JUDGMENT OF THE COURT (Fourth Chamber)
25 September 1997 *

In Case C-237/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Cour d'Appel, Mons (Belgium), for a preliminary ruling in the criminal proceedings pending before that court against

Eddy Amelynck and Others

and

Transports Amelynck SPRL, party liable at civil law,

on the interpretation and validity of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (OJ 1977 L 38, p. 1) and Commission Regulation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1977 L 38, p. 20),

THE COURT (Fourth Chamber),

composed of: J. L. Murray, President of the Chamber, C. N. Kakouris (Rapporteur) and P. J. G. Kapteyn, Judges,

* Language of the case: French.

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Messrs Rinaldi, Boeki and Laznicka, defendants in the main proceedings, by Robert Himpler, of the Crainhem Bar,

— Messrs Poznantek, Leidensdorf, Flaks, Ak, Bromberg and Suffys, and Ms Cornet and Ms Szczekacz, defendants in the main proceedings, by Marc Baltus, of the Brussels Bar,

— Mr Scapardini, defendant in the main proceedings, by Huguette Remy-Libert, of the Brussels Bar,

— the Belgian Government, by Jan Devadder, General Adviser in the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

— the Council of the European Union, by Maria Cristina Giorgi, Adviser in the Legal Service, acting as Agent,

— the Commission of the European Communities, by Michel Nolin, of the Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Belgian Minister for Financial Affairs, represented by Bernhard van de Walle de Ghelcke, of the Brussels Bar; Messrs Poznantek, Leidensdorf, Flaks, Ak, Bromberg and Suffys, and Ms Cornet and Ms Szczekacz, represented by Marc Baltus; Mr Scapardini, represented by Huguette Remy-Libert; the Council, represented by Maria Cristina Giorgi; and the Commission, represented by Michel Nolin, at the hearing on 25 June 1997,

after hearing the Opinion of the Advocate General at the sitting on 26 June 1997,

gives the following

Judgment

1 By judgment of 28 June 1996, received at the Court on 9 July 1996, the Cour d'Appel (Court of Appeal), Mons, referred for a preliminary ruling under Article 177 of the EC Treaty a question concerning the interpretation and validity of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (OJ 1977 L 38, p. 1) and Commission Regulation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1977 L 38, p. 20).

2 That question was raised in the context of criminal proceedings instituted in 1991 by the Belgian Minister for Financial Affairs against Mr Eddy Amelynck, a customs official, and 29 other persons charged with transporting into Belgium and there holding, during the period from October 1984 to March 1985, ready-to-wear garments imported from France but of unknown origin, without producing the documents required for the entry of those goods into Belgium.

3 The proceedings brought against those charged resulted from an investigation conducted jointly by the Belgian customs and excise authorities and the French national directorate for customs investigations (hereinafter 'the DNED'). In the course of that investigation, the DNED had notified the Belgian authorities, by telex of 13 March 1985, of the following findings which it had made subsequent to searches carried out at the homes of certain of the accused:

'1. Exportation as contraband of garments (of French origin; destination: Belgium, in particular Brussels); estimated value: FF 5 000 000 over a period not subject to prescription;

2. Importation as contraband of other garments from Belgium (of Spanish origin) intended for various customers in Paris; estimated value: FF 2 000 000.'

4 As a result of those findings, the Belgian Minister for Financial Affairs instituted criminal proceedings against the accused before the Tribunal Correctionnel (Criminal Court), Tournai, and demanded payment of customs duties in respect of those imports, on the ground that, failing production of the T2 or T2 L documents provided for under Regulations No 222/77 and No 223/77 respectively, the regulations which were applicable at the material time, the accused were not in a position to demonstrate that the goods which had entered Belgium were of Community origin.

5 By judgment of 9 February 1993, the Tribunal Correctionnel found that the criminal proceedings were time-barred, but took the view that the facts complained of had been established and accordingly ordered 28 of the accused to pay customs duties plus default interest.

6 Twenty of those so ordered argued that the customs duties claimed were not payable on the ground that the goods were, in their view, of Community origin. They

accordingly appealed against that decision to the court in Mons, relying, as proof of the goods' origin, on the telex sent by the DNED on 13 March 1985, which referred to the goods as being of French origin.

