JUDGMENT OF THE COURT
14 July 1998 *

In Case C-284/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Giudice di Pace di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between

Safety Hi-Tech Srl

and

S. & T. Srl,

on the interpretation and validity of Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer (OJ 1994 L 333, p. 1),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm and M. Wathelet (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, D. A. O. Edward, P. Jann, L. Sevón and K. M. Ioannou (Rapporteur), Judges,

* Language of the case: Italian.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Safety Hi-Tech Srl, by Maurizio Maresca and Salvatore Elio La Rosa, of the Genoa Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Service, Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato,

— the Austrian Government, by D. Wolf Okresek, Ministerialrat in the Federal Chancellor's Office, acting as Agent,

— the Council of the European Union, by Anna Lo Monaco and Guus Houttuin, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by Laura Pignataro and Antonio Aresu, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Safety Hi-Tech Srl, represented by Maurizio Maresca; the Italian Government, represented by Pier Giorgio Ferri; the Spanish

Government, represented by Rosario Silva de Lapuerta and Nuria Díaz Abad, Abogados del Estado, acting as Agents; the French Government, represented by Romain Nadal, Assistant Secretary for Foreign Affairs, Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; the Council, represented by Anna Lo Monaco and Guus Houttuin; and the Commission, represented by Laura Pignataro and Paolo Stancanelli, of its Legal Service, acting as Agent, at the hearing on 11 November 1997,

after hearing the Opinion of the Advocate General at the sitting on 3 February 1998,

gives the following

Judgment

1 By order of 8 August 1995, received at the Court Registry on 28 August 1995, the Giudice di Pace (Justice of the Peace), Genoa, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation and validity of Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer (OJ 1994 L 333, p. 1, hereinafter 'the Regulation').

2 Those questions were raised in proceedings between Safety Hi-Tech Srl (hereinafter 'Hi-Tech') and S. & T. Srl (hereinafter 'S. & T.') concerning the performance of a contract between them for the sale of a product known as 'NAF S III', composed of hydrochlorofluorocarbons (hereinafter 'HCFCs'), which is used for firefighting.

3 According to the case-file in the national proceedings, Hi-Tech had contracted to deliver to S. & T. a quantity of that product for the price of LIT 3 213 000, including VAT. Under the contract, the product was to be stored by Hi-Tech and made available to S. & T. in Genoa at the latter's request.

4 On 4 August 1995, the date on which payment was to be made against presentation of an invoice by Hi-Tech to S. & T., the latter refused to take delivery of the product, contesting the validity of the contract on the ground that the use, and therefore the marketing, of HCFCs for firefighting was prohibited by Article 5 of the Regulation.

5 On 8 August 1995 Hi-Tech therefore applied for an order from the Giudice di Pace for the payment to it by S. & T. of the agreed price, plus incidental charges and fees.

6 In its application, Hi-Tech submitted that the prohibition on the use and marketing of HCFCs for firefighting relied on by S. & T. was illegal, contending that the Regulation was invalid on the ground that no similar prohibition had been imposed by the Regulation for other substances, such as halons, which are equally, or indeed more, environmentally harmful. Hi-Tech considered the prohibition on the use and marketing of HCFCs to be incompatible with Articles 130r, 30, 85 and 86 of the EC Treaty, and therefore asked the Giudice di Pace to seek a ruling from the Court on the validity of the Regulation.

7 As is apparent from its preamble, the purpose of the Regulation, whose legal basis is Article 130s(1) of the EC Treaty, which is designed to attain the objectives of Article 130r, is, having regard to scientific and technical data and the existence of substitutes, to adopt measures in order progressively to eliminate substances which deplete the ozone layer.

