

JUDGMENT OF THE COURT (Fifth Chamber)

3 June 1999 \*

In Case C-33/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Rechtbank van Koophandel, Hasselt, Belgium, for a preliminary ruling in the proceedings pending before that court between

**Colim NV**

and

**Bigg's Continent Noord NV**

on the interpretation of 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), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75), and of the principles applicable to product labelling,

\* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J.C. Moitinho de Almeida, C. Gulmann, D.A.O. Edward (Rapporteur) and L. Sevón, Judges,

Advocate General: G. Cosmas,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Colim NV, by H. De Bauw, of the Brussels Bar,

— Bigg's Continent Noord NV, by P. Wytinck, of the Brussels Bar,

— the French Government, by K. Rispal-Bellanger, Head of the Subdirectorate for International Economic Law and Community Law in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and R. Loosli-Surrans, *chargé de mission* in the same directorate, acting as Agents,

— the United Kingdom Government, by L. Nicoll, of the Treasury Solicitor's Department, acting as Agent, and S. Morris, Barrister,

— the Commission of the European Communities, by H. van Lier, Legal Adviser, and M. Shotter, a national civil servant seconded to the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Colim NV, represented by H. De Bauw; Bigg's Continent Noord NV, represented by P. Wytinck; the French Government, represented by R. Loosli-Surrans; the Netherlands Government, represented by J.S. van den Oosterkamp, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; and the Commission, represented by H. van Lier and M. Shotter, at the hearing on 10 December 1997,

after hearing the Opinion of the Advocate General at the sitting on 19 February 1998,

gives the following

### Judgment

- 1 By judgment of 10 January 1997, received at the Court on 24 January 1997, the Rechtbank van Koophandel (Commercial Court), Hasselt, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of 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), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75) (hereinafter 'Directive 83/189'), and of the principles applicable to product labelling.
- 2 The questions were raised in proceedings between Colim NV (hereinafter 'Colim') and Bigg's Continent Noord NV (hereinafter 'Bigg's') relating to the labelling of various products on sale in their respective stores.

## Community legislation

- 3 Directive 83/189 lays down a procedure for the provision of information under which the Member States are required to notify the Commission of all draft technical regulations covered by that directive.
  
- 4 Article 1 of Directive 83/189 provides:

‘For the purpose of this Directive, the following meanings shall apply:

1. “technical specification”, a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking or labelling and the production methods and procedures for agricultural products as defined in Article 38(1) of the Treaty and for products intended for human and animal consumption and for medicinal products as defined in Article 1 of Directive 65/65/EEC, as last amended by Directive 87/21/EEC;

...

5. “technical regulation”, technical specifications, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, except those laid down by local authorities;

6. “draft technical regulation”, the text of a technical specification including administrative provisions, formulated with the aim of enacting it or of ultimately having it enacted as a technical regulation, the text being at a stage [of] preparation at which substantial amendments can still be made;
  
  7. “product”, any industrially manufactured product and any agricultural product.’
- 5 Article 8(1) of Directive 83/139 requires the Member States to communicate to the Commission any draft technical regulation, except where such technical regulation merely transposes the full text of an international or European standard, and to state briefly the grounds which make the enactment of the technical regulation necessary.
- 6 Under Article 9(1) the Member States are to postpone the adoption of a draft technical regulation for six months from the date of the notification referred to in Article 8(1) if the Commission or another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged must be amended in order to eliminate or reduce any barriers which it might create to the free movement of goods.

### National legislation

- 7 Article 13 of the *Wet van 14 Juli 1991 betreffende de Handelspraktijken en de Voorlichting en Bescherming van de Consument* (Law of 14 July 1991 on Trade

Practices and Consumer Information and Protection, *Belgisch Staatsblad* of 29 August 1991; hereinafter 'the WHPC') provides:

'The particulars to appear on the labelling which are prescribed by this law, its implementing decrees and the implementing decrees mentioned in the second paragraph of Article 122, instructions for use and guarantee certificates are to be given at least in the language or languages of the area in which the products are placed on the market.

If the labelling is a mandatory requirement, it must be applied in the form and with the content prescribed by the legislation.

