JUDGMENT OF THE COURT

5 December 2000 *

In Case C-448/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal de Police (Local Criminal Court), Belley, France, for a preliminary ruling in the criminal proceedings before that court against

Jean-Pierre Guimont,

on the interpretation of Articles 3(a) and 30 et seq. of the EC Treaty (now, after amendment, Articles 3(1)(a) EC and 28 EC et seq.),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann (Rapporteur), M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón and R. Schintgen, Judges,

* Language of the case: French.

Advocate General: A. Saggio,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Mr Guimont, by A. Lestourneaud, of the Thonon-les-Bains and Pays de Léman Bar,

— the French Government, by K. Rispal-Bellanger, Deputy Director of the Legal Affairs Department at the Ministry of Foreign Affairs, and C. Vasak, Assistant Secretary for Foreign Affairs in the same Department, acting as Agents,

— the Danish Government, by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent,

— the German Government, by W.-D. Plessing, Ministerialrat in the Federal Ministry for Financial Affairs, and C.-D. Quassowski, Regierungsdirektor in the same ministry, acting as Agents,

— the Netherlands Government, by M.A. Fierstra, Head of the European Law Service in the Ministry of Foreign Affairs, acting as Agent,

— the Austrian Government, by C. Stix-Hackl, Gesandte in the Federal Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by H. van Lier, Legal Adviser, and O. Couvert-Castéra, a national civil servant on secondment to the Commission's Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Guimont, the French Government, the Danish Government and the Commission at the hearing on 11 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 9 March 2000,

gives the following

Judgment

1 By judgment of 24 November 1998, received at the Court on 9 December 1998, the Tribunal de Police (Local Criminal Court), Belley, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Articles 3(a) and 30 et seq. of the EC Treaty (now, after amendment, Articles 3(1)(a) EC and 28 EC et seq.).

2 That question was raised in the context of criminal proceedings against Jean-Pierre Guimont for holding for sale, selling or offering a foodstuff, in this case Emmenthal, with deceptive labelling.

The national rules in question

3 The first paragraph of Article 3 of French Decree No 84-1147 of 7 September 1984 applying the Law of 1 August 1905 on frauds and falsifications relating to products or services ('the 1984 Decree') provides:

'The labels and labelling methods used must not be such as to give rise to confusion in the mind of the purchaser or the consumer, particularly as to the characteristics of the foodstuff and, specifically, as to its nature, identity, properties, composition, quantity, durability, method of conservation, origin or provenance, method of manufacture or production.'

4 The 'characteristics of the foodstuff' bearing the designation 'Emmenthal' within the meaning of the French legislation are defined by Article 6 of, and the Annex to, Decree No 88-1206 of 30 December 1988 applying the Law of 1 August 1905 on frauds and falsifications relating to products or services and the Law of 2 July 1935 on the organisation and restructuring of the milk market as regards cheeses (JORF (Official Journal of the French Republic) of 31 December 1988, p. 16753, hereinafter 'the 1988 Decree'). Article 6 of the 1988 Decree provides that 'the designations listed in the Annex are reserved for cheeses meeting the requirements relating to manufacture and composition which are described in the said Annex'. In that Annex, Emmenthal is described as a product with the

following characteristics: 'a firm cheese produced by curing, pressing and salting on the surface or in brine; of a colour between ivory and pale yellow, with holes of a size between a cherry and a walnut; hard, dry rind, of a colour between golden yellow and light brown'.

Facts and procedure before the national court

5 By order of 6 January 1998, Mr Guimont was sentenced to 260 fines of FRF 20 each for holding for sale, selling or offering a foodstuff with deceptive labelling, in this case Emmenthal, which is an offence punishable under the first paragraph of Article 3 of the 1984 Decree.

