JUDGMENT OF THE COURT (Third Chamber)

7 June 2007 *

In Case C-80/06,

REFERENCE for a preliminary ruling under Article 234 EC, by the Tribunale ordinario di Novara (Italy), made by decision of 5 January 2006, received at the Court on 10 February 2006, in the proceedings

Carp Snc di L. Moleri e V. Corsi

v

Ecorad Srl,

in the presence of:

Associazione Nazionale Artigiani Legno e Arredamento,

* Language of the case: Italian.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J.N. Cunha Rodrigues, U. Lõhmus, A. Ó Caoimh and P. Lindh (Rapporteur), Judges,

Advocate General: V. Trstenjak,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 January 2007,

after considering the observations submitted on behalf of:

— Carp Snc di L. Moleri e V. Corsi and the Associazione Nazionale Artigiani Legno e Arredamento, by F. Capelli and M. Ughetta, avvocati,

— Ecorad Srl, by E. Adobati, avvocato,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by D. Recchia and D. Lawunmi, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 March 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation, the possibility of relying on, and the validity of Articles 2 and 3 of Commission Decision 1999/93/EC of 25 January 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards doors, windows, shutters, blinds, gates and related building hardware (OJ 1999 L 29, p. 51), as well as of Annexes II and III thereto.

2 The reference was made in the course of proceedings between the company Carp Snc di L. Moleri e V. Corsi ('Carp') and Ecorad Srl ('Ecorad') regarding the performance of a contract for the sale of doors fitted with panic bars.

Legal context

Directive 89/106/EEC

3 Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12) as amended by Council Directive 93/68/EEC of 22 July 1993 (OJ 1993 L 220, p. 1; 'Directive 89/106' or 'the Directive')

is designed in particular to remove barriers to the free movement of construction products. Pursuant to Article 1(1) of Directive 89/106, the Directive applies to construction products in so far as the essential requirements in respect of construction works, under Article 3(1) of the Directive, relate to them.

4 Article (4)(2) of Directive 89/106 provides that Member States are to presume that products are fit for use if they enable works in which they are employed to satisfy those essential requirements, where those products bear the CE marking. That marking indicates that the products comply with the relevant national standards transposing the harmonised standards, or with a European technical approval, or with the national technical specifications referred to in Article 4(3) in so far as harmonised specifications do not exist.

5 The first subparagraph of Article 6(1) of Directive 89/106 provides that Member States are not to impede the free movement, placing on the market or use in their territory of products which satisfy the provisions of the Directive.

6 Under Article 13(1) of Directive 89/106, the manufacturer, or his agent established in the Community, is to be responsible for the attestation that products are in conformity with the requirements of a technical specification within the meaning of Article 4 of the Directive. Article 13(2) provides that products that are the subject of an attestation of conformity are to benefit from the presumption of conformity with technical specifications. That conformity is to be established by means of testing or other evidence on the basis of the technical specifications in accordance with Annex III.

7 Article 13(3) and (4) of Directive 89/106 provide:

'3. The attestation of conformity of a product is dependent on:

(a) the manufacturer having a factory production control system to ensure that production conforms with the relevant technical specifications; or

(b) for particular products indicated in the relevant technical specifications, in addition to a factory production control system, an approved certification body being involved in assessment and surveillance of the production control or of the product itself.

4. The choice of the procedure within the meaning of paragraph 3 for a given product or family of products shall be specified by the Commission, after consultation of the committee referred to in Article 19, according to:

(a) the importance of the part played by the product with respect to the essential requirements, in particular those relating to health and safety;

(b) the nature of the product;

(c) the effect of the variability of the product's characteristics on its serviceability;

(d) the susceptibility to defects in the product manufacture;

in accordance with the particulars set out in Annex III.

In each case, the least onerous possible procedure consistent with safety shall be chosen.

The procedure thus determined shall be indicated in the mandates and in the technical specifications or in the publication thereof.'

8 Article 14 of Directive 89/106 specifies:

'1. In accordance with Annex III, the procedures described shall lead:

(a) in the case of Article 13(3)(a), to the production of a declaration of conformity for a product by the manufacturer, or his agent established in the Community; or

(b) in the case of Article 13(3)(b), to the issue by an approved certification body of a certificate of conformity for a system of production control and surveillance or for the product itself.

Detailed rules for the implementation of the procedures of attestation of conformity are given in Annex III.

2. The manufacturer's declaration of conformity or the certificate of conformity shall entitle the manufacturer, or his agent established in the Community, to affix the corresponding CE marking on the product itself, on a label attached to it, on its packaging or on the accompanying commercial documents. The model of the CE marking and the rules for its use in respect of each of the procedures of attestation of conformity are given in Annex III.'

Decision 1999/93

9 The Commission adopted Decision 1999/93 in order to specify the procedures for attesting the conformity of doors, windows, shutters, blinds, gates and related building hardware.

10 Under Article 1 of Decision 1999/93, the products and families of products set out in Annex I thereto are to be subject to a procedure for attesting conformity which is based on a factory-production control system under the sole responsibility of the manufacturer. Article 2 of Decision 1999/93 provides that the products set out in Annex II to that decision are to have their conformity attested, not only by means of that factory-production control system but, additionally, by means of a procedure in which an approved certification body is involved in assessment and surveillance of the production control or of the product itself.

11 Annex II to Decision 1999/93 refers to the following products:

'Doors and gates (with or without related hardware):

— for use in fire/smoke compartmentation and on escape routes.

...

