JUDGMENT OF THE COURT
14 January 1997 *

In Case C-124/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Court of Appeal (England and Wales) for a preliminary ruling in the proceedings pending before that court between

The Queen

ex parte **Centro-Com Srl**

and

H. M. Treasury and The Bank of England

on the interpretation of Articles 113 and 234 of the EC Treaty and Council Regulation (EEC) No 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro (OJ 1992 L 151, p. 4),

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini, J. C. Moitinho de Almeida and J. L. Murray (Presidents of Chambers), P. J. G. Kapteyn (Rapporteur), C. Gulmann, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and H. Ragnemalm, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Centro-Com Srl, by R. Luzzatto, of the Milan Bar,

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and S. Richards and R. Thompson, Barristers,

— the Belgian Government, by J. Devadder, Director of Administration in the Legal Department of the Ministry of Foreign Affairs, acting as Agent,

— the Italian Government, by Professor U. Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by I. M. Braguglia, Avvocato dello Stato, acting as Agent,

— the Netherlands Government, by J. G. Lammers, acting as Agent,

— the Commission of the European Communities, by P. Gilsdorf, Principal Legal Adviser, and C. Bury, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Centro-Com Srl, represented by Riccardo Luzzatto, the United Kingdom Government, represented by John E. Collins, and Stephen Richards and Rhodri Thompson, the Netherlands Government, represented by Marc Fierstra, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, and the Commission, represented by Peter Gilsdorf and Claire Bury, at the hearing on 25 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 24 September 1996,

gives the following

Judgment

1 By order of 27 May 1994, received at the Court on 11 April 1995, the Civil Division of the Court of Appeal (England and Wales) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 113 and 234 of the Treaty and Council Regulation (EEC) No 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro (OJ 1992 L 151, p. 4, hereinafter 'the Sanctions Regulation').

2 The two questions have been raised in an action brought by Centro-Com Srl ('Centro-Com'), a company governed by Italian law, against a change of policy and four decisions of the Bank of England, acting on behalf of the Treasury, by which Barclays Bank, London, was refused authorization to transfer, from a Yugoslav account to Centro-Com, sums needed to pay for medical products exported from Italy to Montenegro.

3 On 30 May 1992, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, adopted Resolution 757 (1992), imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro).

4 Under Paragraph 4(c) of Resolution 757 (1992), all States are to prevent the sale or supply by their nationals or from their territories of any commodities or products, whether or not originating in their territories, to any person or body in the Federal Republic of Yugoslavia (Serbia and Montenegro), or to any person or body for the purposes of any business carried on in or operated from that republic. However, the prohibition does not cover supplies intended strictly for medical purposes and foodstuffs, such supplies being required to be notified to the Committee established pursuant to Resolution 724 (1991).

5 Likewise, under Paragraph 5 of Resolution 757 (1992), all States are to prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to any commercial, industrial or public utility undertaking any funds or any other financial or economic resources, and from remitting funds to persons or bodies in the Federal Republic of Yugoslavia (Serbia and Montenegro), except payments exclusively for strictly medical or humanitarian purposes and foodstuffs.

6 Within the Community, the Council gave effect to Resolution 757 (1992) by adopting the Sanctions Regulation.

7 Article 1(b) of the Sanctions Regulation prohibited as from 31 May 1992 the export to the Republics of Serbia and Montenegro of all commodities and products originating in or coming from the Community.

8 Article 2(a) of the Sanctions Regulation provides that that prohibition is not to apply, however, to 'the export to the Republics of Serbia and Montenegro of commodities and products intended for strictly medical purposes and foodstuffs notified to the Committee established pursuant to Resolution 724 (1991) of the United Nations Security Council' ('the Sanctions Committee').

9 Article 3 further provides that: 'Exports to the Republics of Serbia and Montenegro of commodities and products for strictly medical purposes ... as well as foodstuffs shall be subject to a prior export authorization to be issued by the competent authorities of the Member States.'

10 In accordance with Article 1 of the United Nations Act 1946, the United Kingdom Government adopted on 4 June 1992 the Serbia and Montenegro (United Nations Sanctions) Order 1992 ('the Order'), which prohibits any person from supplying or delivering any goods to a person connected with Serbia or Montenegro, except under the authority of a licence granted by the Secretary of State.

11 Article 10 of that measure provides that, except with permission granted by or on behalf of the Treasury, no person is to make any payment or part with any gold, securities or investments where such payment or transfer is an action which is likely to make available to any person connected with Serbia or Montenegro any funds or other financial or economic resources, or to remit or transfer funds to or for the benefit of any such person.

12 By a notice of 8 June 1992, the Bank of England made it clear, on behalf of the Treasury, that it would consider applications for permission to debit Serbian and Montenegrin accounts where the payments were made for charitable or humanitarian purposes. Its policy was in particular to authorize the debiting of Serbian and Montenegrin accounts in payment for exports made for medical and humanitarian

purposes to Serbia or Montenegro and approved by the United Nations, whether those exports were made from the United Kingdom or from another country.

13 After obtaining the approval of the United Nations Sanctions Committee and the prior authorization of the Italian authorities required by Article 3 of the Sanctions Regulation, Centro-Com exported from Italy, between 15 October 1992 and 6 January 1993, 15 consignments of pharmaceutical goods and blood-testing equipment to two wholesalers in Montenegro.

14 Since the payments for those exports were to be debited to a bank account held by the National Bank of Yugoslavia with Barclays Bank, the latter applied to the Bank of England, by separate letter for each consignment, for permission to debit that account. By 23 February 1993 the Bank of England had approved 11 of the 15 applications, and Barclays Bank had paid the relevant sums to Centro-Com.

15 Following reports of abuse of the authorization procedure established by the Sanctions Committee for the export of goods to Serbia and Montenegro, such as misdescription of goods and unreliability of the documents issued, or apparently issued, by that Committee, the Treasury decided to change its policy. Henceforth, payment from Serbian and Montenegrin funds held in the United Kingdom for exports of goods exempt from the sanctions, such as medical products, was to be permitted only where those exports were made from the United Kingdom.

16 As is clear from the order for reference, one of the main reasons for the new policy was to enable the United Kingdom authorities to exercise effective control over goods exported to Serbia and Montenegro so as to ensure that the goods exported

actually matched their description and that no debiting of accounts held with British banks was authorized for payments for non-medical or non-humanitarian purposes.

17 In consequence, by letter of 25 February 1993 the Bank of England informed Barclays Bank that in future it would not give favourable consideration to applications for permission to debit Serbian and Montenegrin accounts held with British banks in payment for goods exported to Serbia or Montenegro from any country other than the United Kingdom. In four separate decisions the Bank of England therefore refused Barclays Bank's outstanding applications.

18 The Court of Appeal is uncertain whether that change of policy and the four contested decisions are compatible with Article 113 of the Treaty and the Sanctions Regulation. It has therefore stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Is it compatible with the common commercial policy of the Community and, in particular, Article 113 of the EC Treaty and Council Regulation (EEC) No 1432/92 prohibiting trade between the Community and the Republics of Serbia and Montenegro (OJ 1992 L 151 of 3 June 1992, p. 4) for Member State A to adopt national measures which prohibit the release of funds located in Member State A but belonging to a person in Serbia or Montenegro in circumstances where:

(1) release of the funds is sought to pay a national of Member State B for goods exported by him from Member State B to Serbia or Montenegro;

(2) (a) the goods have been formally approved as intended strictly for medical purposes by the United Nations Sanctions Committee pursuant to UN Security Council Resolution 757;

(b) they have been exported pursuant to a prior export authorization issued by the competent authorities of Member State B pursuant to Regulation 1432/92;

(3) the national measures permit the release of funds in payment for the export of such goods from Member State A itself where the export authorization referred to at paragraph 2(b) above has been issued by the competent authorities of Member State A; and

(4) Member State A has decided that the adoption of such national measures is necessary or expedient for enabling UN Security Council Resolution 757 to be effectively applied?

2. Is the answer to Question 1 affected by the provisions of Article 234 of the EC Treaty?'

The first question

19 By this question, the national court asks in substance whether the common commercial policy provided for in Article 113 of the EEC Treaty, as implemented by the Sanctions Regulation, precludes Member State A from adopting, for the purpose of ensuring effective application of United Nations Security Council Resolution 757 (1992), measures prohibiting Serbian or Montenegrin funds located in its territory from being released in order to pay for goods exported by a national of Member State B from that latter State to Serbia or Montenegro on the ground that Member State A allows payment for such exports to be made only if the exports take place from its own territory and they have been authorized by its own competent authorities pursuant to the Sanctions Regulation, when the goods in question have been classified by the United Nations Sanctions Committee as products intended for strictly medical purposes and the competent authorities of Member

State B have issued export authorizations for them in accordance with the Sanctions Regulation.

20 That question raises two problems concerning the interpretation of rules applicable in the sphere of the common commercial policy.

