

JUDGMENT OF THE COURT (Sixth Chamber)
21 January 1993 *

In Case C-188/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Hamburg for a preliminary ruling in the proceedings pending before that court between

Deutsche Shell Aktiengesellschaft

and

Hauptzollamt Hamburg-Harburg

supported by

Oberfinanzdirektion Hamburg

intervener,

on the interpretation and application of the Convention on a Common Transit Procedure concluded on 20 May 1987 between the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden, the Swiss Confederation and the European Economic Community (OJ 1987 L 226, p. 2),

THE COURT (Sixth Chamber),

composed of: J. L. Murray, acting as President of the Chamber, G. F. Mancini, F. A. Schockweiler, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven,
Registrar: L. Hewlett, Administrator,

* Language of the case: German.

after considering the written observations submitted on behalf of

the Commission of the European Communities, by Jörn Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Deutsche Shell AG, represented by K. Kleiner, Leiter der Abteilung Zölle und Verbrauchsteuern, and H. Bublitz, Hauptreferent der Abteilung Zölle und Verbrauchsteuern, and of the Commission, at the hearing on 17 September 1992,

after hearing the Opinion of the Advocate General at the sitting on 15 October 1992,

gives the following

Judgment

1 By order of 3 May 1991, received at the Court on 25 July 1991, the Finanzgericht (Finance Court) Hamburg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of the Convention on a Common Transit Procedure concluded on 20 May 1987 between the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden, the Swiss Confederation (hereinafter 'the EFTA countries') and the European Economic Community (OJ 1987 L 226, p. 2; hereinafter 'the Convention'), approved on behalf of the Community by Council Decision 87/415/EEC of 15 June 1987 (OJ 1987 L 226, p. 1).

2 The questions arose in proceedings between Deutsche Shell Aktiengesellschaft (hereinafter 'Shell') and the Hauptzollamt Hamburg-Harburg (hereinafter 'the Hauptzollamt').

- 3 Article 1(1) of the Convention lays down measures for the carriage of goods in transit between the Community and the EFTA countries as well as between the EFTA countries themselves, by introducing a common transit procedure regardless of the kind and origin of the goods.
- 4 Article 11(1) of the Convention provides that the identification of goods is normally to be ensured by sealing. Article 11(4) provides for a derogation whereby the office of departure may dispense with sealing if, having regard to other possible measures for identification, the description of the goods in the T1 or T2 declaration or in the supplementary documents makes them readily identifiable.
- 5 Under Article 63 of Appendix II to the Convention, the customs authorities of each country may authorize certain consignors not to produce at the office of departure either the goods concerned or the transit declaration in respect thereof. Such authorization must, *inter alia*, specify the identification measures to be taken. Under Article 65(d) of Appendix II, the customs authorities may prescribe that the means of transport or the package or packages are to bear special seals, accepted by the customs authorities and affixed by the authorized consignor.
- 6 Article 14 of the Convention establishes a Joint Committee which is entrusted with the administration of the Convention and ensuring its proper implementation. Under Article 15 of the Convention, the Joint Committee may make recommendations and, in the cases provided for in Article 15(3), adopt decisions. Such decisions are to be put into effect by the Contracting Parties in accordance with their own legislation.
- 7 At its first annual meeting on 21 January 1988, the Joint Committee adopted 'arrangements' concerning the sealing of goods. Those 'arrangements' contain special provisions applicable in trade with Switzerland and Austria, which require the Convention's provisions on sealing to be applied strictly and in accordance with specific detailed rules.

8 Shell is an authorized consignor, which had been authorized to transport its petroleum products by ship without customs sealing but with identification by description. On 1 November 1988, the Hauptzollamt took a decision whereby, inter alia, it thenceforth authorized Shell to identify its goods by description alone only if (i) the goods concerned were difficult to seal or bulky or unsuitable for transportation under customs seal (animals), (ii) vehicles could not be sealed for technical reasons, or (iii) the customs office of destination was a customs office at the point of entry into an EFTA country. That decision originated in an instruction of the Federal Ministry of Finance, which was based on the 'arrangements' of the Joint Committee of 21 January 1988.

9 The consequence of that decision was to oblige Shell to attach several leads to each river vessel used for transport, involving many hours' work and making automated barrelling at the refinery impossible.