The particulars appearing on the labelling must be clearly visible and legible and clearly distinct from advertising.

On no account may the labelling be presented in such a way as to cause confusion with a certificate of quality.'

8 Article 30 of the WHPC states:

'No later than at the time of the conclusion of the sale, the vendor must in good faith provide the consumer with the appropriate and useful information concerning the characteristics of the product or service and concerning the conditions of sale, having regard to the need for information expressed by the consumer and the use which has been specified by him or is reasonably foreseeable.'

## Main proceedings

- 9 According to the file, each of the parties to the main proceedings operates a department store in the Dutch-speaking province of Limburg, Colim in Houthalen-Helchteren and Bigg's, since 1996, in Kuringen-Hasselt. The principal place of business of the group of which Bigg's forms part is in Waterloo, in another language area of Belgium.
- 10 Upon application by Colruyt NV, a company of which Colim is a subsidiary, a court bailiff established on 4 July 1996 that numerous products offered for sale in the Bigg's store in Kuringen-Hasselt did not carry, on the packaging or labelling, any particulars in Dutch — the language of the area — whether instructions for use, composition or sales description.
- 11 When the same bailiff made a second visit on 12 July 1996, he recorded that the particulars appearing on the labels of some 30 products were not translated into the language of the area, save for the product Zeugg Skipper Orange 1 L, on which a sticker was affixed bearing a Dutch translation of the nature and composition of the product and a reference in Dutch to the Information Points where further information in that language was obtainable.
- 12 According to the bailiff's description, 'the functioning of these Information Points is as follows: the bar code appearing on the product has to be held against a scanner whereupon information concerning the relevant product appears on a screen', that information being limited to the price and a summary translation of the sales description. The bailiff stated that the Information Points did not provide a telephone number for the customer to ring in order to obtain further information on the product.
- 13 On the basis of those findings, Colim made a summary application to the national court on 27 September 1996 for an order, subject to financial penalties for non-

compliance, restraining the defendant, Bigg's, from selling 48 products whose marketing in the circumstances set out by the bailiff infringed, in particular, Articles 13 and 30 of the WHPC.

- 14 On 18 October 1996 a court bailiff instructed by Bigg's recorded that Colim was likewise selling various products in its store without labelling in Dutch.
- 15 Bigg's then brought a counterclaim before the national court containing claims similar to those formulated by Colim.
- 16 Bigg's contended before the national court that the provisions relied on by Colim, in particular Articles 13 and 30 of the WHPC, were inapplicable because they had not been notified to the Commission, as required by Directive 83/189.
- 17 It is apparent, moreover, from the reply given on 2 August 1996 by the Commission to Bigg's adviser that the WHPC had not been the subject of notification, even as to part, for the purposes of Directive 83/189.

### Questions referred for a preliminary ruling

- 18 The national court states that, in so far as Colim relies on the infringement of Articles 13 and 30 of the WHPC, a ruling by the Court on the question whether that legislation should have been notified to the Commission under Directive 83/189 is necessary in order for it to give judgment in the main proceedings. In



those circumstances, it decided to stay the proceedings with regard to the infringement of Articles 13 and 30 of the WHPC and submitted the following questions to the Court for a preliminary ruling:

‘1. Is a legal provision of a Member State whereby:

— the particulars to appear on labelling which are mandatory under national law;

— instructions for use; and

— guarantee certificates;

must be given at least in the language or languages of the area where the products are placed on the market, with the consequence that the packaging of imported products must be altered, a “technical regulation” within the meaning of Directive 83/189/EEC?

2. (a) Where specific Community rules exist concerning the particulars which must appear on specific products, may a Member State require imported products to carry other information in the language of the area in which the products are sold or in a language readily understood by the consumer?

(b) If the answer to Question (a) is in the affirmative, may such a requirement be made of all information on packaging or only of certain information and, if so, which?

- (c) In respect of products for which there are no specific Community rules, may a Member State require all or certain (and if so which) information on the imported products to be given in the language of the area in which the products are sold or in a language readily understood by the consumer?’