21 The first problem concerns the relationship between measures of foreign and security policy, such as those intended to ensure effective application of Resolution 757 (1992), on the one hand, and the common commercial policy, on the other.

22 The second problem concerns the scope of the common commercial policy and the relevant measures adopted pursuant to Article 113 of the Treaty.

The relationship between measures of foreign and security policy and the common commercial policy

23 The United Kingdom contends that the national measures at issue in the main proceedings were taken by virtue of its national competence in the field of foreign and security policy and that performance of its obligations under the Charter and under resolutions of the United Nations falls within that competence. The validity of those measures cannot be affected by the exclusive competence of the Community in relation to the common commercial policy or by the Sanctions Regulation, which does no more than implement at Community level the exercise of Member States' national competence in the field of foreign and security policy.

24 The Member States have indeed retained their competence in the field of foreign and security policy. At the material time, their cooperation in this field was governed by *inter alia* Title III of the Single European Act.

25 None the less, the powers retained by the Member States must be exercised in a manner consistent with Community law (see Joined Cases 6/69 and 11/69 *Commission* v *France* [1969] ECR 523, paragraph 17; Case 57/86 *Greece* v *Commission* [1988] ECR 2855, paragraph 9; Case 127/87 *Commission* v *Greece* [1988] ECR 3333, paragraph 7, and Case C-221/89 *Factortame and Others* [1991] ECR I-3905, paragraph 14).

26 Similarly, the Member States cannot treat national measures whose effect is to prevent or restrict the export of certain products as falling outside the scope of the common commercial policy on the ground that they have foreign and security objectives (see Case C-70/94 *Werner* v *Germany* [1995] ECR I-3189, paragraph 10).

27 Consequently, while it is for Member States to adopt measures of foreign and security policy in the exercise of their national competence, those measures must nevertheless respect the provisions adopted by the Community in the field of the common commercial policy provided for by Article 113 of the Treaty.

28 It was indeed in the exercise of their national competence in matters of foreign and security policy that the Member States expressly decided to have recourse to a Community measure, which became the Sanctions Regulation, based on Article 113 of the Treaty.

29 As the preamble to the Sanctions Regulation shows, that regulation ensued from a decision of the Community and its Member States which was taken within the framework of political cooperation and which marked their willingness to have recourse to a Community instrument in order to implement in the Community certain aspects of the sanctions imposed on the Republics of Serbia and Montenegro by the United Nations Security Council.

30 It follows from the foregoing that, even where measures such as those in issue in the main proceedings have been adopted in the exercise of national competence in matters of foreign and security policy, they must respect the Community rules adopted under the common commercial policy.

The scope of the common commercial policy and the relevant acts adopted pursuant to Article 113 of the Treaty

31 The United Kingdom Government contends that national measures such as those at issue in the main proceedings, which impose restrictions on the release of funds, are not on any view measures of commercial policy, so that they are not covered by the common commercial policy.

32 In this connection it is to be observed that, even if such measures do not constitute measures of commercial policy, they may nevertheless be contrary to the common commercial policy, as implemented in the Community, if and insofar as they contravene Community legislation adopted in pursuance of that policy.

33 Consequently, it is necessary to consider whether measures such as those at issue in the main proceedings are compatible, not only with the Sanctions Regulation,

but also with Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports (OJ, English Special Edition 1969 (II), p. 590, 'the Export Regulation').

34 The Sanctions Regulation contains no express provision concerning payments for exports which it authorizes.

35 In so far as Article 1(b) thereof prohibits exports to Serbia and Montenegro, the Sanctions Regulation derogates from the provisions of the Export Regulation.

36 That derogation does not, however, extend to exports to Serbia and Montenegro of products for strictly medical purposes which satisfy the conditions laid down in Articles 2(a) and 3 of the Sanctions Regulation. It follows that those exports remain subject to the common system provided for by the Export Regulation.

37 Article 1 of the Export Regulation provides: 'The exportation of products from the European Economic Community to third countries shall be free, that is to say, they shall not be subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of this Regulation.'

38 Article 11 of that regulation provides for such an exception. It provides: 'Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by a Member State of quantitative restrictions on exports on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures

possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.'

39 The United Kingdom doubts that restrictions on the release of funds held at a bank can constitute quantitative restrictions on exports to third countries within the meaning of Article 1 of the Export Regulation.