10 Shell challenged the decision before the Oberfinanzdirektion (Principal Revenue Office) Hamburg, which nevertheless confirmed it. The Finanzgericht Hamburg, to which the case was referred, has put the following questions to the Court for a preliminary ruling:

'1. Is the resolution of the Joint Committee established under Article 14 of the Convention of 20 May 1987 on a Common Transit Procedure to the effect that document No XXI/1367/87 — EFTA 2 should be used in the Common Transit Procedure binding on the Member States? Is that resolution subject to the jurisdiction of the Court of Justice?

2. If Question 1 is answered in the affirmative:

Is that resolution valid?

3. If Question 1 is answered in the negative:

Is the Convention of 20 May 1987 subject to the jurisdiction of the Court of Justice?

If this question is answered in the affirmative:

- (a) Are Article 11(4) and Article 15(2) of the Convention to be interpreted as meaning that the Joint Committee is entitled to restrict the power of the customs office of departure to dispense with sealing, by providing that goods must always be secured by sealing unless the customs office at the point of entry into the EFTA country is the customs office of destination or the space containing the goods cannot be sealed?
- (b) Are the provisions referred to in (a) to be interpreted as meaning that the decision to dispense with sealing may also be taken by the highest authority in the Member State concerned instead of by the customs office of departure?

4. If the questions under 3 are answered in the affirmative:

Are the provisions referred to therein, in conjunction with the principle of proportionality, to be interpreted as meaning that sealing may also be required in the case of the shipment of mineral oils in tanker trains and ships by a consignor authorized under Chapter II of Appendix II to the Convention?

11 Reference is made to the Report for the Hearing for a fuller account of the facts, the rules in question, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 It should be noted as a preliminary point that the questions referred by the Finanzgericht Hamburg essentially concern the interpretation of the arrangements adopted by the Joint Committee in the light of Article 11(4) of the Convention

and Article 65(d) of Appendix II thereto. It is therefore necessary first to consider the second part of Question 1, in which the national court asks whether the Court of Justice has jurisdiction to interpret those arrangements.

The second part of Question 1

- 13 In order to answer that question, it is necessary first to examine the legal nature of the arrangements having regard to the categories of measures envisaged in the Convention.
- 14 Under Article 15(1) of the Convention, the Joint Committee 'shall ... make recommendations, and in the cases provided for in paragraph 3, it shall take decisions'. Under Article 15(2), recommendations are to concern 'in particular' amendments to be made to the Convention other than those referred to in paragraph 3, and any other measure required for its application. Article 15(3) sets out exhaustively the areas in which the Joint Committee may take decisions which, in accordance with the last sentence of that paragraph, are to be put into effect by the Contracting Parties in accordance with their own legislation. The measures envisaged in Article 15(3) are therefore mandatory, whereas recommendations under Article 15(2)(b) are not.
- 15 The arrangements of the Joint Committee do not fall into any of the areas envisaged in Article 15(3) of the Convention. Moreover, the minutes of the annual meeting of 21 January 1988 show that the Joint Committee itself considered that measure to be necessary in order to apply the Convention. The arrangements must therefore be regarded as a recommendation within the meaning of Article 15(2)(b) of the Convention.
- 16 The next point to be examined is whether a non-mandatory measure, adopted on the basis of an agreement concluded by the Community, forms part of the Community legal order.

- 17 Since measures emanating from bodies which have been established by an international agreement of that type, and which have been entrusted with responsibility for its implementation, are directly linked to the agreement which they implement, they form part of the Community legal order (see Case C-192/89 *S. Z. Sevince v Staatssecretaris van Justitie* [1990] ECR I-3461, paragraph 10). Since the arrangements of the Joint Committee are to be regarded as a measure required for the application of the Convention under Article 15(2)(b), that recommendation is directly linked to the Convention. The arrangements of the Joint Committee therefore form part of Community law.
- 18 It is settled case-law that the fact that a measure of Community law has no binding effect does not preclude the Court from ruling on its interpretation in proceedings for a preliminary ruling under Article 177 (see Case 113/75 *Giordano Frecassetti v Amministrazione delle Finanze dello Stato* [1976] ECR 983, Case 90/76 *Van Ameyde v UCI* [1977] ECR 1091, and Case C-322/88 *Grimaldi v Fonds des Maladies Professionnelles* [1989] ECR 4407, paragraph 9). Although the recommendations of the Joint Committee cannot confer upon individuals rights which they may enforce before national courts, the latter are nevertheless obliged to take them into consideration in order to resolve disputes submitted to them, especially when, as in this case, they are of relevance in interpreting the provisions of the Convention.
- 19 The answer to the second part of Question 1 must therefore be that the Court has jurisdiction to give a preliminary ruling on the interpretation of the arrangements of the Joint Committee established by the Convention.

Question 3

- 20 In Question 3(a), the national court asks whether Articles 11(4) and 15(2) of the Convention are to be interpreted as empowering the Joint Committee to recommend to Member States that the identification of goods is to be ensured by sealing when the customs office at the point of entry into an EFTA country is not the office of destination.

- 21 As stated in paragraph 15, the arrangements of the Joint Committee constitute a measure required for the application of the Convention within the meaning of Article 15(2)(b). The purpose of the arrangements is to harmonize national customs practices as far as possible in order to ensure the rapid movement of goods. Confirmation that that is the purpose of the competence conferred on the Joint Committee is to be found in the first recital in the preamble to the Council Decision of 15 June 1987 concerning the conclusion of the Convention. According to that recital, the Common Transit Procedure is to enable the carriage of goods to be simplified in the context of trade between the Community and the EFTA countries.
- 22 As the minutes of the meeting of the Joint Committee on 21 January 1988 show, the result of identifying goods by description was to make frontier crossings between the Community and Austria and Switzerland more difficult. As the Commission confirmed at the hearing, that method of identification caused the Swiss and Austrian customs authorities to intensify sampling checks. Having regard to the objective of allowing speedier frontier crossings, and bearing in mind the need to ensure uniformity of customs practice in applying the Convention, the Joint Committee did not go beyond the limits of the task conferred on it by calling attention to the general framework within which derogations from the general principle of sealing may be authorized.
- 23 The answer to Question 3(a) must therefore be that Articles 11(4) and 15(2) of the Convention do not preclude the Joint Committee from recommending that the identification of goods is to be ensured by sealing when the customs office of entry into the EFTA Member State is not the office of destination.
- 24 Question 3(b) asks whether the above provisions of the Convention are to be interpreted as precluding the central administration of the Member State concerned from taking the decision instead of the customs office of departure.

25 Article 11(1) of the Convention provides that, as a general rule, the identification of goods is to be ensured by sealing. Article 11(4) confers on the office of departure the authority to dispense with sealing. That latter provision must be read in conjunction with Article 65(d) of Appendix II to the Convention, according to which the customs authorities may, in the context of the conditions for granting authorized consignor status, prescribe certain identification measures, particularly special sealing. It follows that the authority of the office of departure must be exercised within the limits of the general framework laid down by the higher customs authorities of the State concerned.

26 The answer to Question 3(b) must therefore be that Article 11(4) and Article 15(2)(b) of the Convention, read in conjunction with Article 65(d) of Appendix II to the Convention, do not preclude a higher customs authority of a Member State from establishing the general framework within which the authority conferred upon the office of departure to dispense with the sealing obligation is to be exercised.

Question 4

27 With regard to Question 4, it should be noted that, in the context of proceedings brought under Article 177 of the Treaty, the Court does not have jurisdiction to rule on the compatibility of a national measure with Community law.

28 In the light of the answers given above, there is no need to reply to the first part of Question 1, or to Question 2.

Costs

29 The costs incurred by the Commission of the European Communities, which has 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 (Sixth Chamber)

in answer to the questions referred to it by the Finanzgericht Hamburg, by order of 3 May 1991, hereby rules:

1. The Court of Justice has jurisdiction to give a preliminary ruling on the interpretation of the arrangements of the Joint Committee established by the Convention on a Common Transit Procedure concluded on 20 May 1987 between the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden, the Swiss Confederation and the European Economic Community.
2. Articles 11(4) and 15(2) of the Convention do not preclude the Joint Committee from recommending that the identification of goods is to be ensured by sealing when the customs office of entry into the EFTA Member State is not the office of destination.
3. Article 11(4) and Article 15(2)(b) of the Convention, read in conjunction with Article 65(d) of Appendix II to the Convention, do not preclude a higher customs authority of a Member State from establishing the general framework within which the authority conferred upon the office of departure to dispense with the sealing obligation is to be exercised.
4. In the context of proceedings brought under Article 177 of the Treaty the Court does not have jurisdiction to rule on the compatibility of a national measure with Community law.

Murray

Mancini

Schockweiler

Diez de Velasco

Kapteyn

Delivered in open court in Luxembourg on 21 January 1993.

J.-G. Giraud

C. N. Kakouris

Registrar

President of the Sixth Chamber