6 At a hearing in which the Tribunal de Police, Belley, examined Mr Guimont's formal objection to that order, it was stated that an inspection had been carried out on 5 March 1996 by the Directorate for Competition, Consumer Affairs and Prevention of Fraud of the Department of Vaucluse at the premises of a company specialising in the cutting and packaging of portions of cheese prepacked in plastic film intended particularly for sale in supermarkets. During that inspection, 260 whole Emmenthal cheeses were discovered from the 'Laiterie d'Argis', of which Mr Guimont is the technical manager.

7 In its inspection, referred to in the paragraph above, the Departmental Directorate noted the total lack of rind on the cheeses examined, contrary to Article 6 of, and the Annex to, the 1988 Decree.

8 In his defence before the national court, Mr Guimont has argued in particular that Article 6 of the 1988 Decree is incompatible with the provisions of Articles 3(a) and 30 et seq. of the Treaty.

9 He has pointed out before the referring court that the name 'Emmenthal' is generic and widely used in a number of countries of the European Union without any requirement as to the existence of a rind. He has argued that, by reserving the designation 'Emmenthal' for cheeses with 'a hard, dry rind, of a colour between golden yellow and light brown', the 1988 Decree introduces a quantitative restriction on intra-Community trade or a measure having equivalent effect.

10 In its judgment making the reference, the Tribunal de Police, Belley, has made, *inter alia*, the following observations:

— The charge against the accused can be maintained only in so far as the 1988 Decree is not contrary to supranational norms;

— Mr Guimont has shown by the evidence adduced that Emmenthal without rind is manufactured or marketed in other countries of the European Community;

— The *Codex alimentarius* of the UN Food and Agriculture Organisation and the World Health Organisation contains a norm which refers to the consumption of Emmenthal without rind;

— The variation between different national rules and, in particular, the restrictive position adopted in the French regulations as compared with those of other European countries is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade, while no right to protection of the generic name 'Emmenthal' is recognised by Community legislation;

— Such discrimination does not seem justified on any of the grounds allowed under Article 36 of the Treaty.

11 In those circumstances, the national court decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'On a proper construction of Articles 3(a) and 30 et seq. of the Treaty establishing the European Community, must the French rules enacted by Decree No 88-1206 of 30 December 1988, which prohibit the manufacture and marketing in France of a cheese without rind under the designation "Emmenthal", be regarded as constituting a quantitative restriction or a measure having equivalent effect on intra-Community trade?'

Preliminary observations

12 It should be noted first that Article 3 of the Treaty determines the fields and objectives to which the activities of the Community are to relate. It thus lays down the general principles of the internal market, which are to be applied in

conjunction with the respective chapters of the Treaty devoted to their implementation (Case C-341/95 *Bettati* v *Safety Hi-Tech* [1998] ECR I-4355, paragraph 75). The general objective laid down in Article 3(a) of the Treaty is explained by the provisions of Article 30 et seq. In those circumstances, the reference in the question to Article 3(a) of the Treaty does not call for an answer distinct from that to be given on the interpretation of Article 30 et seq. of the Treaty.

13 Second, it is necessary to examine the argument of the French Government that Article 30 of the Treaty does not apply to a case such as that at issue in the main proceedings.

14 On the one hand, the French Government argues that the inapplicability of Article 30 follows from the simple fact that the rule which Mr Guimont is accused of infringing is not, in practice, applied to imported products. It maintains that that rule was designed to create obligations solely for national producers and does not therefore concern intra-Community trade in any way. In its submission, the case-law of the Court of Justice, and particularly the judgment in Case 98/86 *Mathot* [1987] ECR 809, paragraphs 8 and 9, demonstrates that Article 30 of the Treaty is designed to protect only intra-Community trade.

15 In response to that argument, it should be observed that Article 30 of the Treaty covers any measure of the Member States which is capable, directly or indirectly, actually or potentially, of hindering intra-Community trade (Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5). However, that article is not designed to ensure that goods of national origin enjoy the same treatment as imported goods in every case, and a difference in treatment as between goods which is not capable of restricting imports or of prejudicing the marketing of

imported goods does not fall within the prohibition contained in that article (*Mathot*, paragraphs 7 and 8).

