JUDGMENT OF THE COURT (Fifth Chamber)

11 May 1999 *

In Joined Cases C-425/97 to C-427/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Gerechtshof, 's-Hertogenbosch, Netherlands, for a preliminary ruling in the criminal proceedings before that court against

Adrianus Albers (C-425/97)

Martinus Van den Berkmortel (C-426/97)

and

Leon Nuchelmans (C-427/97)

* Language of the case: Dutch.

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),

THE COURT (Fifth Chamber),

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

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by J. G. Lammers, Acting Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Irish Government, by M. A. Buckley, Chief State Solicitor, acting as Agent,

— the Commission of the European Communities, by H. van Lier, Legal Adviser, and M. Shotter, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of A. Albers, M. Van den Berkmortel and L. Nuchelmans, represented by L. J. L. Heukels, of the Haarlem Bar; of the Netherlands Government, represented by M. A. Fierstra, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; of the Irish Government, represented by P. Charleton, SC; and of the Commission, represented by H. van Lier and M. Shotter, at the hearing on 25 November 1998,

after hearing the Opinion of the Advocate General at the sitting on 17 December 1998,

gives the following

Judgment

1 By three orders of 11 November 1997, received by the Court on 16 December 1997, the Gerechtshof (Regional Court of Appeal), 's-Hertogenbosch, referred a question for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) 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').

2 That question was raised in the course of criminal proceedings against A. Albers, M. Van den Berkmortel and L. Nuchelmans for keeping fattening cattle to which sympathicomimetic substances containing Clenbuterol were administered.

3 The Verordening Stoffen met sympathico mimetische werking (PVV) 1991 (Regulation on sympathicomimetic substances — hereinafter 'the Verordening'), adopted by the Produktschap voor Vee en Vlees (Cattle and Meat Board, a public law body) and approved by the Minister for Agriculture, includes, in Article 1, a definition of sympathicomimetic substances. It is common ground that Clenbuterol is one of those substances.

4 Article 2 thereof provides: 'It is prohibited to administer sympathicomimetic veterinary medicines containing Clenbuterol to fattening cattle over 14 weeks old or to authorise the administration of such veterinary medicines to such fattening cattle.'

5 Article 3(1) provides: 'It is prohibited to keep or to have in stock, to buy or to sell fattening cattle to which sympathicomimetic substances referred to therein have been administered contrary to Article 2'.

6 Under Article 1(5) of Directive 83/189 'technical regulation' for the purposes of the directive means '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'. Under Article 1(1) 'technical specification' for the purposes of the directive means 'a specification contained in a document which lays down the characteristics required of a product ... 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 ...'.

7 Articles 8 and 9 of Directive 83/189 require Member States both to communicate to the Commission any draft technical regulation falling within its scope and, in

certain cases, to postpone the adoption of such drafts for several months to allow the Commission to verify whether such drafts are compatible with Community law or to propose or adopt a directive on the question.

8 Article 10 of Directive 83/189 provides that 'Articles 8 and 9 shall not apply where Member States honour their obligations arising out of Community directives and regulations'.

9 In its judgment in Case C-194/94 *CIA Security International* [1996] ECR I-2201, paragraph 54 (hereinafter '*CIA Security*'), the Court interpreted Directive 83/189 as meaning that breach of the obligation to notify imposed by Articles 8 and 9 renders the technical regulations concerned inapplicable, so that they are unenforceable against individuals. It therefore ruled that individuals may rely on Articles 8 and 9 of Directive 83/189 before the national court which must decline to apply a national technical regulation which has not been notified in accordance with the Directive.

10 The presence of Clenbuterol was recorded in urine samples taken from cattle on the farms of the three defendants in the main proceedings, who are cattle breeders in the Netherlands. The Public Prosecutor thereupon brought criminal proceedings against them for breach of the Verordening.

11 At first instance Mr Albers and Mr Van den Berkmortel were convicted by the Economische Politierechter (Magistrate for economic offences) of the Arrondissementsrechtbank (District Court), 's-Hertogenbosch, by judgments of 14 December 1995, and Mr Nuchelmans by the Economische Kamer (Economic Chamber) of the Arrondissementsrechtbank (District Court), Maastricht, by judgment of 6 June 1996, for keeping fattening cattle to which sympathicomimetic substances containing Clenbuterol had been administered. The defendants appealed against those judgments to the Gerechtshof, 's-Hertogenbosch.