40 It should be noted that Article 1 of the Export Regulation implements the principle of freedom to export at Community level and must therefore be interpreted as covering measures adopted by the Member States whose effect is equivalent to a quantitative restriction where their application may lead to an export prohibition (see Case C-70/94 *Werner*, cited above, paragraph 22, and Case C-83/94 *Leifer and Others* [1995] ECR I-3231, paragraph 23).

41 National measures adopted by a Member State preventing the release of Serbian or Montenegrin funds as payment for goods that can legally be exported to Serbia or Montenegro unless those goods are exported from its own territory constitute a restriction on the payment of the price of the goods which, like the supply of goods, is an essential element of an export transaction.

42 Such measures adopted by a Member State, which restrict the principle of freedom to export at Community level, are equivalent to a quantitative restriction since their application precludes the making of payments in consideration of the supply of goods dispatched from other Member States and thus prevents such exports.

43 The United Kingdom also considers that the requirement that the goods concerned should be exported from its territory is justified on grounds of public security.

Having regard to the difficulties involved in applying the system of authorizations issued by the Sanctions Committee, that requirement is necessary in order to ensure that the sanctions imposed by United Nations Security Council Resolution 757 (1992) are applied effectively, since it allows the United Kingdom authorities themselves to check the nature of goods exported to Serbia and Montenegro.

44 It is to be remembered in this regard that the concept of public security within the meaning of Article 11 of the Export Regulation covers both a Member State's internal security and its external security and that, consequently, the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations may affect the external security of a Member State (see Case C-70/94 *Werner*, cited above, paragraphs 25 and 27, and Case C-83/94 *Leifer and Others*, cited above, paragraphs 26 and 28).

45 A measure intended to apply sanctions imposed by a resolution of the United Nations Security Council in order to achieve a peaceful solution to the situation in Bosnia-Herzegovina, which forms a threat to international peace and security, therefore falls within the exception provided for by Article 11 of the Export Regulation.

46 However, a Member State's recourse to Article 11 of the Export Regulation ceases to be justified if Community rules provide for the necessary measures to ensure protection of the interests enumerated in that article (see Case 72/83 *Campus Oil and Others* v *Minister for Industry and Energy* [1984] ECR 2727, paragraph 27, which concerned recourse to Article 36 of the EEC Treaty).

47 The Sanctions Regulation, which is designed to implement, uniformly throughout the Community, certain aspects of the sanctions imposed by the United Nations Security Council, lays down the conditions on which exports of medical products

to the Republics of Serbia and Montenegro are to be authorized: namely, that those exports must be notified to the Sanctions Committee and export authorization must be issued by the competent authorities of the Member States.

48 In those circumstances, national measures adopted by a Member State precluding the release of Serbian or Montenegrin funds in exchange for exports to those republics unless that Member State's authorities have previously checked the nature of the products in question and issued export authorization cannot be justified, since effective application of the sanctions can be ensured by other Member States' authorization procedures, as provided for in the Sanctions Regulation, in particular the procedure of the Member State of exportation.

49 In that respect, the Member States must place trust in each other as far as concerns the checks made by the competent authorities of the Member State from which the products in question are dispatched (see Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5, paragraph 22, and Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 19).

50 In the present case, there is nothing to suggest that the system provided for by Article 3 of the Sanctions Regulation, whereby the Member States issue export authorizations, had not functioned properly.

51 Finally, it should be borne in mind that, since Article 11 of the Export Regulation forms an exception to the principle of freedom to export laid down in Article 1 of the Export Regulation, it must, on any view, be interpreted in a way which does not extend its effects beyond what is necessary for the protection of the interests which it is intended to guarantee (see Case C-83/94 *Leifer and Others*, cited above, paragraph 33).

52 In the circumstances of this case, a Member State may secure the protection of the interests involved by measures less restrictive of the right to export than a requirement that all goods should be exported from its territory. So, where a Member State has particular doubts about the accuracy of descriptions of goods appearing in an export authorization issued by the competent authorities of another Member State, it may, in particular, before giving authorization for accounts held in its territory to be debited, have resort to the collaboration established by Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (OJ 1981 L 144, p. 1).

53 In view of the foregoing considerations, the answer to be given must be that the common commercial policy provided for in Article 113 of the Treaty, as implemented by the Sanctions Regulation and the Export Regulation, precludes Member State A from adopting, for the purpose of ensuring effective application of United Nations Security Council Resolution 757 (1992), measures prohibiting Serbian or Montenegrin funds located in its territory from being released in order to pay for goods exported by a national of Member State B from that latter State to Serbia or Montenegro on the ground that Member State A allows payment for such exports to be made only if the exports take place from its own territory and they have been authorized by its own competent authorities pursuant to the Sanctions Regulation, when the goods in question have been classified by the United Nations Sanctions Committee as products intended for strictly medical purposes and the competent authorities of Member State B have issued export authorizations for them in accordance with the Sanctions Regulation.