16 However, as regards the national rule at issue in the main proceedings, the French Government does not deny that, according to its wording, it is applicable without distinction to both French and imported products.

17 This argument of the French Government cannot therefore be accepted. The mere fact that a rule is not applied to imported products in practice does not exclude the possibility of it having effects which indirectly or potentially hinder intra-Community trade (see Case C-184/96 *Commission* v *France* [1998] ECR I-6197, paragraph 17).

18 On the other hand, the French Government, supported on this point by the Danish Government, argues that, in the particular case before the national court, the rule at issue does not constitute a hindrance, even an indirect or a potential hindrance, to intra-Community trade within the meaning of the Court's case-law. According to those governments, the facts underlying the reference to the Court relate to a purely internal situation, the accused being of French nationality and the product in question being manufactured entirely in French territory.

19 Mr Guimont, the German, Netherlands and Austrian Governments and the Commission argue that, according to the Court's case-law, Article 30 cannot be considered inapplicable simply because all the facts of the specific case before the national court are confined to a single Member State (Joined Cases C-321/94 to C-324/94 *Pistre and Others* [1997] ECR I-2343, paragraph 44).

20 In regard to that argument, it should be noted that the *Pistre* judgment concerned a situation where the national rule in question was not applicable without distinction but created direct discrimination against goods imported from other Member States.

21 As for a rule such as that at issue in the main proceedings, which, according to its wording, applies without distinction to national and imported products and is designed to impose certain production conditions on producers in order to permit them to market their products under a certain designation, it is clear from the Court's case-law that such a rule falls under Article 30 of the Treaty only in so far as it applies to situations that are linked to the importation of goods in intra-Community trade (Case 286/81 *Oosthoek's Uitgeversmaatschappij* [1982] ECR 4575, paragraph 9; *Mathot*, paragraphs 3 and 7 to 9).

22 However, that finding does not mean that there is no need to reply to the question referred to the Court for a preliminary ruling in this case. In principle, it is for the national courts alone to determine, having regard to the particular features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they refer to the Court. A reference for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action (Case C-281/98 *Angonese* v *Cassa di Risparmio di Bolzano* [2000] ECR I-4139, paragraph 18).

23 In this case, it is not obvious that the interpretation of Community law requested is not necessary for the national court. Such a reply might be useful to it if its national law were to require, in proceedings such as those in this case, that a national producer must be allowed to enjoy the same rights as those which a producer of another Member State would derive from Community law in the same situation.

24 In those circumstances, it needs to be examined whether a national rule such as that at issue in the main proceedings might, in so far as applied to imported products, constitute a measure having equivalent effect to a quantitative restriction contrary to Article 30 of the Treaty.

The interpretation of Article 30 of the Treaty

25 As a preliminary observation, it should be noted that, as is undisputed in these proceedings, a national rule such as that at issue in the main proceedings constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the Treaty, in so far as it is applied to imported products.

26 National legislation which subjects goods from other Member States, where they are lawfully manufactured and marketed, to certain conditions in order to be able to use the generic designation commonly used for that product, and which thus in certain cases requires producers to use designations which are unknown to, or less highly regarded by, consumers, does not, it is true, absolutely preclude the importation into the Member State concerned of products originating in other Member States. It is, however, likely to make their marketing more difficult and thus impede trade between Member States (Case 298/87 *Smanor* [1988] ECR 4489, paragraph 12).