12 As the orders for reference show, on appeal the defendants cited the judgment in *CIA Security* and argued that the Verordening, which they claimed contained technical regulations and had not been notified to the Commission, 'cannot be taken into consideration'.

13 The national court therefore decided to stay the proceedings and, in each of the cases, refer the following question to the Court of Justice for a preliminary ruling:

'Does the Verordening Stoffen met sympathico mimetische werking (PVV) 1991, in particular Article 3(1) thereof, contain technical regulations which, pursuant to Article 8 of Directive 83/189/EEC, as it stood at the time when the Verordening came into force, should have been notified to the Commission beforehand?'

14 By order of the President of the Court of 26 January 1998, the three cases were joined for the purposes of the written procedure, the oral procedure and the judgment.

15 By its question the national court is asking essentially whether a rule such as that in Article 3(1) of the Verordening, read in conjunction with Article 2 of that Verordening, constitutes a technical regulation within the meaning of Directive 83/189 and, if so, whether the Member State which adopted such a rule is exempt, under Article 10 of that Directive, from the obligation to notify the Commission laid down in Article 8 thereof.

16 As regards the first part of the question, it must be observed that, as the Netherlands Government and the Commission pointed out, rules which, like those in the present case, are intended to prevent the administration of sympathicomimetic

substances to fattening cattle over 14 weeks old constitute technical specifications within the meaning of Article 1(1) of Directive 83/189.

17 Such rules define the production methods and procedures for agricultural products as defined in Article 38(1) of the EC Treaty (now, after amendment, Article 32(1) EC) intended for human consumption.

18 Moreover, since they are issued by the national administrative authorities, apply to the whole of the Netherlands territory and are binding on their addressees, they are technical regulations within the meaning of Article 1(5) of Directive 83/189.

19 As regards the second part of the question referred for a preliminary ruling, the Netherlands and Irish Governments, and the Commission, submit that, under Article 10 of Directive 83/189, the Netherlands authorities were not obliged to notify the Commission of the technical regulation at issue in the main proceedings because in adopting it they were merely honouring their obligations under Community directives.

20 On that point, as the Commission observed, reference must be made in particular to Council Directive 86/469/EEC of 16 September 1986 concerning the examination of animals and fresh meat for the presence of residues (OJ 1986 L 275, p. 36), which applies to cattle.

21 As the Commission also observed, the ninth recital thereof states that the directive is intended to ensure that common control measures are taken to ascertain and eliminate the cause of residues in animals and fresh meat, and ensure that meat showing residues which exceed the permitted level is excluded from consumption.

Article 9(3)(b) therefore requires the competent authorities to ensure that if the examination 'reveals the presence of prohibited substances, the animals may not be placed on the market for human or animal consumption'.

22 Annex I lists the residue groups covered by the Directive. Clenbuterol comes under point B, headed 'Specific Groups', Group I 'Other medicines', sub-group (c) 'Other veterinary medicines'.

23 It follows that, in issuing the prohibition on administering Clenbuterol to fattening cattle over 14 weeks old and holding, having in stock, buying or selling fattening cattle over 14 weeks old to which that substance has been administered, the Netherlands Government honoured its obligations under Directive 86/469.

24 In the light of the foregoing, the answer to the question referred must be that a rule such as that at issue constitutes a technical regulation within the meaning of Directive 83/189 in respect of which the Member State which adopted it is exempt, under Article 10 of that Directive, from the obligation to notify the Commission laid down in Article 8 thereof.

Costs

25 The costs incurred by the Netherlands and Irish 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 proceedings 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 question referred to it by the Gerechtshof, 's-Hertogenbosch, by orders of 11 November 1997, hereby rules:

A rule such as that in Article 3(1) of the Verordening Stoffen met sympathico mimetische werking (PVV) 1991, read in conjunction with Article 2 of that Verordening, constitutes 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, in respect of which the Member State which adopted it is exempt, under Article 10 of that directive, from the obligation to notify the Commission laid down in Article 8 thereof.

Puissochet Moitinho de Almeida Gulmann

Sevón Wathelet

Delivered in open court in Luxembourg on 11 May 1999.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber