

JUDGMENT OF THE COURT (First Chamber)
13 November 1990 *

In Case C-269/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Magistrate dealing with commercial cases on the Arrondissementsrechtbank Almelo (Netherlands) for a preliminary ruling in the criminal proceedings pending before that court against

Bonfait BV, a company incorporated under Netherlands law, whose registered office is in Denekamp,

on the interpretation of Articles 30 and 36 of the EEC Treaty,

THE COURT (First Chamber),

composed of: G. C. Rodríguez Iglesias, President of Chamber, Sir Gordon Slynn and R. Joliet, Judges,

Advocate General: M. Darmon

Registrar: J. A. Pompe, Deputy Registrar,

having regard to the observations submitted on behalf of

Bonfait BV, by R. J. M. Cremers, of the Alemelo Bar,

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

* Language of the case: Dutch.

the Commission of the European Communities, by René Barents, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing

after hearing oral argument from Bonfait BV, represented by Mr Hijmans, of the Almelo Bar, from the Netherlands Government, represented by Mr Heukels, and from the Commission at the hearing on 2 May 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 25 September 1990,

gives the following



Judgment

- 1 By interim judgment of 29 June 1989, which was received at the Court on 5 September 1989, the Magistrate dealing with commercial cases on the Arrondissementsrechtbank Almelo referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 30 of the EEC Treaty.
- 2 The questions were raised in criminal proceedings brought against Bonfait BV for having used, for products which the company had imported from the Federal Republic of Germany, a description regulated by law in the Netherlands without, however, satisfying the conditions upon which that description may be used.
- 3 The Vlees- en Vleeswarenbesluit (Netherlands Order on Meat and Prepared Meat Products) of 27 April 1987 lays down particular rules on the composition and description of meat and prepared meat products. One of those rules concerns, in particular, a figure called the 'Federgetal', which expresses the ratio of water content to the content of organic non-fatty substances.

- 4 According to Article 6(1)(d) of the Order, that Federgetal must not exceed 4 for 'vleeswaar' (prepared meat products).
- 5 Bonfait BV was prosecuted for having sold and delivered, in August and September 1988, as 'vleeswaren' meat products called 'Mosaikpastete' and 'Kaiserjagdwurst' which it had imported from the Federal Republic of Germany where those products are lawfully marketed as 'Fleischwaren' and whose ratios of water content to the content of organic non-fatty substances were respectively 4.7 and 4.5.
- 6 In view of those facts the national court referred to the Court the following questions for a preliminary ruling:
 - '(1) Are the provisions of the Netherlands Vlees- en Vleeswarenbesluit applicable to meat products imported into the Netherlands from other Member States?
 - (2) Are the said provisions measures within the meaning of Article 30 of the EEC Treaty?
 - (3) Do the said provisions serve to protect public health in the Netherlands?'
- 7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case before the national court, its legal background, the course of the proceedings and the 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 It must be observed at the outset that in so far as the questions referred involve the interpretation of provisions of national law the Court has no jurisdiction to rule upon them.

- 9 Nevertheless, it appears from the judgment referring the questions that the national court is essentially seeking to ascertain whether Articles 30 and 36 of the Treaty preclude the application to products imported from another Member State of national rules which restrict the use of the description 'vleeswaar' to products whose ratio of water content to content of organic non-fatty substances does not exceed a certain value.
- 10 It must be recalled first of all that since its judgment in Case 8/74 *Procureur du Roi v Dassonville* [1974] ECR 837, the Court has consistently held that the prohibition of measures having an effect equivalent to quantitative restrictions laid down in Article 30 of the Treaty applies to all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.
- 11 Next, it should be emphasized that the Court has consistently held (see in particular Case 120/78 *REWE-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649, Case 261/81 *Walter Rau Lebensmittelwerke v De Smedt PvbA* [1982] ECR 3961 and Case 178/84 *Commission v Germany* [1987] ECR 1227) that, in the absence of common rules relating to the marketing of the products concerned, obstacles to movement within the Community resulting from disparities between the national laws must be accepted in so far as such rules, applicable to domestic and to imported products without distinction, may be recognized as being necessary in order to satisfy mandatory requirements relating *inter alia* to consumer protection and fair trading. It is also necessary for such rules to be proportionate to the aim in view. If a Member State has a choice between various measures to attain the same objective, it should choose the means which least restricts the free movement of goods.
- 12 It should be observed that the application of the rules described by the national court to imported products, which, although lawfully marketed in the country of origin as prepared meat products do not satisfy the requirement concerning the ratio of water content to content of organic non-fatty substances, is likely to hinder their importation.

- 13 That observation is not invalidated by the fact that, as the Netherlands Government points out, the rules in question do not reserve a generic designation for national products.
- 14 It is therefore necessary to establish whether the application of the rules in question can be justified by mandatory requirements relating to consumer protection or fair trading, as the Netherlands Government contends, or by reasons connected with the protection of the health of humans.
- 15 As regards consumer protection, it must be stated that it can be guaranteed by means which do not hinder the importation of products which have been lawfully manufactured and marketed in other Member States, in particular by suitable labelling giving the nature of the product sold (judgment in Case 193/80 *Commission v Italy* [1981] ECR 3019 and in Case 178/84, cited above). Labels bearing pertinent information about the composition of the product and indicating the respective proportions of its constituents would enable the consumer to choose, if he wished, the product complying with the requirement laid down by the Vlees-en Vleeswarenbesluit concerning the ratio of water content to organic non-fat.
- 16 On the matter of fair trading, the Court has held (in Case 182/84 *Miro BV* [1985] ECR 3731) that, in a common market system, interests such as fair trading must be guaranteed with regard on all sides for the fair and traditional practices observed in the various Member States.
- 17 From that point of view, it cannot be considered as an essential requirement for fair trading that products imported from another Member State which do not comply with a requirement that the ratio of water content to the content of organic non-fatty substances should not exceed a certain level may not be sold under a particular name (in the present case, 'vleeswaren') when those products

are lawfully manufactured and marketed in the Member State of origin under an equivalent designation ('Fleischwaren') and purchasers are also provided with proper information.

- 18 It follows from the foregoing that the application to products imported from other Member States of rules such as those described by the national court cannot be justified by mandatory requirements relating to consumer protection or fair trading.
- 19 Nor can the application of such rules to imported products be justified on the grounds of the protection of the health of humans where it is established that products not complying with those rules can be sold under a name different from that defined by those rules.
- 20 The answer to the questions submitted by the national court must therefore be that Articles 30 and 36 of the Treaty preclude the application to products imported from another Member State of national rules which restrict the use of the description 'prepared meat product' to products whose ratio of water content to content of organic non-fatty substances does not exceed a certain value.

Costs

- 21 The costs incurred by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the costs are a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions submitted to it by the Magistrate dealing with commercial cases on the Arrondissementsrechtbank Almelo, by interlocutory judgment of 29 June 1989, hereby rules:

Articles 30 and 36 of the Treaty preclude the application to products imported from another Member State of national rules which restrict the use of the description 'prepared meat product' to products whose ratio of water content to content of organic non-fatty substances does not exceed a certain value.

Rodríguez Iglesias

Slynn

Joliet

Delivered in open court in Luxembourg on 13 November 1990.

J.-G. Giraud

Registrar

G. C. Rodríguez Iglesias

President of the First Chamber