8 In particular, as is clear from the third, fourth and fifth recitals in its preamble, the Regulation was adopted in order to fulfil the commitments entered into by the Community under the Vienna Convention of 22 March 1985 for the Protection of the Ozone Layer (hereinafter 'the Vienna Convention') and the Montreal Protocol of 16 September 1987 on Substances that Deplete the Ozone Layer (Council Decision 88/540/EEC of 14 October 1988, OJ 1988 L 297, p. 8), which was amended on 29 June 1990 (see Council Decision 91/690/EEC of 12 December 1991, OJ 1991 L 377, p. 28) and under the second amendment of the Montreal Protocol of 25 November 1992 on substances that deplete the ozone layer (see Council Decision 94/68/EC of 2 December 1993, OJ 1994 L 33, p. 1), to which instruments the Member States and the Community are parties.

9 Article 1 of the Regulation, which determines its scope, states that it is to apply to the production, importation, exportation, supply, use and recovery of various substances, referred to as 'controlled substances', which it lists and which include HCFCs and halons.

10 HCFCs are defined by the 12th indent of Article 2 of the Regulation as one of the controlled substances listed in Group VIII of Annex I, including their isomers. Halons are defined by the seventh indent of the same article as one of the controlled substances listed in Group III of Annex I, including their isomers.

11 With respect in particular to the conditions governing the use of HCFCs, Article 4(8), the second subparagraph of Article 4(9) and Article 4(10) of the Regulation lay down special conditions applicable to HCFCs marketed or used by producers or importers for their own account.

12 All other use of HCFCs, apart from use by producers or importers for their own account, is governed by Article 5 of the Regulation, entitled 'Control of the use of hydrochlorofluorocarbons', which provides:

'1. From the first day of the sixth month following that of the entry into force of this Regulation, the use of hydrochlorofluorocarbons shall be prohibited except:

— as solvents,

— as refrigerants,

— for the production of rigid insulating foams and integral-skin foams for use in safety applications,

— in laboratory uses, including research and development,

— as feedstock in the manufacture of other chemicals and

— as carrier gas for sterilisation substances in closed systems.

2. From 1 January 1996 the use of hydrochlorofluorocarbons shall be prohibited:

— in non-contained solvent uses including open-top cleaners and open-top dewatering systems without cold areas, in adhesives and mould-release agents when not employed in closed equipment, for drain cleaning where hydrochlorofluorocarbons are not recovered and aerosols, apart from use as solvents for reagents in fingerprint development on porous surfaces such as paper and apart from use as fixing agents for laser printers produced before 1 January 1996,

— in equipment produced after 31 December 1995 for the following uses:

(a) as refrigerants in non-confined direct-evaporation systems;

(b) as refrigerants in domestic refrigerators and freezers;

(c) in car air conditioning;

(d) in road public-transport air conditioning.

3. From 1 January 1998 the use of hydrochlorofluorocarbons in equipment produced after 31 December 1997 for the following uses shall be prohibited:

— in rail public-transport air conditioning,

— as carrier gas for sterilisation substances in closed systems.

4. From 1 January 2000 the use of hydrochlorofluorocarbons in equipment produced after 31 December 1999 for the following uses shall be prohibited:

— as refrigerants in public and distribution cold stores and warehouses,

— as refrigerants for equipment of 150 kw and over, shaft input,

except where codes, safety regulations or other such constraints prevent the use of ammonia.

5. The importing, release for free circulation and placing on the market of equipment for which a use restriction is in force under this Article shall be prohibited from the date on which that use restriction comes into force. Equipment shown to

be manufactured before the date of that use restriction shall not be covered by this prohibition.

6. The Commission may, in accordance with the procedure laid down in Article 16 and in the light of technical progress, add to, delete items from or amend the list set out in paragraphs 1 to 4.'

13 With respect to halons, Article 3(3) of the Regulation provides, subject to certain exceptions laid down in Article 3(8) to (12), that:

'... each producer shall ensure that he produces no halons after 31 December 1993.

In the light of the nominations made by Member States the Commission shall, in accordance with the procedure laid down in Article 16, apply the criteria set out in Decision IV/25 of the Parties to the Montreal Protocol in order to determine every year any essential uses for which the production and importation of halons may be permitted in the Community after 31 December 1993 and those users who may take advantage of those essential uses for their own account. Such production and importation shall be allowed only if no adequate alternatives or recycled halons are available from any of the Parties to the Protocol.

