environment, can be regarded as 'reviews' for the purposes of Article 8(3) of Directive 91/414.

67 In that regard, it must recalled, as already held at paragraph 48 of this judgment, that a review within the meaning of Directive 91/414 presupposes that the plant protection product at issue has already been the subject of an authorisation and that that authorisation is still valid at the time when the review is carried out.

68 Furthermore, it is apparent upon reading Articles 4(5) and 8(3) of Directive 91/414 that the purpose of that review is not a re-evaluation of an active substance in isolation but rather a re-evaluation of the final plant protection product and that it is at the initiative of the national authorities and not at the initiative of the individuals concerned that the relevant product is reviewed.

69 The answer to Question 5 is therefore that it is for the national court to assess whether the evaluation provided for in Article 25d(2) of the Bmw corresponds to all the characteristics of a 'review' within the meaning of Article 8(3) of Directive 91/414 and, in particular, to those set out at paragraphs 67 and 68 of this judgment.

Question 6

70 By its sixth question, the national court asks whether Article 8(3) of Directive 91/414 contains only provisions concerning the communication of data prior to a review or whether it must be interpreted as meaning that the conditions which it lays down also have an impact on the way in which a review must be organised and carried out.

71 In that regard, it has already been observed at paragraph 47 of this judgment that, in accordance with Article 8(3) of Directive 91/414, the Member States apply the requirements laid down in Article 4(1)(b)(i) to (v), and (c) to (f), of that directive when they 'review plant protection products containing an active substance' not referred to in Annex I of that directive which is already on the market two years after the date of notification of the directive and before such review has taken place. Furthermore, it is apparent upon reading Article 8(3) of Directive 91/414 that the Member States apply those requirements in accordance with national provisions concerning the data to be provided.

72 The requirements laid down in Article 4(1)(b) to (e) of Directive 91/414 relate to the safety and effectiveness of plant protection products. Article 4(1)(f) of that directive requires that Member States establish maximum residue levels and notify them to the Commission for approval. It is against the yardstick of those criteria that the Member States decide to review plant protection products (see, to that effect, *Monsanto*, paragraph 39).

73 It should further be stated, as the Advocate General observed at point 88 of his Opinion, that Article 8(3) of Directive 91/414 contains no rule governing the way in which the review is organised and carried out.

74 In those circumstances, the answer to Question 6 must be that Article 8(3) of Directive 91/414 is to be interpreted as meaning that it contains only provisions relating to the supply of data prior to a review.

Question 1

75 By its first question, which is divided into two parts, the national court asks essentially whether Article 8(2) and (3) of Directive 91/414 and Article 16(1) of Directive 98/8 have direct effect after expiry of the periods prescribed for transposing those directives into domestic law.

76 In the light of the answers given to the other questions, there is no need to answer Question 1.

77 According to settled case-law, the Member States' obligation arising from a directive to achieve the result envisage by the directive and their duty under Article 10 EC to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see, in particular, Case 14/83 *Von Colson and Kamann* [1984] ECR 1891, paragraph 26, and Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8).

78 Thus, when it applies domestic law, and in particular legislative provisions specifically adopted for the purpose of implementing the requirements of a directive, the national court is bound to interpret national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently comply with the third paragraph of Article 249 EC (see to that effect, inter alia, *Von Colson and Kamann*, paragraph 26, and *Marleasing*, paragraph 8).

Costs

79 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 16(1) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market must be interpreted as meaning that it does not constitute a 'standstill' obligation. However, the second paragraph of Article 10 EC and**

the third paragraph of Article 249 EC, and Directive 98/8, require that during the transitional period prescribed in Article 16(1) of that directive the Member States refrain from adopting any measures liable seriously to compromise the result prescribed by that directive.

2. **Article 8(2) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market is to be interpreted as meaning that if a Member State authorises the placing on the market on its territory of plant protection products containing active substances not referred to in Annex I to that directive that were already on the market two years after the date of notification of the directive, it is not required to comply with the provisions of Article 4 or Article 8(3) of that directive.**

3. **Article 16(1) of Directive 98/8 has the same meaning as Article 8(2) of Directive 91/414.**

4. **It is for the national court to assess whether the evaluation provided for in Article 25d(2) of the Law on pesticides of 1962 (Bestrijdingsmiddelenwet) corresponds to all the characteristics of a 'review' within the meaning of Article 8(3) of Directive 91/414.**

5. **Article 8(3) of Directive 91/414 must be interpreted as meaning that it contains only provisions relating to the provision of data prior to a review.**

6. **There is no need to answer Question 1.**

[Signatures]