### Question 1

- 19 By its first question, the national court is essentially asking whether the obligation to give mandatory labelling particulars, instructions for use and guarantee certificates for products at least in the language or languages of the area in which those products are placed on the market constitutes a ‘technical regulation’ within the meaning of Directive 83/189 which, on that basis, should have been notified to the Commission.
- 20 Since technical regulations must be notified to the Commission only in so far as they are covered by the obligation to notify laid down in Article 8 of Directive 83/189, the scope of that obligation should first be defined.
- 21 The United Kingdom Government maintains that the obligation applies only to national measures which enact new technical regulations or add to existing technical regulations. Directive 83/189 is intended to give the Commission and the Member States the opportunity to examine the effects on the internal market of proposed new measures before they are adopted by the Member State in question.

- 22 In that regard, it should be remembered that the aim of Directive 83/189 is to protect, by preventive monitoring, the free movement of goods, which is one of the foundations of the Community (Case C-13/96 *Bic Benelux v Belgian State* [1997] ECR I-1753, paragraph 19). That monitoring is designed to eliminate or reduce barriers to the free movement of goods that might result from technical regulations which the Member States propose to adopt. A national measure which reproduces or replaces, without adding new or additional specifications, existing technical regulations which, if adopted after the entry into force of Directive 83/189, have been duly notified to the Commission, cannot be regarded as a 'draft' technical regulation within the meaning of Article 1(6) of Directive 83/189 or, consequently, as subject to the obligation to notify.
- 23 It is for the national court to determine whether that is the position in the present case.
- 24 As regards the meaning of the term 'technical regulation' in Directive 83/189, it should be noted first of all that that term and, therefore, the scope of the directive, have been extended, first by Directive 88/182, then by Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189/EEC (OJ 1994 L 100, p. 30).
- 25 However, in the main proceedings the applicable version of Directive 83/189 is the one in force when notification should have been given if the provisions of Article 13 of the WHPC constituted technical regulations.
- 26 So, since the WHPC was adopted on 14 July 1991, the requirements laid down in Article 13 of the Law must be examined in the light of Directive 83/189 as amended by Directive 88/182.

- 27 It is true that rules of a Member State under which, in order for products to be marketed in that State, one or more specified languages must be used for mandatory labelling particulars, instructions for use or guarantee certificates, could be regarded as amounting to 'requirements applicable to the product as regards terminology, symbols... packaging, marking or labelling' within the meaning of Article 1(1) of Directive 83/189 and, therefore, as constituting a technical regulation within the meaning of that directive.
- 28 However, it is necessary to distinguish between the obligation to convey certain information about a product to a consumer, which is carried out by affixing particulars to the product or adding documents to it such as instructions for use and the guarantee certificate, and the obligation to give that information in a specified language. Unlike the first obligation, which concerns the product directly, the second is intended merely to specify the language in which the first must be carried out.
- 29 Save where it can be transmitted effectively by the use of pictograms or signs other than words, information which traders are obliged to communicate to the purchasers or, as the case may be, to the end-user is of no practical use unless it is given in a language which can be understood by the persons for whom it is intended. So the obligation to express that information in a specified language does not in itself constitute a 'technical regulation' within the meaning of Directive 83/189, but an ancillary rule necessary in order for the information to be effectively communicated.
- 30 The answer to the first question must therefore be that the obligation to give mandatory labelling particulars, instructions for use and guarantee certificates for products at least in the language or languages of the area in which those products are placed on the market does not constitute a 'technical regulation' within the meaning of Directive 83/189.

## Question 2

- 31 By its second question, the national court is essentially asking whether, and to what extent, the Member States may require information appearing on imported products to be given in the language of the area in which those products are sold or in another language which may be readily understood by consumers in that area.
- 32 In its question, the national court contemplates two distinct situations according to whether there are specific Community rules specifying the particulars which must appear on a given product. In the first situation, the question is whether, and to what extent, the Member States may lay down language requirements for the information appearing on the product which are not provided for by the Community rules. In the second, where no specific Community rules exist, the question is whether, and to what extent, the Member States are entitled to require all or part of the information appearing on the product to be given in the language of the area in which it is sold or in another language which may be readily understood by consumers in that area.
- 33 A point to be noted at the outset is that, for certain categories of product, Community directives require the national language or languages to be used in order to enhance consumer or public health protection.
- 34 When those directives fully harmonise the language requirements applicable for a given product, the Member States cannot impose additional language requirements.
- 35 By contrast, where there is only partial Community harmonisation or none at all, the Member States in principle retain the power to impose additional language requirements.