The Commission shall issue licences to those users identified as laid down in the second subparagraph and shall notify them of the use for which they have authorisation and the substances and the quantities of them that they are authorised to use.

A producer may be authorised by the competent authority of the Member State in which his relevant production is situated to produce halons after 31 December 1993 for the purpose of meeting the licensed demands presented by users identified as laid down in the second subparagraph. The competent authority of the Member State concerned shall notify the Commission in advance of its intention of issuing any such authorisation.'

14 Furthermore, Article 4(3) of the Regulation also provides, with respect to halons:

'... each producer shall ensure that he does not place any halons on the market or use any for his own account after 31 December 1993.

The competent authority of the Member State in which a producer's production is situated may authorise him to place halons on the market after 31 December 1993 for the purpose of meeting the licensed demands of those users identified as laid down in Article 3(3).'

15 In addition, unless special authorisation has been granted by the Commission, Article 8(1) of the Regulation prohibits the release for free circulation in the Community of, *inter alia*, virgin, recovered or reclaimed halons imported from States not parties to the Protocol and Article 9 of the Regulation also prohibits the release for free circulation in the Community of products containing, *inter alia*, halons imported from any State not party to the Protocol.

16 As far as the use of halons is concerned, it is undisputed that the Regulation contains no provision analogous to Article 5, which concerns the use of HCFCs.

17 Having regard to the conditions relating to HCFCs and halons and to Hi-Tech's arguments, the national court, considering that the outcome of the proceedings before it depends on the validity of the Regulation, has stayed proceedings pending a preliminary ruling on the following questions:

'1. Is Council Regulation (EC) No 3093/94 to be interpreted (given that it must comply with Article 130r of the Treaty) as permitting the free use of halons (that is, products which have a serious impact on the environment), subject only to limitations on their production or on their use by producers, and not on their importation, but as prohibiting absolutely the use (and hence both the production and the importation) of HCFCs (that is, of products which have little impact on the environment) for purposes not stated in Article 5?

2. Is not the provision in point in Regulation No 3093/94 in substance a measure having equivalent effect to a quantitative restriction in so far as, in the absence of any of the grounds of justification under Article 36 of the Treaty, it restricts the free movement of a product throughout the Community?

3. Does not the conduct of the Community and of its institutions, in adopting Regulation No 3093/94, and particularly at the stages subsequent to its adoption, constitute action of a public-law nature designed to reinforce the dominant position of certain operators, such action constituting in itself an instance of serious abuse for the purposes of Article 86 of the Treaty?

4. May legislation for the protection of the environment — and particularly Regulation No 3093/94 — derogate (be interpreted as derogating) from the Community rules on competition (by thus permitting or facilitating restrictive agreements or the abuse of a dominant position) or are the prohibitions under those rules unconditional and not subject to derogation, precluding derogations or restrictions, whether introduced by the Community or by individual Member States?'

18 In order to give a helpful answer to the national court, it is necessary to delimit the scope of the questions in the light of the factual circumstances disclosed by the wording of the questions and by the documents forwarded by the national court.

19 In that connection, it must be observed that the questions relate to the validity of the Regulation as a whole. However, the dispute in the main proceedings is concerned only with the prohibition by the Regulation of the use and, where appropriate, the marketing of HCFCs for use in firefighting, no other use of those substances being involved. Accordingly, neither the provisions of the Regulation relating to substances other than HCFCs nor the provisions of the Regulation relating to other uses of HCFCs are at issue in the main proceedings. Consequently, the validity of those provisions cannot be examined for the purposes of the preliminary ruling requested in this case.

The first question

20 By its first question, the national court seeks to ascertain, first, whether Article 5 of the Regulation prohibits the use and, consequently, the marketing of HCFCs for firefighting and, second, raises the problem of the legality of that prohibition in the light of Article 130r of the Treaty.

