JUDGMENT OF THE COURT (Sixth Chamber)
31 March 1993 *

In Joined Cases C-184/91 and C-221/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Amtsgericht Emden, Federal Republic of Germany, for a preliminary ruling in the proceedings pending before that court between

Christof Oorburg

and

Wasser-und Schiffahrtsdirektion Nordwest, Aurich,

and between

Serge van Messem

and

Wasser-und Schiffahrtsdirektion Nordwest, Aurich,

on the interpretation of Article 76 of the EEC Treaty,

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. F. Mancini, F. A. Schockweiler, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: C. Gulmann,
Registrar: L. Hewlett, Administrator,

* Language of the case: German.

after considering the written observations submitted on behalf of:

— the German Government, by E. Röder, Ministerialrat at the Federal Ministry of Economic Affairs, and C.-D. Quassowski, Regierungsrat at the said Ministry, acting as Agents,

— the Netherlands Government, by B. R. Bot, Secretary-General at the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by R. Wägenbaur, Principal Legal Adviser, acting as Agent, assisted by B. Rapp-Jung, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of the German Government, the Netherlands Government and the Commission at the hearing on 15 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 9 December 1992,

gives the following

Judgment

1 By orders of 2 July 1991, received at the Court on 17 July 1991 (Case C-184/91) and 3 September 1991 (Case C-221/91), the Amtsgericht (Local Court) Emden, Federal Republic of Germany, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 76 of the EEC Treaty.

2 By order of 9 September 1991, the Court decided to join the two cases for the purposes of the oral procedure and judgment.

3 The questions arose in the context of actions brought before the Amtsgericht Emden by Mr Oorburg, a Netherlands boatmaster, and Mr van Messem, a Belgian boatmaster, against decisions of the Wasser-und Schiffahrtsdirektion Nordwest (North-West Waterways Authority) imposing fines on them for navigating on German inland waterways without holding a valid certificate within the meaning of the Binnenschifferpatentverordnung (Regulation on boatmasters' certificates for inland waterway navigation, hereinafter 'the Verordnung') of 7 December 1981 (*Bundesgesetzblatt* I, p. 1333).

4 The persons concerned hold a Netherlands boatmaster's certificate, the 'Groot Vaarbewijs II', which is valid for navigation on all Netherlands waterways. They pointed out to the German authorities that they had that certificate but the authorities did not consider it a master's certificate valid for navigation in the Federal Republic of Germany.

5 In the proceedings before the Amtsgericht, Mr van Messem claimed that he had been checked on several occasions prior to the Wasser-und Schiffahrtsdirektion Nordwest decision and had never had any problems with his Netherlands certificate.

6 The national court takes the view that it should find against the applicants, provided that the German legislation complies with Article 76 of the EEC Treaty. As it had some doubts on the matter, the national court stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is Article 76 of the EEC Treaty to be interpreted as meaning that a Member State is precluded from making navigation on its national waterways conditional upon the possession of a master's certificate for inland navigation issued in accordance with national law without making any differentiation in principle according to the nature of the inland waterways to be sailed?'

7 Reference is made to the Report for the Hearing for a fuller account of the legal provisions at issue, the facts in the main proceedings, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 The question raised by the court of reference seeks essentially to ascertain whether Article 76 of the Treaty is to be interpreted as meaning that the authorities of a Member State are precluded from requiring boatmasters of other Member States navigating on the inland waterways of the first State to produce a boatmaster's certificate issued by the authorities of that State.

9 The German Government observes that the Verordnung codified and amended the complex rules which applied previously and that it is simpler and more favourable to holders of foreign certificates than the rules it replaced. It also allows foreign boatmasters' certificates to be recognized as equivalent. The objective of Article 76 is therefore not jeopardized. The German Government also contends that the problem is not connected with the field of application of Article 76 but with the freedom to provide services in the field of transport under Article 61(1). It considers that, regard being had to the present stage of harmonization, Community law does not preclude it from maintaining the Verordnung in force in its present version and enforcing it.

10 The Netherlands Government argues that there has been a change in the implementation of the Verordnung which affects the conditions of competition for boatmasters from other Member States and is contrary to Article 76 of the Treaty.

11 According to the Commission, a comparison of the present German provisions with those previously applicable does not reveal any adverse change as far as foreign boatmasters are concerned. It considers, however, that Article 76 may also be infringed as a result of a change in an administrative practice and that it is for the national court to determine whether there has been such a change.

12 In replying to the question from the national court, it must be borne in mind that Article 76 of the Treaty contains a standstill clause. It is clear from Case C-195/90 *Commission* v *Germany* [1992] ECR I-3141, paragraph 20, that that provision is intended to prevent the introduction by the Council of a common

transport policy from being rendered more difficult, or from being obstructed, by the adoption, without the Council's agreement, of national measures the direct or indirect effect of which is to alter unfavourably the situation in a Member State of carriers from other Member States in relation to national carriers.

13 It follows that Article 76 of the Treaty precludes the national provisions governing masters' certificates for inland navigation at the time when the Treaty entered into force from being amended in a manner unfavourable to carriers of other Member States.

14 At the hearing, the Netherlands Government also explained that the difficulties had arisen only since the German legislation had made provision for the possibility of recognizing foreign certificates. It was only in recent years that Netherlands boatmasters who did not hold a German master's certificate had not been allowed to continue their journey unless they were accompanied by a pilot holding such a certificate.

15 It should be pointed out in this connection that Article 76 of the Treaty precludes not only any amendment to legislative provisions but also any change in an administrative practice which may similarly affect carriers of other Member States.

16 It is for the national court to decide whether there has been an amendment to the applicable legislation or a change in an administrative practice which is contrary to Article 76 of the Treaty.

17 Accordingly, it should be stated in reply to the question referred to the Court that Article 76 of the EEC Treaty must be interpreted as meaning that it does not preclude a Member State from making navigation on its national inland waterways conditional upon the possession of a master's certificate for inland navigation issued in accordance with national law but that it does preclude the introduction of any new discriminatory measures which are unfavourable to carriers of other

Member States. A change in an administrative practice may also constitute a measure of that kind. It is for the national court to decide whether any such change has taken place.

Costs

18 The costs incurred by the Netherlands and German 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Amtsgericht Emden by orders of 2 July 1991, hereby rules:

Article 76 of the EEC Treaty must be interpreted as meaning that it does not preclude a Member State from making navigation on its national inland waterways conditional upon the possession of a master's certificate for inland navigation issued in accordance with national law but that it does preclude the introduction of any new discriminatory measures which are unfavourable to carriers of other Member States. A change in an administrative practice may also constitute a measure of that kind. It is for the national court to decide whether any such change has taken place.

Kakouris Mancini

Schockweiler Diez de Velasco Kapteyn

Delivered in open court in Luxembourg on 31 March 1993.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Sixth Chamber