- 36 However, while language requirements of the kind laid down by the national legislation at issue in the main proceedings are not technical regulations within the meaning of Directive 83/189, they do constitute a barrier to intra-Community trade in so far as products coming from other Member States have to be given different labelling involving additional packaging costs (see, to that effect, Case C-51/93 *Meyhui v Schott Zwiesel Glaswerke* [1994] ECR I-3879, paragraph 13).
- 37 Furthermore, the need to alter the packaging or the labelling of imported products prevents such requirements from being treated as selling arrangements within the meaning of the judgment in Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097, paragraph 16.
- 38 Article 30 of the EC Treaty (now, after amendment, Article 28 EC) prohibits obstacles to the free movement of goods resulting from rules that lay down requirements to be met by such goods (such as requirements as to designation, form, size, weight, composition, presentation, labelling or packaging), even if those rules apply without distinction to all national and imported products, unless their application can be justified by a public-interest objective taking precedence over the free movement of goods (see, in particular, *Meyhui*, paragraph 10).
- 39 As has been stated in paragraph 29 of this judgment, information addressed to the purchaser or end-user which can be communicated only by words is of no practical use unless it is given in a language which he can understand.
- 40 However, a national measure imposing such language requirements must, in any event, be proportionate to the aim pursued (see *Meyhui*, paragraph 10).

- 41 It follows, first, that a measure requiring the use of a language which consumers can readily understand must not exclude the possible use of other means of informing them, such as designs, symbols or pictograms. It is for the national court to determine in each case whether what appears on the labelling is such as to give consumers full information (see, to that effect, Case C-85/94 *Piageme and Others v Peeters* [1995] ECR I-2955, paragraph 28).
- 42 Second, a measure of that kind must be restricted to the information made mandatory by the Member State concerned. Decisions as to the availability, in the language of the consumer, of information which, in the view of that State, need not be made mandatory must be left to the trader responsible for marketing the product, who may have it translated if he wishes.
- 43 Furthermore, since language requirements of the kind laid down by the legislation at issue in the main proceedings can be justified by the public-interest objective of consumer protection only in so far as they are applicable without distinction, they cannot, in addition, be applied solely to imported products, so that products from other language areas of the Member State concerned are not at an advantage compared with products coming from other Member States.
- 44 The answer to the second question must therefore be that, in the absence of full harmonisation of language requirements applicable to information appearing on imported products, the Member States may adopt national measures requiring such information to be given in the language of the area in which the products are sold or in another language which may be readily understood by consumers in that area, provided that those national measures apply without distinction to all national and imported products and are proportionate to the objective of consumer protection which they pursue. They must, in particular, be restricted to information which the Member State makes mandatory and which cannot be appropriately conveyed to consumers by means other than translation.

## Costs

- 45 The costs incurred by the French, Netherlands and United Kingdom Governments and by the Commission, 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Rechtbank van Koophandel, Hasselt, by judgment of 10 January 1997, hereby rules:

1. **The obligation to give mandatory labelling particulars, instructions for use and guarantee certificates for products at least in the language or languages of the area in which those products are placed on the market does not constitute a 'technical regulation' within the meaning of 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, as amended by Council Directive 88/182/EEC of 22 March 1988.**
2. **In the absence of full harmonisation of language requirements applicable to information appearing on imported products, the Member States may adopt**



national measures requiring such information to be given in the language of the area in which the products are sold or in another language which may be readily understood by consumers in that area, provided that those national measures apply without distinction to all national and imported products and are proportionate to the objective of consumer protection which they pursue. They must, in particular, be restricted to information which the Member State makes mandatory and which cannot be appropriately conveyed to consumers by means other than translation.

Puissochet	Moitinho de Almeida	Gulmann
Edward		Sevón

Delivered in open court in Luxembourg on 3 June 1999.

R. Grass

J.-P. Puissochet

Registrar

President of the Fifth Chamber