The interpretation of Article 5 of the Regulation

21 It should be noted at the outset that the Regulation, including Article 5 thereof, is intended to implement the commitments given by the Community under the Vienna Convention and the Montreal Protocol and the second amendment thereto.

22 It is settled law that Community legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the Community (see to that effect Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52).

23 By virtue of Article 2(3) of the Vienna Convention, the parties to that convention may adopt more severe domestic measures provided that they are intended, having regard to scientific evaluations, to promote the use of substitutes that are less harmful to the ozone layer.

24 To that end, the sixth recital in the preamble to the Regulation indicates that, in the light of scientific evidence in particular, it is appropriate in certain cases to introduce control measures which are more severe than those of the second amendment to the Montreal Protocol.

25 It is in order to attain that objective that Article 5 of the Regulation prohibits the use of HCFCs.

26 That general prohibition, which applies with effect from 1 June 1995, is, however, subject to a series of exceptions exhaustively listed in Article 5(1) of the Regulation. Thus, under that provision HCFCs may be used after 1 June 1995 as solvents, as refrigerants, for the production of rigid insulating foams and integral-skin foams for use in safety applications, in laboratory uses, including research and development, as feedstock in the manufacture of other chemicals and as carrier gas for sterilisation substances in closed systems.

27 Moreover, in accordance with the general prohibition on use, Article 5(2), (3) and (4) of the Regulation prohibit other uses of HCFCs as from 1 January 1996, 1 January 1998 and 1 January 2000.

28 It is clear from those provisions that the use of HCFCs for firefighting is not provided for by the Regulation, with the result that their use is prohibited, by virtue of Article 5(1) of the Regulation, as from 1 June 1995.

29 The question must therefore be considered whether the total prohibition of the use of HCFCs for firefighting means that their marketing is also prohibited.

30 The marketing of HCFCs for firefighting is not mentioned in Article 5 of the Regulation. However, in so far as the release of HCFCs into commercial channels for those purposes is a step preparatory to the use of such substances and has no aim other than their use for those same purposes, it must be concluded that, because the use of HCFCs has been totally prohibited since 1 June 1995, the marketing of them for firefighting must also be regarded as prohibited from that date.

31 That interpretation is borne out both by Article 3 and by Articles 6 to 13 of the Regulation, which relate respectively to the production of controlled substances and to the importation of them, which are also steps preparatory to their use. The fact that those provisions do not mention the production or import of HCFCs for firefighting indicates that the Community legislature, having imposed a general prohibition on the use of such substances for such purposes, considered that it would be pointless to lay down rules for the production, import and, consequently, the marketing of those substances.

32 Consequently, Article 5 of the Regulation must be interpreted as entirely prohibiting the use, and therefore the marketing, of HCFCs for firefighting.

The legality of the prohibition on the use of HCFCs in the light of Article 130r of the Treaty

33 Hi-Tech considers that the prohibition on the use of HCFCs for firefighting is illegal under Article 130r of the Treaty since the Council, by not observing the objective, the principles and the criteria of that provision, exceeded the bounds of the discretion conferred on it.

34 The Council, on the other hand, maintains that Article 130r of the Treaty confers a discretion on it and that the Court is not entitled to review its exercise of that discretion. It also contends that that provision grants it a wide discretion regarding the measures it chooses to adopt in order to implement the environmental policy. Only if such measures were manifestly inappropriate having regard to the aim pursued would their legality be in issue.

35 Article 130r of the Treaty provides:

'1. Community policy on the environment shall contribute to pursuit of the following objectives:

— preserving, protecting and improving the quality of the environment;

— protecting human health;

— prudent and rational utilisation of natural resources;

— promoting measures at international level to deal with regional or worldwide environmental problems.

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay ...

...

3. In preparing its policy on the environment, the Community shall take account of:

— available scientific and technical data;

— environmental conditions in the various regions of the Community;

— the potential benefits and costs of action or lack of action;

— the economic and social development of the Community as a whole and the balanced development of its regions.