27 As for the question whether such a rule may still be in conformity with Community law, it should be remembered that, according to the Court's case-law, national rules adopted in the absence of common or harmonised rules and

applicable without distinction to national products and to products imported from other Member States may be compatible with the Treaty in so far as they are necessary in order to satisfy overriding requirements relating, *inter alia*, to fair trading and consumer protection (Case C-39/90 *Denkavit* v *Land Baden-Württemberg* [1991] ECR I-3069, paragraph 18), where they are proportionate to the objective pursued and that objective is not capable of being achieved by measures which are less restrictive of intra-Community trade (Case C-368/95 *Familiapress* v *Bauer Verlag* [1997] ECR I-3689, paragraph 19).

28 In this context, it is necessary to refer, as the Commission has done, to Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1), as amended by Council Directive 89/395/EEC of 14 June 1989 (OJ 1989 L 186, p. 17), which, at the time of the facts at issue in the main proceedings, provided in Article 5(1):

'The name under which a foodstuff is sold shall be the name laid down by whatever laws, regulations or administrative provisions apply to the foodstuff in question or, in the absence of any such name, the name customary in the Member State where the product is sold to the ultimate consumer and to mass caterers, or a description of the foodstuff and, if necessary, of its use, that is sufficiently precise to inform the purchaser of its true nature and to enable it to be distinguished from products with which it could be confused.'

29 Whilst that provision demonstrates the importance of a correct use of foodstuff designations for the protection of consumers, it does not authorise Member States to adopt in the matter of designations rules which restrict the importation of

goods lawfully manufactured and marketed in another Member State where those rules are not proportionate to that purpose or where that protection could have been achieved by measures less restrictive of intra-Community trade.

30 It is true that, according to the case-law of the Court, Member States may, for the purpose of ensuring fair trading and the protection of consumers, require the persons concerned to alter the description of a foodstuff where a product offered for sale under a particular name is so different, in terms of its composition or production, from the products generally understood as falling within that description within the Community that it cannot be regarded as falling within the same category (Case C-366/98 *Geffroy* [2000] ECR I-6579, paragraph 22).

31 However, where the difference is of minor importance, appropriate labelling should be sufficient to provide the purchaser or consumer with the necessary information (*Geffroy*, paragraph 23).

32 In the case at issue in the main proceedings, it should be noted that, according to the *Codex alimentarius* referred to in paragraph 10 of this judgment, which provides indications allowing the characteristics of the product concerned to be defined, a cheese manufactured without rind may be given the name 'Emmenthal' since it is made from ingredients and in accordance with a method of manufacture identical to those used for Emmenthal with rind, save for a difference in treatment at the maturing stage. Moreover, it is undisputed that such an 'Emmenthal' cheese variant is lawfully manufactured and marketed in Member States other than the French Republic.

33 Therefore, even if the difference in the maturing method between Emmenthal with rind and Emmenthal without rind were capable of constituting a factor

likely to mislead consumers, it would be sufficient, whilst maintaining the designation 'Emmenthal', for that designation to be accompanied by appropriate information concerning that difference.

34 In those circumstances, the absence of rind cannot be regarded as a characteristic justifying refusal of the use of the 'Emmenthal' designation for goods from other Member States where they are lawfully manufactured and marketed under that designation.

35 The answer to the question referred for a preliminary ruling must therefore be that Article 30 of the Treaty precludes a Member State from applying to products imported from another Member State, where they are lawfully produced and marketed, a national rule prohibiting the marketing of a cheese without rind under the designation 'Emmenthal' in that Member State.

Costs

36 The costs incurred by the French, Danish, German, Netherlands and Austrian 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,

in answer to the question referred to it by the Tribunal de Police, Belley, by judgment of 24 November 1998, hereby rules:

Article 30 of the EC Treaty (now, after amendment, Article 28 EC) precludes a Member State from applying to products imported from another Member State, where they are lawfully produced and marketed, a national rule prohibiting the marketing of a cheese without rind under the designation 'Emmenthal' in that Member State.

Rodríguez Iglesias	Gulmann	Wathelet
Skouris	Edward	Puissochet
Jann	Sevón	Schintgen

Delivered in open court in Luxembourg on 5 December 2000.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President