7 The Cour d'Appel, Mons, faced with, on the one hand, the argument of the accused and, on the other, that of the Belgian Ministry of Financial Affairs, which argued that production of the T2 or T2 L document alone was the exclusive way to establish the Community status of the goods, decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Do Community Regulations No 222/77 and No 223/77, laying down the rule that, save where otherwise provided, proof that goods originate in the Community may be provided only by transit document T2 or T2 L, comply with Articles 9 and 10 of the EEC Treaty and are they compatible with Articles 37(2) and 39(2) of Regulation No 222/77 which provide that the findings of the competent authorities of a Member State are to have the same force [in other Member States] as findings of the competent authorities of each of those Member States?'

8 In view of its wording and content, the question must be divided into two.

The first question

9 In the first question, the national court is asking whether the rule laid down in Regulations No 222/77 and No 223/77 to the effect that, save as otherwise provided, proof of the Community status of goods may be provided only by means of transit documents T2 or T2 L is consistent with Articles 9 and 10 of the EC Treaty.

10 In this regard, Regulation No 222/77 sets out two procedures for Community transit. The first, referred to as the 'procedure for external Community transit', applies essentially, according to Article 1(2) of that regulation, to goods which do not satisfy the conditions laid down in Articles 9 and 10 of the Treaty, that is to say, goods which come from non-member countries and are not in free circulation in the Community. The second, referred to as the 'procedure for internal Community transit', applies essentially, according to Article 1(3) of Regulation No 222/77, to goods which do satisfy the conditions laid down in Articles 9 and 10 of the Treaty, that is to say, goods which originate in the Member States or are in free circulation in the Community, known as 'Community goods'.

11 In accordance with Article 12(1) of Regulation No 222/77, goods carried under the procedure for external Community transit must be covered by a declaration made on a T1 form.

12 With regard to internal Community transit, Article 39 of Regulation No 222/77 makes provision for proof relating to this type of transit, laying down in paragraph (1) that all goods to be carried under this transit procedure must be covered by a declaration made on a T2 form.

13 Since Regulation No 222/77 envisages cases in which the Community transit system is not obligatory, Community goods which are not carried under the procedure for internal Community transit are covered by Regulation No 223/77, which provides in Article 1(8), as a method of proof, for the issue of document T2 L, the content of which corresponds to document T2 for internal Community transit.

14 Furthermore, Article 9 of Regulation No 222/77 provides as follows: 'Where, in the cases provided for in this regulation, the provisions of the Treaty establishing the European Economic Community which relate to free movement of goods are

only applied on presentation of an internal Community transit document issued to establish the Community status of the goods, the party concerned may, for any valid reason, obtain that document subsequently from the competent authorities of the Member State of departure.' A similar provision, Article 71 of the implementing regulation, Regulation No 223/77, also provides that document T2 L may be issued retroactively.

15 As the Court stated in its judgment in Case C-117/88 *Trend-Moden Textilhandel* v *Hauptzollamt Emmerich* [1990] ECR I-631, paragraph 19, Articles 9 and 10 of the Treaty are silent as to the means of proof and the burden of proof of the Community status of goods and leave it to secondary Community legislation to settle those matters.

16 With regard to those means of proof, Regulations No 222/77 and No 223/77 lay down the rule that the Community status of goods may be proved only by means of document T2 or document T2 L, subject to specified exceptions (see *Trend-Moden Textilhandel*, cited above, paragraph 14, and Case C-83/89 *Openbaar Ministerie and Minister van Financiën* v *Houben* [1990] ECR I-1161, paragraph 17).

17 As regards the burden of proof, it follows from the provisions of Regulation No 222/77 that the applications to obtain those documents, the declarations required, the other formalities to be completed, the submission of those documents to the competent authorities and the proper performance of transit operations are matters which in general are the responsibility of the parties concerned or their representatives (Articles 11(a), 12(3) and 13). Those provisions, which feature in Title II of Regulation No 222/77 dealing with external Community transit, are also applicable to internal Community transit by virtue of Article 39(2) of Regulation No 222/77, which states that, save as otherwise provided in Articles 40 and 41, the provisions of Title II are to apply *mutatis mutandis* to the procedure for internal Community transit. The corresponding provisions in Regulation No 223/77 also apply to document T2 L.