4. ...'

36 That provision thus sets a series of objectives, principles and criteria which the Community legislature must respect in implementing environmental policy.

37 However, in view of the need to strike a balance between certain of the objectives and principles mentioned in Article 130r and of the complexity of the implementation of those criteria, review by the Court must necessarily be limited to the question whether the Council, by adopting the Regulation, committed a manifest error of appraisal regarding the conditions for the application of Article 130r of the Treaty.

38 It is therefore necessary to verify whether, having regard to its objective, the Regulation was adopted in breach of Article 130r of the Treaty.

39 Hi-Tech advances three arguments in that respect.

40 First, it submits that the Regulation, by authorising the use of other substances, such as halons, does not take account of two other fundamental parameters for environmental protection, namely the HCFCs Global Warming Potential (hereinafter 'GWP') and their Atmospheric Lifetime (hereinafter 'ALT'), factors which should be taken into account together with the Ozone Depletion Potential (hereinafter 'ODP'). According to Hi-Tech, if all those factors were taken into consideration, HCFCs would be found to be much less harmful than halons. Consequently, the Regulation, by taking account only of the ODP and laying down only measures to combat depletion of the ozone layer, did not ensure protection of the environment as a whole, as required by Article 130r of the Treaty, but only of part of it.

41 It must first be observed that the lack of any prohibition on the use of other substances, even if assumed to be illegal, could not in itself affect the validity of the prohibition on the use of HCFCs.

42 As to the complaint concerning the failure to take account of the GWP and the ALT of HCFCs, it must be borne in mind that Article 130r(1) of the Treaty provides, among other objectives of Community environmental policy, for the protection and improvement of the quality of the environment.

43 As the Court held in Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 57, Article 130r is confined to defining the general objectives of the Community in the matter of the environment. Responsibility for deciding what action is to be taken is conferred on the Council by Article 130s. Moreover, Article 130t states that the protective measures adopted jointly pursuant to Article 130s are not to prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaty.

44 It does not follow from those provisions that Article 130r(1) of the Treaty requires the Community legislature, whenever it adopts measures to preserve, protect and improve the environment in order to deal with a specific environmental problem, to adopt at the same time measures relating to the environment as a whole.

45 It follows that Article 130r(1) of the Treaty authorises the adoption of measures relating solely to certain specified aspects of the environment, provided that such measures contribute to the preservation, protection and improvement of the quality of the environment

46 In that connection, as is apparent from its title, the aim of the Regulation is to control substances that deplete the ozone layer. The fact that only that aspect of environmental preservation, protection and improvement is referred to by the Regulation cannot therefore be regarded as incompatible with the purpose of Article 130r(1) of the Treaty.

47 Secondly, according to Hi-Tech, by authorising the use of halons, which display a much higher ODP than HCFCs and therefore represent a much greater threat to ozone, the Regulation failed to ensure a high level of environmental protection as required by Article 130r(2) of the Treaty.

48 As far as that requirement is concerned, it must be observed that the Regulation ensures a high level of protection. It is clear from the fourth and fifth recitals in its preamble that, in the light of scientific evidence and with a view to fulfilling the Community's obligations under the Vienna Convention and the second amendment to the Montreal Protocol, the purpose of the Regulation is to lay down measures to control, in particular, the use of HCFCs. The sixth recital, moreover, states that, in the light of scientific evidence in particular, it is appropriate in certain cases to introduce control measures which are more severe than those of the second amendment to the Protocol. By prohibiting, in Article 5(1) of the

Regulation, the use of HCFCs and thereby adopting a more stringent measure than that deriving from its international obligations, the Community legislature did not infringe the requirement of a high level of protection laid down in Article 130r(2) of the Treaty.

49 Finally, whilst it is undisputed that Article 130r(2) of the Treaty requires Community policy in environmental matters to aim for a high level of protection, such a level of protection, to be compatible with that provision, does not necessarily have to be the highest that is technically possible. As stated in paragraph 43 of this judgment, Article 130t of the Treaty authorises the Member States to maintain or introduce more stringent protective measures.

