

JUDGMENT OF THE COURT (Third Chamber)  
18 February 1987 \*

In Case 98/86

REFERENCE to the Court under [Article 267 TFEU] by the tribunal de première instance [Court of First Instance], Dinant, for a preliminary ruling in the criminal proceedings brought before that court by the

**Ministère public** [Public Prosecutor]

v

**Arthur Mathot**, residing at Celles (province of Namur)

on the interpretation of the first subparagraph of Article 3 (1) (6) of 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 food-stuffs for sale to the ultimate consumer (Official Journal L 33 of 8 February 1979, p. 1),

THE COURT (Third Chamber)

composed of: Y. Galmot, President of the Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo  
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the Deputy Royal Prosecutor attached to the tribunal de première instance, Dinant,

the Belgian Government, by H. De Belder, Director of European Affairs,

\* Language of the Case: French.

the Commission of the European Communities, by Daniel Jacob, a member of its Legal Department,

having regard to the Report for the Hearing and further to the hearing on 12 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 November 1986,

gives the following

### Judgment

- 1 By a judgment of 6 March 1986, which was received at the Court on 14 April 1986, the tribunal de première instance, Dinant, referred to the Court for a preliminary ruling under [Article 267 TFEU] a question on the interpretation of [Article 34 TFEU] in order to be able to assess the compatibility with Community law of the Belgian legislation on the labelling of butter.
- 2 That question arose in criminal proceedings brought against Arthur Mathot, who was prosecuted for marketing in Belgium butter prepared by him in a package which did not bear the name and address of the processor, contrary to the Law of 8 July 1935 and the Royal Decree of 27 February 1963.
- 3 The national court found that under Belgian law there is an obligation in regard to butter produced in Belgium to indicate on the package the name and address of the producer, manufacturer, processor or vendor in the country whereas no such obligation exists in regard to butter imported from other Member States, which could put Belgian producers, manufacturers or processors at a disadvantage *vis-à-vis* their foreign competitors and thus 'restrict imports or have an equivalent effect contrary to [Article 34 TFEU]'. Furthermore, it appears that in Belgium supermarkets prefer butter in packages bearing neither the name nor the address of the processor.

- 4 It was in that context that the national court referred the following question to the Court of Justice:

'Is the requirement imposed only on Belgian processors, and not on their competitors from other Member States, to indicate their name and address on the packaging of butter compatible with [Article 34 TFEU] ?'

- 5 Reference is made to the Report for the Hearing for the Community and Belgian legislation applicable in this matter and the observations submitted by the defendant in the main proceedings, the Deputy Royal Prosecutor, the Belgian Government and the Commission, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 6 It must be pointed out first of all that in proceedings brought under [Article 267 TFEU] the Court may not rule either on the interpretation of national legislative or regulatory provisions or on the compatibility of such provisions with Community law. It may, however, provide the national court with an interpretation of Community law that will enable that court to resolve the legal problem before it. It appears from the documents before the Court that the national court is asking whether and under what conditions it is contrary to [Article 34 TFEU] or to a general principle of Community law for certain provisions of national law concerning the labelling of butter, which are in conformity with a Community directive, to apply only to domestic products to the exclusion of products coming from other Member States.
- 7 With regard to [Article 34 TFEU], it must be emphasized that the purpose of that provision is to eliminate obstacles to the importation of goods and not to ensure that goods of national origin always enjoy the same treatment as imported goods. A difference of treatment as between goods which is not capable of restricting imports or of prejudging the marketing of imported goods does not fall within the prohibition contained in that article (judgment of 23 October 1986 in Case 355/85 *Driancourt v Cognet* [1986] ECR 3231).
- 8 However, in a case such as the one described in the order for reference, and even if there is discrimination against domestically produced butter, such a difference of treatment can in no circumstances restrict the importation of butter or prejudice

the marketing of imported butter. [Article 34 TFEU] is not therefore infringed by such rules.

- 9 With regard to the question whether the difference of treatment mentioned above is of such a nature as to infringe the general principle of non-discrimination, it should be remembered that, according to the case-law of the Court, treatment which works to the detriment of national products as compared with imported products and which is put into effect by a Member State in a sector which is not subject to Community rules or in relation to which there has been no harmonization of national laws does not come within the scope of Community law (judgment of 23 October 1986 in *Driancourt v Cognet*, cited above).
- 10 In this case, the national laws on the labelling of butter have been harmonized by Council Directive 79/112 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 (Official Journal 1979 L 33, p. 1). According to Article 3 (1) of that directive, 'indication of the following particulars alone shall be compulsory on the labelling of foodstuffs:

...

- (6) the name or business name and address of the manufacturer or packager, or of a seller established within the Community'.

Article 3 (2) provides that:

'Notwithstanding the previous paragraph, Member States may retain national provisions which require indication of the factory or packaging centre, in respect of home production'.

- 11 It is correct that Directive 79/112 created obligations concerning the labelling and presentation of foodstuffs marketed in the entire Community without permitting any distinction to be drawn according to the origin of those foodstuffs, subject only to the condition contained in Article 3 (2). National rules which impose those obligations only on domestic products to the exclusion of products imported from

other Member States therefore discriminate against certain traders contrary to Community law by virtue of the fact that the requirements of the directive are not yet applied to imported products. However, such a situation does not give those traders the right to seek exemption from the obligations laid down in the directive. It is for the Commission to ensure that the national authorities put an end to that situation by extending the scope of the national rules to all the products covered by the directive.

- 12 The reply to the question referred to the Court must therefore be that neither [Article 34 TFEU] nor any other provision of the EEC Treaty, nor any general principle of Community law makes it unlawful for certain provisions of national legislation, themselves in conformity with the Community directive, to apply only to domestically produced products, to the exclusion of those from other Member States.

#### Costs

- 13 The costs incurred by the Belgian Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Third Chamber),

in answer to the question referred to it by the tribunal de première instance, Dinant by a judgment of 6 March 1986, hereby rules:

**Neither [Article 34 TFEU], nor any other provision of the EEC Treaty, nor any general principle of Community law makes it unlawful for certain**

provisions of national legislation, themselves in conformity with a Community directive, to apply only to domestically produced products, to the exclusion of those coming from other Member States.

Galmot

Everling

Moitinho de Almeida

Delivered in open court in Luxembourg on 18 February 1987.

P. Heim

Registrar

Y. Galmot

President of the Third Chamber