18 As the Court held in paragraph 20 of *Trend-Moden Textilhandel*, those rules are justified by the need to facilitate the movement of goods within the Community, which is one of the basic principles of the common market. Providing those on whom the burden of proof normally falls with a standard and simple means of

proving the Community status of goods, combined with the possibility of producing such proof even after the frontier has been crossed, is consistent with that purpose and cannot therefore be regarded as contrary to Articles 9 and 10 of the Treaty.

19 In the light of the foregoing, the answer to the first question must be that the rule laid down in Regulations No 222/77 and No 223/77 to the effect that, save as otherwise provided, proof of the Community status of goods may be provided only by means of transit documents T2 or T2 L is consistent with Articles 9 and 10 of the Treaty.

The second question

20 In the second question, the national court is in substance asking whether, irrespective of the answer to the first question, Article 37(2) of Regulation No 222/77 allows proof of the Community status of goods to be provided, apart from by documents T2 or T2 L, also by means of 'the findings of the competent authorities of a Member State made when inspections are carried out under the Community transit procedure'.

21 Article 37(2) of Regulation No 222/77, which deals with the external Community transit procedure but which by virtue of Article 39(2) of the same regulation is also applicable to the internal Community transit procedure, provides that the findings of the competent authorities of a Member State made when inspections are carried out under the Community transit procedure are to have the same force in other Member States as findings of the competent authorities of each of those Member States.

22 While it does not rule out the possibility that findings of the competent authority of a Member State may relate to the Community status of goods, Article 37(2) cannot constitute a derogation from the abovementioned rule that, save as otherwise provided, proof of the Community status of goods may be provided only by means of document T2 or document T2 L.

23 Apart from the exceptions expressly provided for by Regulation No 222/77, such as, in particular, carriage by air (Article 45), carriage by pipeline (Article 46), along with that of goods contained in travellers' luggage (Article 49), findings of this kind made by the authorities of a Member State cannot be used as proof of the Community status of goods, since this would lead to the reintroduction of the simultaneous application of national administrative procedures which those rules, as is clear from the ninth recital in the preamble to the regulation, are designed precisely to avoid. The view that these findings may replace documents T2 or T2 L would therefore run counter to the purpose served by the rules in question, which, as the Court pointed out in paragraph 16 of *Trend-Moden Textilhandel*, cited above, is to facilitate the transport of goods within the Community by simplifying and standardizing the formalities to be carried out when internal frontiers are crossed.

24 This interpretation is, moreover, corroborated by Article 9 of Regulation No 222/77 and Article 71 of Regulation No 223/77, which provide for the retroactive issue of document T2 and document T2 L respectively. As the Court pointed out in *Trend-Moden Textilhandel*, paragraph 15, those provisions incorporate the Community legislature's intention to exclude other means of proof while at the same time facilitating the task of the party concerned.

25 In addition, Article 37(2) of Regulation No 222/77 requires that the findings of the competent authorities of the Member States be made during inspections of goods being transported under the Community transit procedure, whether external or internal. It follows that the probative value of those findings is conditional on the goods in question, such as those in the main proceedings, qualifying for the internal Community transit procedure. That cannot, however, be the case with regard to goods that are not accompanied by declarations made on forms T2 or T2 L.

26 In view of all the foregoing considerations, the answer to the second question must be that Article 37(2) of Regulation No 222/77 does not allow proof of the Community status of goods to be provided by means of the findings of the competent authorities of a Member State made when inspections are carried out under the Community transit procedure.

Costs

27 The costs incurred by the Belgian and German Governments, as well as by the Council of the European Union 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 (Fourth Chamber),

in answer to the question referred to it by the Cour d'Appel, Mons, by judgment of 28 June 1996, hereby rules:

1. **The rule laid down in Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit and Commission Regulation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure to the effect that, save as otherwise provided, proof of the Community status of goods may be provided only by means of transit documents T2 or T2 L is consistent with Articles 9 and 10 of the EC Treaty.**

2. **Article 37(2) of Regulation No 222/77 does not allow proof of the Community status of goods to be provided by means of the findings of the competent authorities of a Member State made when inspections are carried out under the Community transit procedure.**

Murray Kakouris Kapteyn

Delivered in open court in Luxembourg on 25 September 1997.

R. Grass

Registrar

J. L. Murray

President of the Fourth Chamber