JUDGMENT OF THE COURT
2 February 1989 *

In Case 274/87

Commission of the European Communities, represented by its Legal Adviser, Jörn Sack, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Martin Seidel, Ministerial Adviser in the Federal Ministry of Economic Affairs, and by Michael Loschelder, Rechtsanwalt, Cologne, acting as Agents, with an address for service in Luxembourg at the German Embassy,

defendant,

APPLICATION for a declaration that by prohibiting the importation of meat products which do not comply with the German rules governing meat, the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the Treaty,

THE COURT

composed of O. Due, President, T. Koopmans and R. Joliet (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Díez de Velasco and M. Zuleeg, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

* Language of the case: German.

having regard to the Report for the Hearing and further to the hearing on 16 November 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 29 November 1988,

gives the following

Judgment

1 By application lodged at the Court Registry on 16 September 1987, the Commission of the European Communities brought an action before the Court under the second paragraph of Article 169 of the EEC Treaty for a declaration that by prohibiting the importation and marketing in its territory of meat products from other Member States which do not comply with Paragraphs 4 and 5 of the Fleisch-Verordnung (Meat Regulation) of 21 January 1982, (*BGBl.* I, p. 89), the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty.

2 The regulation in question prohibits the marketing of meat products which contain ingredients other than meat, subject to exceptions in respect of specified products the composition of which is defined, with a requirement, in certain cases, for specific information to be shown on the packaging or displayed on signs. The ban on marketing those products is supplemented by Paragraph 47, subparagraph 1, of the Lebensmittel- und Bedarfsgegenständegesetz (Law on foodstuffs and necessities) of 15 August 1974 (*BGBl.* I, p. 1945; III, 2125 to 40), which prohibits the importation of foodstuffs which do not comply with German standards. Compliance with those rules is ensured by means of criminal or administrative penalties.

3 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 It should be noted at the outset that it is undisputed that the contested rules have a restrictive effect on imports of meat products legally manufactured and marketed in other Member States. The issue between the parties is whether or not the measures in question are justified on the grounds put forward by the German Government, that is to say the protection of health and mandatory requirements relating to consumer protection, fair trading and the common agricultural policy.

5 It should also be noted at the outset that the contested rules prohibit the marketing of the products concerned in German territory regardless of whether they are national or foreign products. Such measures which are applicable without distinction are not affected by the prohibition of measures having equivalent effect, provided that they are necessary in order to meet certain imperative requirements (see, in particular, the Court's judgment of 17 June 1981 in Case 113/80 *Commission* v *Ireland* [1981] ECR 1625).

Justification based on the protection of health within the meaning of Article 36 of the Treaty

6 Before considering the arguments put forward by the defendant Government in this regard, it must be pointed out that the Court has consistently held that, whilst human life and health are among the matters protected by Article 36 and it is therefore for the Member States to decide within the limits set by the Treaty the degree of protection which they wish to ensure, national rules restricting imports are compatible with the Treaty only in so far as they are necessary for the effective protection of human life and health and only if that objective cannot be achieved by measures less restrictive of intra-Community trade (judgments of 20 May 1976 in Case 104/75 *De Peijper* [1976] ECR 613 and of 4 February 1988 in Case 261/85 *Commission* v *United Kingdom* [1988] ECR 547).

7 The German Government maintains that the contested prohibition of importation is justified on grounds relating to the protection of health within the meaning of

Article 36 of the Treaty because it is necessary to ensure a sufficient intake of certain essential nutrients contained in meat, especially proteins.

8 It must be pointed out at once that that argument is contradicted by information which appears in reports on nutrition published in 1980 and 1984 by the German Government itself. Those reports show that protein intake levels in Germany are in general more than adequate and that even in the case of certain groups of the population, particularly young people, whose protein intake is lower than the recommended level, the lower intake poses no threat to health in view of the safety margins incorporated in the relevant recommendations.

9 It is also clear from those reports that some meat ingredients contain harmful substances such as purine, cholesterol and saturated fatty acids; the reports therefore express some concern about any future increase in the consumption of meat and meat products.

10 Finally, with regard to the German Government's argument that vegetable proteins have a lower nutritional value than animal proteins, it must be stressed that, as the Court has already stated in its judgment of 23 February 1988 in Case 216/84 *Commission* v *France* [1988] ECR 793, a Member State may not invoke public health grounds in order to prohibit the importation of a product by arguing that its nutritional value is lower than another product already available on the market in question, since it is plain that the choice of foodstuffs available to consumers in the Community is such that the mere fact that an imported product has a lower nutritional value does not pose a real threat to human health.