Building hardware related to doors and gates:

— for use in fire/smoke compartmentation and on escape routes.'

12 Article 3 of Decision 1999/93 states that the procedure for attesting conformity as set out in Annex III thereto is to be indicated in mandates for guidelines for European technical approvals. Annex III grants authority to the European Committee for Standardisation ('CEN/Cenelec') to specify the attestation of conformity systems in the relevant harmonised standards. Thus, for doors, gates and associated hardware intended for use in fire/smoke compartmentation or on escape routes, Annex III to Decision 1999/93 requires use of the procedure for certification of conformity by an approved certification body, as referred to in point 2(i) of Annex III to Directive 89/106.

13 It is common ground that, at the material time, harmonised standards did not yet exist for exterior doors to be fitted with panic bars.

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 During the month of April 2005, Ecorad ordered from Carp the supply and installation of three exterior doors fitted with panic bars. In May 2005, following the installation of the first of those doors, Ecorad formed the view that the product installed did not comply with Community legislation, since Carp did not have a certificate of conformity issued by an approved certification body as referred to in Decision 1999/93 (or 'type 1 certification'). Consequently, Ecorad refused to perform its contractual obligations.

15 Carp thereupon brought an action for damages before the Tribunale ordinario di Novara (District Court, Novara). In the context of those proceedings, Ecorad relied on the non-conformity with Community legislation of the product sold and alleged, in that connection, that Carp had failed to comply with Decision 1999/93.

16 In its order for reference, the Tribunale ordinario di Novara considers that the dispute requires the interpretation of Decision 1999/93 and questions the validity of that decision, assuming it is directly applicable.

17 It is in those circumstances that the Tribunale ordinario di Novara decided to stay proceedings and to refer to the Court of Justice the following questions for a preliminary ruling:

'(1) Are Articles 2 and 3 of Decision 1999/93/EC and Annexes II and III thereto to be interpreted as meaning that it is not possible for doors intended to be fitted

with panic bars to be manufactured by operators (door fitters) who do not comply with the requirements of the system of attestation of conformity No 1?

(2) If the answer to Question 1 is yes: regardless of whether technical standards have been adopted by the European Committee for Standardisation (CEN), are the requirements under Articles 2 and 3 of Decision 1999/93/EC and Annexes II and III thereto legally binding from the date when that decision entered into force in so far as regards the type of attestation of conformity procedure to be complied with by manufacturers (door fitters) of doors intended to be fitted with panic bars?

(3) Are Articles 2 and 3 of Decision 1999/93/EC and Annexes II and III thereto to be regarded as being invalid on the basis that they are contrary to the principle of proportionality in so far as they require all producers to comply with the attestation of conformity procedure No 1 in order to be able to mark doors fitted with panic bars they have themselves manufactured with the CE conformity marking (the mandate to adopt the relevant technical standards being given to the CEN)?'

The questions referred for a preliminary ruling

18 Examination of the first and third questions — relating, respectively, to the interpretation and the validity of Decision 1999/93 — pre-supposes an affirmative answer to the second question, by which the referring court asks, in essence, whether Decision 1999/93 produces legally binding effects. Firstly, however, it is necessary to examine whether that decision can be relied upon in a dispute between individuals.

19 On that point, Carp claims that Decision 1999/93 does not actually impose legally binding obligations upon it, in so far as it — Carp — is not the addressee of that decision. Ecorad maintains, on the other hand, that it — Ecorad — has the right to rely upon Decision 1999/93 in the dispute in the main proceedings.

20 In that context, without it being necessary first to examine the validity of Decision 1999/93, it should be recalled that, according to settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. It follows that even a clear, precise and unconditional provision of a directive seeking to confer rights or impose obligations on individuals cannot of itself apply in proceedings exclusively between private parties (Case 152/84 *Marshall* [1986] ECR 723, paragraph 48; Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 20; Case C-192/94 *El Corte Inglés* [1996] ECR I-1281, paragraphs 16 and 17; Case C-201/02 *Wells* [2004] ECR I-723, paragraph 56; and Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraphs 108 and 109).

21 Decision 1999/93 was adopted on the basis of Article 13(4) of Directive 89/106 and is addressed to the Member States. It is an act of general application which specifies the types of attestation of conformity procedures that are applicable, respectively, to doors, windows, shutters, blinds, gates and related building hardware and which authorises CEN/Cenelec to specify the content of those procedures in the relevant harmonised standards, which will then be transposed by the standardisation bodies of each Member State. In accordance with Article 249 EC, Decision 1999/93 is binding only upon the Member States, which, under Article 4 of that decision, are the sole addressees. Accordingly, the considerations underpinning the case-law referred to in the preceding paragraph with regard to directives apply *mutatis mutandis* to the question whether Decision 1999/93 may be relied upon as against an individual.

22 It should therefore be stated in reply to the second question referred by the national court that an individual cannot rely, in the context of legal proceedings against

another individual concerning contractual liability, on the infringement by the latter of Articles 2 and 3 of Decision 1999/93 and of Annexes II and III thereto.

23 In light of that reply, it is not necessary to answer the first and third questions referred for a preliminary ruling.

Costs

24 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 (Third Chamber) hereby rules:

An individual cannot rely, in the context of legal proceedings against another individual concerning contractual liability, on the infringement by the latter of Articles 2 and 3 of Commission Decision 1999/93/EC of 25 January 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards doors, windows, shutters, blinds, gates and related building hardware, and of Annexes II and III thereto.

[Signatures]