ORDER OF THE COURT
28 June 2000 *

In Case C-116/00,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Cour d'Appel, Paris, for a preliminary ruling in the criminal proceedings pending before that court against

Claude Laguillaumie,

on the interpretation of Articles 30 and 36 (now Articles 28 and 30), 85 and 86 (now Articles 81 EC and 82 EC) of the EC Treaty and 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 (OJ 1983 L 109, p. 8), Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1975 L 78, p. 32) and Directive 94/62/EC of the European Parliament and the Council of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10),

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward, L. Sevón (Rapporteur) and R. Schintgen, (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, A. La Pergola, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm, M. Wathelet, V. Skouris and F. Macken, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By an undated document entitled 'Request for a ruling to clarify the law', received by the Court on 27 March 2000, the Cour d'Appel, Paris, requested a preliminary ruling, pursuant to Article 234 of the EC Treaty, concerning the interpretation of Articles 30 and 36 (now Articles 28 EC and 30 EC), 85 and 86 (now Articles 81 EC and 82 EC) of the EC Treaty and 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 (OJ 1983 L 109, p. 8), Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1975 L 78, p. 32) and Directive 94/62/EC of the European Parliament and the Council of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

2 The question arose in the context of criminal proceedings against Claude Laguillaumie, who was charged with having knowingly and deliberately failed to secure or to arrange, or to assist in, the disposal of products generating waste which the company managed by him offers for sale or makes available to users, an offence punishable under Articles 6(2) and 24 of Law No 75-633 of 15 July 1975 on the disposal of waste and recovery of materials (*JORF* 16 July 1975, p. 7279), as amended by Decree No 92-377 of 1 April 1992, applying Law No 75-633 to waste resulting from discarded packaging (*JORF* 3 April 1992, p. 5003).

3 It appears from Articles 4 and 6 of Decree No 92-377, amongst other provisions, that any producer whose products are marketed in packaging is required to assist in or ensure the disposal of all packaging waste. For this purpose he may arrange for the used packaging to be removed by a body authorised by joint decision of the Minister for the Environment, the Minister for Economic Affairs, the Minister of Industry, the Minister of Agriculture and the Minister for Local Authorities.

4 Consequently, in order to fulfil their obligations regarding the disposal of household packaging, producers may do one of two things, described as follows in the order for reference:

— either subscribe to a body approved by the public authorities and entrusted with fulfilling the obligations of recovering and exploiting packaging waste, in this case Eco Emballages SA ('Eco Emballages'), which has been approved by the public authorities since 1993 under Decree No 92-377;

— or set up their own system for collecting and disposing of the packaging which they use.

5 As Mr Laguillaumie neither took any action of his own, nor did he cause action to be taken, to ensure that the company fulfilled its packaging disposal obligations, criminal proceedings were brought against him by the Public Prosecutor's Department.

6 It appears from the order for reference that, when summoned for that offence before the Tribunal Correctionel, Auxerre (France), he was acquitted on the ground that Decree No 92/377 did not conform with Directive 91/156.

7 Prosecuted before the Cour d'Appel, Paris, he contended that Eco Emballages was abusing a dominant position within the meaning of Article 86 of the Treaty. From this he concluded that the French measures which formed the basis for prosecuting him were contrary to the principles of Articles 30 and 36 of the Treaty and that Decree No 92/377 was also unclear as to some of the measures to be implemented to assist in the disposal of waste.

8 The Cour d'Appel continues as follows:

'[F]or that reason the Cour d'Appel, after considering the matter, seeks the opinion of the Court of Justice on a preliminary issue concerning the

compatibility of the decree of 1 April 1992 and the ministerial decrees of 12 November 1992 and 30 August 1996 authorising Eco Emballages SA, with exclusive rights in French territory, to recover all products other than glass and medicinal products, with the principles laid down by

— Article 85 of the Treaty of Rome,

— Article 86 of the Treaty of Rome,

— Directive 91/156 of 18 March 1991,

— Directive ... [83/189] of 28 March 1983,

— Articles 30 and 36 of the Treaty of Rome and ... Directive ... 94/62 of 20 December 1994.'

9 The Cour d'Appel states that the application is accompanied by the text of the statutory provisions, Mr Laguillaumie's statement in defence and a 'photocopy of the proceedings' brought against him by the Departmental Directorate for Competition, Consumer Affairs and the Punishment of Fraud.

10 It must first of all be observed that the question is set out in an undated document entitled 'Request for a ruling to clarify the law'. Although such a form is unusual,

it is not for the Court, in view of the distribution of functions between itself and the national court, to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure (see Case 65/81 *Reina* [1982] ECR 33, paragraph 7).

11 It should further be observed that, as the Court has consistently held, it may not, in proceedings under Article 234 of the EC Treaty, rule on the conformity of national measures with Community law (see Case 14/86 *Pretore di Salò* v *X* [1987] ECR 2545, paragraph 15).