11 It follows from the foregoing that the contested prohibition of importation may not be justified on grounds relating to the protection of health within the meaning of Article 36 of the Treaty.

Justification based on imperative requirements relating to consumer protection

12 The German Government maintains that the contested prohibition of importation is necessary for the effective protection of German consumers who, as a result of eating habits which date back several decades, have a clear idea about what they expect from meat products, that is to say that they must be composed exclusively or essentially of meat and comply with the quality standards laid down in Paragraphs 4 and 5 of the Fleisch-Verordnung.

13 In that regard, it must be borne in mind that, as the Court has repeatedly stressed (in particular in its judgments of 12 March 1987 in Case 178/84 *Commission* v *Germany* [1987] ECR 1227 and of 14 July 1988 in Case 407/85 *3 Glocken GmbH and Another* v *Unità sanitaria locale Centro-Sud and Another* [1988] ECR 4233), although it is admittedly legitimate to seek to enable consumers who attribute specific qualities to certain products to make their choice in the light of the criteria they consider essential, that possibility may be ensured by means which do not prevent the importation of products which have been lawfully manufactured and marketed in other Member States and, in particular, by the compulsory affixing of suitable labels giving the nature of the product sold.

14 It is true that, where meat products are concerned, the indication of all the ingredients may cause difficulties when the products are sold in bulk or listed on restaurant menus. It must nevertheless be observed that it is clear from Council Directive 79/112 on the labelling and presentation of foodstuffs (Official Journal 1979, L 33, p. 1), and particularly Article 12 thereof, that Member States may lay down detailed rules for the labelling of foodstuffs offered for sale to the ultimate consumer without pre-packaging, in order to provide the consumer with the information which is essential for the exercise of his choice and to avoid confusing him with too detailed information.

15 Moreover, as the Commission has rightly pointed out, the problem of labelling in such situations has already been dealt with in the Fleisch-Verordnung, in particular in Paragraph 5 (2) thereof, which lays down special labelling rules for products exempt from the marketing ban when sold in bulk, particularly in restaurants or mass-catering establishments.

16 It follows that the contested ban on importation may not be justified on the ground of mandatory requirements relating to consumer protection.

Justification based on mandatory requirements relating to fair trading

17 The German Government further argues that the contested ban on importation constitutes a measure which is necessary in order to protect producers and distributors of pure meat products against unfair competition. Such competition might arise from the fact that some traders or producers could acquire a competitive advantage by using less expensive ingredients of poorer quality without the differences in manufacture being apparent to consumers.

18 It is sufficient to point out that that argument, based on the consumer's lack of information, has already been dismissed above.

19 It follows that the contested ban on importation may not be justified on the ground of mandatory requirements relating to fair trading.

Justification based on mandatory requirements relating to the common agricultural policy

20 The German Government maintains, finally, that the contested ban on importation is necessary in order to meet certain mandatory requirements relating to the common agricultural policy, and in particular to the aim of stabilizing the market pursued by the common organizations of the markets in beef and veal and pigmeat.

21 That argument cannot be accepted either. As the Court stated in its judgments in Cases 216/84 and 407/85, cited above, once the Community has established a common market organization in a particular sector, the Member States must

refrain from taking any unilateral measure, even if that measure is likely to support the common policy.

22 It is also clear from those judgments that, even if they support a common policy of the Community, national measures may not conflict with one of the fundamental principles of the Community — in this case that of the free movement of goods — unless they are justified by reasons recognized by Community law. As found above, this is not the position with the provisions at issue in the present case.

23 It follows from all of the foregoing that the alleged breach of obligations under the Treaty has been established. It must therefore be declared that, by prohibiting the importation and marketing in its territory of meat products from other Member States which do not comply with Paragraphs 4 and 5 of the Fleisch-Verordnung, the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty.

Costs

24 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by prohibiting the importation and marketing in its territory of meat products from other Member States which do not comply with Paragraphs 4 and 5 of the Fleisch-Verordnung, the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty;

(2) Orders the Federal Republic of Germany to pay the costs.

Due Koopmans Joliet Slynn Kakouris

Moitinho de Almeida Rodríguez Iglesias Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 2 February 1989.

J.-G. Giraud
Registrar

O. Due
President