The second question

54 By this question the national court asks in substance whether national measures which prove to be contrary to the common commercial policy provided for in

Article 113 of the Treaty and to the Community regulations implementing that policy are nevertheless justified under Article 234 of the EEC Treaty, since by those measures the Member State concerned sought to comply with its obligations under an agreement concluded with other Member States and non-member countries prior to entry into force of the EEC Treaty or accession by that Member State.

55 The first paragraph of Article 234 of the Treaty provides that the rights and obligations arising from agreements concluded before the entry into force of the Treaty between one or more Member States on the one hand, and one or more third countries on the other, are not to be affected by the provisions of the Treaty.

56 According to settled case-law, the purpose of the first paragraph of Article 234 of the Treaty is to make clear, in accordance with the principles of international law, that application of the Treaty does not affect the commitment of the Member State concerned to respect the rights of non-member States under an earlier agreement and to comply with its corresponding obligations (see Case C-324/93 *Evans Medical and Macfarlan Smith* [1995] ECR I-563, paragraph 27).

57 Consequently, in order to determine whether a Community rule may be deprived of effect by an earlier international agreement, it is necessary to examine whether that agreement imposes on the Member State concerned obligations whose performance may still be required by non-member States which are parties to it (see Case C-324/93 *Evans Medical and Macfarlan Smith*, cited above, paragraph 28).

58 However, in proceedings for a preliminary ruling, it is not for this Court but for the national court to determine which obligations are imposed by an earlier

agreement on the Member State concerned and to ascertain their ambit so as to be able to determine the extent to which they thwart application of the provisions of Community law in question (see Case C-324/93 *Evans Medical and Macfarlan Smith*, cited above, paragraph 29).

59 So, the national court must examine whether, in the circumstances of the case before it, in which exports were approved by the United Nations Sanctions Committee and authorized by the competent authorities in the country of export, both the change of policy and the four decisions refusing to allow funds to be released are necessary in order to ensure that the Member State concerned peforms its obligations under the Charter of the United Nations and United Nations Security Council Resolution 757 (1992).

60 It should, in any event, be remembered that, when an international agreement allows, but does not require, a Member State to adopt a measure which appears to be contrary to Community law, the Member State must refrain from adopting such a measure (see Case C-324/93 *Evans Medical and Macfarlan Smith*, cited above, paragraph 32).

61 The answer to this question must therefore be that national measures which prove to be contrary to the common commercial policy provided for in Article 113 of the Treaty and to the Community regulations implementing that policy are justified under Article 234 of the Treaty only if they are necessary to ensure that the Member State concerned performs its obligations towards non-member countries under an agreement concluded prior to entry into force of the Treaty or prior to accession by that Member State.

Costs

62 The costs incurred by the United Kingdom, Belgian, Italian and Netherlands Governments and by the Commission of the European Communities, 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 pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Court of Appeal (England and Wales), by order of 27 May 1994, hereby rules:

1. The common commercial policy provided for in Article 113 of the EEC Treaty, as implemented by Council Regulation (EEC) No 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro and by Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports, precludes Member State A from adopting, for the purpose of ensuring effective application of United Nations Security Council Resolution 757 (1992) measures prohibiting Serbian or Montenegrin funds located in its territory from being released in order to pay for goods exported by a national of Member State B from that latter State to Serbia or Montenegro on the ground that Member State A allows payment for such exports to be made only if the exports take place from its own territory and they have been

authorized by its own competent authorities pursuant to Regulation No 1432/92, when the goods in question have been classified by the United Nations Sanctions Committee as products intended for strictly medical purposes and the competent authorities of Member State B have issued export authorizations for them in accordance with Regulation No 1432/92.

2. National measures which prove to be contrary to the common commercial policy provided for in Article 113 of the Treaty and to the Community regulations implementing that policy are justified under Article 234 of the EEC Treaty only if they are necessary to ensure that the Member State concerned performs its obligations towards non-member countries under an agreement concluded prior to entry into force of the Treaty or prior to accession by that Member State.

Rodríguez Iglesias	Mancini	Moitinho de Almeida	
Murray	Kapteyn	Gulmann	Edward
Puissochet	Hirsch	Jann	Ragnemalm

Delivered in open court in Luxembourg on 14 January 1997.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President