

JUDGMENT OF THE COURT (FOURTH CHAMBER)
14 DECEMBER 1983 ¹

**Société de Vente de Ciments et Bétons de l'Est SA
v Kerpen & Kerpen GmbH & Co. KG
(reference for a preliminary ruling
from the Oberlandesgericht Saarbrücken)**

(Competition — Compatibility with Article 85 of the EEC Treaty
of a contract made between two undertakings)

Case 319/82

1. *Competition — Agreements between undertakings — Effect on competition — Contracts for the sale of goods restricting the buyer's freedom to use the goods supplied — Effect on trade between Member States — Criteria*
(EEC Treaty, Art. 85 (1))
2. *Competition — Agreements between undertakings — Automatic nullity — Consequences for parts of the agreement not contrary to Article 85 (1) — Appraisal by the national court — Application of national law*
(EEC Treaty, Art. 85 (2))

1. Provisions in a contract concluded between a French exporter and an importer established in the Federal Republic of Germany imposing on the buyer, described in the contract as sole importer, an obligation to use the goods supplied for his own needs, not to resell the goods in a specified area and to consult the seller before

soliciting business in another specified area, both areas being in the Federal Republic of Germany, have as their object the prevention, restriction or distortion of competition within the common market. They are therefore contrary to Article 85 (1) of the EEC Treaty and void when the contract is capable of affecting trade between

¹ — Language of the Case: German.

Member States. Where such a contract relates to some 10% of exports of the goods in question to the Federal Republic of Germany from France, it is capable of affecting trade between Member States appreciably.

2. The automatic nullity decreed by Article 85 (2) of the EEC Treaty applies only to those contractual pro-

visions which are incompatible with Article 85 (1). The consequences of such nullity for other parts of the agreement, and for any orders and deliveries made on the basis of the agreement, and the resulting financial obligations are not a matter for Community law. Such consequences are to be determined by the national court according to its own law.

In Case 319/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Oberlandesgericht (Higher Regional Court) Saarbrücken for a preliminary ruling in the action pending before that court between

SOCIÉTÉ DE VENTE DE CIMENTS ET BÉTONS DE L'EST SA

and

KERPEN & KERPEN GMBH & CO. KG

on the interpretation of Article 85 of the EEC Treaty,

THE COURT (Fourth Chamber)

composed of: T. Koopmans, President of Chamber, K. Bahlmann, P. Pescatore, A. O'Keefe and G. Bosco, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following