50 Lastly, Hi-Tech considers that, by not prohibiting the use of other substances also intended for firefighting, including hydrofluorocarbons and perfluorocarbons, the Regulation did not take account of the available scientific and technical data, as required by Article 130r(3) of the Treaty, because those substances, the GWP and ALT of which are considerable, are more damaging to the environment than HCFCs, the ODP, GWP and ALT for which are regarded as acceptable.

51 Article 130r(3) of the Treaty requires the Community, in preparing its policy on the environment, to take account in particular of available scientific and technical data. However, the Regulation cannot be regarded as failing to meet that requirement.

52 In addition to taking account of the scientific evidence, as indicated in the fourth and fifth recitals in its preamble, the Regulation states, in the seventh recital, that 'a periodical review of the permitted uses of ozone-depleting substances ... is desirable' and, in the eighth recital, that 'it is necessary to keep under review the evolution of the market in ozone-depleting substances, particularly in order to ensure sufficient supply for essential uses, and the state of development of appropriate

substitutes, but also to keep to a minimum the imports of virgin, recovered and reclaimed ozone-depleting substances released for free circulation in the European Community'.

53 It is precisely in order to take account of the available scientific and technical data that Article 5(6) of the Regulation, dealing with the use of HCFCs, provides that the Commission may, in the light of technical progress, add to, delete items from or amend the list of prohibited uses.

54 In addition, it is clear from the case-file in the proceedings before the national court that, when the Regulation was adopted, there were, from the scientific point of view, alternatives to the use of HCFCs, involving recourse to products less harmful to the ozone layer, such as water, powder and inert gases.

55 The Community legislature, by imposing the prohibition on the use, and hence the marketing, of HCFCs for firefighting, did not therefore commit any manifest error of appraisal. That being so, the complaint examined above, alleging that the Regulation is unlawful on the ground that it is contrary to Article 130r of the Treaty, must be rejected.

56 Hi-Tech also considers that the prohibition on the use, and hence the marketing, of HCFCs for firefighting is disproportionate in relation to the aim of environmental protection.

57 In considering that complaint, it must be borne in mind that, according to settled case-law, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means

which it employs are suitable for the purpose of attaining the desired objective and whether they go beyond what is necessary for that purpose (see, in particular, Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, paragraph 54).

58 In view of the objective of the Regulation, which is to protect the ozone layer, it must be held that the means employed by the Regulation, in Article 5(1), namely the prohibition on the use, and hence the marketing, of HCFCs for firefighting, was suitable for the purpose of attaining that objective. In view, however, of the fact that other substances that are equally, or indeed more, harmful to the ozone layer, such as halons, are authorised for firefighting, it is necessary to determine whether that prohibition exceeds the limitations inherent in observance of the principle of proportionality.

59 It need merely be recalled that, as is clear from the case-file in the proceedings before the national court, halons display an extinguishing capability which is not otherwise available, particularly in dealing with fires in small spaces, and are of extremely low toxicity, whereas, to achieve the same result, a larger quantity of HCFCs would be needed, entailing a greater toxic impact.

60 Since, as indicated in paragraph 54 of this judgment, there are effective substitutes for HCFCs such as water, powder and inert gases and, as indicated in paragraph 59, for certain essential uses there are irreplaceable substitutes such as halons, the prohibition of using HCFCs cannot be regarded as contrary to the principle of proportionality.

61 It must therefore be concluded that examination of Article 5(1) of the Regulation, in the light of Article 130r of the Treaty, has disclosed no factor of such a kind as to affect its validity.

The second question

62 By its second question, the national court seeks to ascertain whether, in the light of Article 30 of the Treaty, the prohibition laid down in Article 5(1) of the Regulation on the use and marketing of HCFCs for firefighting is valid.