12 The Court may, however, extract from the wording of the questions formulated by the national court, and having regard to the facts as stated by it, those elements which concern the interpretation of Community law for the purpose of enabling that court to resolve the legal problem before it (see *Pretore di Salò* v *X*, cited above, paragraph 16).

13 Finally, it is necessary to ascertain, after hearing the parties referred to in Article 20 of the EC Statute of the Court, whether the order for reference contains the necessary elements to enable the Court to give an interpretation of Community law which will be helpful to the national court.

14 In this connection it must be noted that the information furnished in the decision making the reference does not serve only to enable the Court to give helpful answers, but also to enable the governments of the Member States and other interested parties to submit observations in accordance with Article 20 of the EC Statute of the Court of Justice (see order in Case C-422/98 *Colonia Versicherung and Others* [1999] ECR I-1279, paragraph 5). It is the Court's duty to ensure that that possibility is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the decision making reference is notified to the interested parties (see judgment in Joined Cases 141/81 to 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6; order in Case C-326/95 *Banco de*

Fomento e Exterior [1996] ECR I-1385, paragraph 7, and judgment in Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraph 23).

15 The Court has consistently held that 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 legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see judgment in Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6; orders in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 4; in Joined Cases C-128/97 and C-137/97 *Testa and Modesti* [1998] ECR I-2181, paragraph 5; in Case C-9/98 *Agostini* [1998] ECR I-4261, paragraph 4, and in *Colonia Versicherung and Others*, cited above, paragraph 4, and judgment in *Lehtonen and Castors Braine*, cited above, paragraph 22).

16 The Court has also stressed that it is important for the national court to state the precise reasons which caused it to question itself as to the interpretation of Community law and to consider that it was necessary to refer questions to the Court for a preliminary ruling (see orders in Case C-101/96 *Italia Testa* [1996] ECR I-3081, paragraph 6; in *Testa and Modesti*, cited above, paragraph 15, and in *Agostini*, cited above, paragraph 6). Thus, the Court has held that it is essential that the national court should give at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and on the link it establishes between those provisions and the national legislation applicable to the dispute (see order in Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 9).

17 It is clear, however, that the order for reference does not contain sufficient information to satisfy those requirements.

18 More specifically, the national court does not explain the connection between each of the provisions of which it seeks an interpretation and the factual situation

or the applicable national legislation. Thus, and in particular, it is not made clear in what the abuse of a dominant position which is complained of on the basis of Article 86 of the Treaty might consist or what is the national provision the consideration of which by the national court requires a prior interpretation of Directive 83/189.

19 In the absence of those particulars, it is not possible to delimit the specific problem of interpretation which could be raised in relation to each of the provisions of Community law which the national court requires to be interpreted. The need for precision with regard to the factual and legislative context applies especially in the sphere of competition, which is characterised by complex factual and legal situations (see order in *Banchero*, cited above, paragraph 5, and judgment in *Lehtonen and Castors Braine*, cited above, paragraph 22).

20 It is true that the national court points out that its request for a preliminary ruling is accompanied by Mr. Laguillaumie's statement in defence and the file on the case in the national proceedings.

21 Although those documents may explain the context in which the question has been put, it must however be observed that Article 234 of the EC Treaty establishes a procedure for direct cooperation between the Court of Justice and national courts, in the course of which the parties are requested to submit observations only within the legal framework established by the court making the reference (see order in Case C-116/96 REV *Reisebüro Binder* [1998] ECR I-1889, paragraph 7).

22 Within the limits laid down by Article 234 of the EC Treaty, it is thus for the national courts alone to decide the principle and the purpose of any reference to the Court of Justice (see order in *Reisebüro Binder*, cited above, paragraph 8).

23 It is therefore for the court making the reference to explain, in the order for reference itself, the factual and legislative context of the case in the main proceedings, the reasons which have caused that court to question itself as to the interpretation of certain provisions of Community law and the connection which it establishes between those provisions and the national law applicable to the case.

24 It is the decision making the reference which serves as the basis of the proceedings before the Court of Justice. As has already been pointed out in paragraph 14 of this order, it is moreover that decision alone which is notified to the interested parties, in particular the Member States, accompanied by a translation into the official language of each State, in accordance with Article 20 of the EC Statute of the Court of Justice.

25 Thus it was that, in a case where the national court making the reference deemed to be incorporated in the text of its judgment the forms of order sought by the applicants, the facts put forward, and the arguments as presented by the parties in their pleadings, the Court held that the fact that the national court referred to the observations submitted by the parties to the main proceedings — which, moreover, were likely to contain differing accounts of the dispute — was not sufficient to safeguard the possibility to submit observations afforded by Article 20 of the EC Statute of the Court of Justice to the parties mentioned in that provision (see order in *Colonia Versicherung*, cited above, paragraph 8).

26 In the light of the above considerations it must be held, pursuant to Articles 92 and 103(1) of the Rules of Procedure, that the question referred to the Court is manifestly inadmissible.

Costs

27 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

hereby orders:

The reference for a preliminary ruling submitted by the Cour d'Appel, Paris, by decision received at the Court on 27 March 2000 is inadmissible.

Luxembourg, 28 June 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President