63 It is settled law that the prohibition of quantitative restrictions and of all measures having equivalent effect applies not only to national measures but also to measures adopted by the Community institutions (see in particular Case 15/83 *Denkavit Nederland* v *Hoofdproduktschap voor Akkerbouwprodukten* [1984] ECR 2171, paragraph 15, and Case C-51/93 *Meyhui* v *Schott Zwiesel Glaswerke* [1994] ECR I-3879, paragraph 11).

64 Environmental protection has already been considered by the Court to be one of the essential objectives of the Community (see Case 240/83 *Procureur de la République* v *Association de Défense des Brûleurs d'Huiles Usagées* [1985] ECR 531, paragraph 13). In Case 302/86 *Commission* v *Denmark* [1988] ECR 4607, paragraph 9, the Court held that protection of the environment is an imperative requirement which may limit the application of Article 30 of the Treaty.

65 However, Hi-Tech considers that, in the light of Article 30 of the Treaty, the principle of proportionality has not been observed.

66 In that regard, it need merely be pointed out that, as is clear from the objective of the Regulation and from the considerations set out in paragraphs 59 to 61 of this judgment, a prohibition on the use and marketing of HCFCs which is designed to protect the ozone layer cannot be regarded as disproportionate to the aim pursued.

67 It must therefore be stated that consideration of the question referred has disclosed no factor of such a kind as to affect the validity of Article 5 of the Regulation.

The third and fourth questions

68 By its third and fourth questions, the national court seeks essentially to ascertain, first, whether Article 5(1) of the Regulation, by prohibiting the use and marketing of HCFCs, has the effect of favouring, contrary to Article 85 of the Treaty, a restrictive agreement or practice on the part of producers and sellers of other substances which are authorised by the Regulation or an abuse of a dominant position by such producers and sellers, contrary to Article 86 of the Treaty, and, second, whether the abovementioned provision of the Regulation may, as a provision ensuring protection of the ozone layer, justify exceptions to Articles 85 and 86 of the Treaty.

69 In that connection, it should be noted that, according to settled case-law, the need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court define the factual and legal context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see in particular the judgment in Joined Cases C-320/90, C-321/90 and C-392/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6, and the order in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 4).

70 As the Court held in *Telemarsicabruzzo* and in *Banchero*, cited above (paragraphs 7 and 5 respectively), those requirements are of particular importance in certain areas, such as that of competition, which are characterised by complex factual and legal situations.

71 However, the order for reference does not contain sufficient information to satisfy those requirements.

72 The order merely repeats exactly the arguments put forward by Hi-Tech which, as that party conceded at the hearing before the Court, do not explain how that prohibition might favour agreements or concerted practices. Nor do they give the information needed to define the relevant market or explain the impact which the prohibition on the marketing of HCFCs has on the functioning of that market. Moreover, the national court merely referred to Articles 85 and 86 of the Treaty without indicating the precise reasons which prompted it to query the validity, in relation to the situation before it, of the prohibition laid down by Article 5(1) of the Regulation.

73 Thus, the information in the order for reference, in so far as it refers with insufficient precision to the situations of law or fact to which the national court is referring, do not enable the Court to give a helpful interpretation of Community law.

74 Accordingly, it must be held, pursuant to Articles 92 and 103(1) of the Rules of Procedure, that the third and fourth questions referred to the Court are manifestly inadmissible.

Costs

75 The costs incurred by the Italian, Spanish, French and Austrian Governments 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 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 Giudice di Pace, Genoa, by order of 8 August 1995, hereby rules:

1. **Article 5 of Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer must be interpreted as prohibiting entirely the use and, consequently, the marketing of hydrochlorofluorocarbons for firefighting.**

2. **Consideration of the questions submitted has not disclosed any factor of such a kind as to affect the validity of Regulation No 3093/94.**

Rodríguez Iglesias Gulmann Ragnemalm

Wathelet Mancini

Moitinho de Almeida Kapteyn Edward

Jann Sevón Ioannou

Delivered in open court in Luxembourg on 14 July 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President