JUDGMENT OF THE COURT (Fifth Chamber)
21 June 2001 *

In Case C-30/99,

Commission of the European Communities, represented by R.B. Wainwright and M. Shotter, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by M.A. Buckley, acting as Agent, assisted by A.M. Collins, BL, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

supported by

United Kingdom of Great Britain and Northern Ireland, represented by R. Magrill, acting as Agent, assisted by M. Hoskins, barrister, with an address for service in Luxembourg,

intervener,

APPLICATION for a declaration that:

— by prohibiting the marketing in Ireland with the description and indication of fineness which they bear in their country of origin, of articles made from precious metals (gold, silver or platinum) lawfully manufactured and marketed in other Member States but not complying with the Irish provisions concerning standards of fineness, or by obliging these imports to replace their hallmarks with those for the appropriate lower official Irish standard of fineness;

— by requiring articles made from precious metals (gold, silver or platinum) imported from another Member State, and marketed in Ireland, to bear a sponsor's mark indicative of the maker, worker or dealer in such articles, registered by the Wardens and Commonalty of Goldsmiths of the city of Dublin which appoints the Assay Master by which these articles are intended to be struck with the approved hallmark, when these articles already bear a sponsor's mark conforming to the legislation of the Member State of origin;

— by requiring articles made from precious metals (gold, silver or platinum) imported from another Member State, and marketed in Ireland, which have been lawfully struck in another Member State with a hallmark stamped by a body which offers guarantees of independence, and which offers appropriate information to consumers, to bear an approved hallmark struck by the Assay Master which is appointed by the Wardens and Commonalty of Goldsmiths of the city of Dublin;

— by establishing differences between approved hallmarks struck on articles manufactured in Ireland and those hallmarks of the same type struck on articles imported from other Member States,

Ireland has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC),

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward, P. Jann (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: L.A. Geelhoed,
Registrar: D. Louterman-Hubeau, Head of Division,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 December 2000,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 5 February 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that:

— by prohibiting the marketing in Ireland with the description and indication of fineness which they bear in their country of origin, of articles made from precious metals (gold, silver or platinum) lawfully manufactured and marketed in other Member States but not complying with the Irish provisions concerning standards of fineness, or by obliging these imports to replace their hallmarks with those for the appropriate lower official Irish standard of fineness;

— by requiring articles made from precious metals (gold, silver or platinum) imported from another Member State, and marketed in Ireland, to bear a sponsor's mark indicative of the maker, worker or dealer in such articles, registered by the Wardens and Commonalty of Goldsmiths of the city of Dublin which appoints the Assay Master by which these articles are intended to be struck with the approved hallmark, when these articles already bear a sponsor's mark conforming to the legislation of the Member State of origin;

— by requiring articles made from precious metals (gold, silver or platinum) imported from another Member State, and marketed in Ireland, which have been lawfully struck in another Member State with a hallmark stamped by a body which offers guarantees of independence, and which offers appropriate information to consumers, to bear an approved hallmark struck by the Assay Master which is appointed by the Wardens and Commonalty of Goldsmiths of the city of Dublin;

— by establishing differences between approved hallmarks struck on articles manufactured in Ireland and those hallmarks of the same type struck on articles imported from other Member States,

Ireland has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC),

2 By order of the President of the Court of 6 September 1999 the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the form of order sought by Ireland.

The national legislation

3 The legislative provisions and rules applying to articles made from precious metal in Ireland are to be found *inter alia* in the Hallmarking Act 1981 (hereinafter 'the Act'), the Hallmarking (Approved Hallmarks) Regulations 1983, the Hallmarkings (Approved Hallmarks) (Amendment) Regulations 1990, the Hallmarking (Irish Standards of Fineness) Regulations 1983 and the Hallmarking (Irish Standards of Fineness) (Amendment) Regulations 1990.

4 The 1983 Hallmarking (Irish Standards of Fineness) Regulations and the 1990 Hallmarking (Irish Standards of Fineness) (Amendment) Regulations list the approved standards of fineness for articles made from or containing precious metals. Those regulations complete the standards of fineness already referred to in the Charter granted to the Wardens and Commonalty of Goldsmiths of the city of Dublin on 22 December 1637 and in Section 22 of the Plate Assay Act 1783 and Section 3 of the Plate Assay (Ireland) Act 1807. The standards for gold are 916.6, 833, 750, 585, 417 and 375 parts in every 1 000 parts, corresponding respectively to 22, 20, 18, 14, 10 and 9 carats; for silver 925 and 958.4 and for platinum 950 parts in every 1 000 parts.

5 Articles made from precious metals must bear an approved hallmark. Under Section 2 of the Act, an approved hallmark means:

'(a) a mark lawfully struck by the Assay Master whether before or after the commencement of the Act under the law for the time being in force;

(b) a mark lawfully struck in an Assay Office in the United Kingdom before the 21st day of February 1927;

(c) an "international hallmark", that is to say, a mark prescribed by regulations under Section 3 of the Act as recognised by the Government or the Minister under a treaty or international convention to which Ireland is a party and which relates to precious metals and is lawfully struck by the Assay Master or in a country other than Ireland.'

6 According to Regulation 7 of the Hallmarking (Approved Hallmarks) Regulations 1983, an international hallmark is a mark notified in accordance with the Convention on the Control and Marking of Articles of Precious Metals (hereinafter 'the Convention'), to which Ireland and a number of other Member States are parties.

7 Regulation 5 of the Hallmarking (Approved Hallmarks) Regulations 1983 prescribes three marks as approved hallmarks to be applied to all articles made from precious metal other than imported articles to which international hallmarks have already been applied. These are the appropriate mark used by the Dublin Assay Office, a mark denoting the relevant standard of fineness and applied in the Dublin Assay Office (fineness mark) and a mark or letter denoting the year of manufacture of the article or the year of hallmarking of the article and applied in the Dublin Assay Office.

8 According to Section 9 of the Act articles made from precious metal submitted to the Assay Master to be struck with an approved hallmark must also be struck with a sponsor's mark. The sponsor designated by the mark is the maker, worker of or dealer in the hallmarked articles. The Assay Master and a sponsor may make arrangements for the sponsor's mark to be struck by the Assay Master. The sponsor's mark must be registered at the Wardens and Commonalty of Goldsmiths of the city of Dublin.

9 Section 3(2) of the Act provides that regulations may prescribe different marks for articles manufactured in the State and for imported articles.

10 On that basis Regulation 5 of the Hallmarking (Approved Hallmarks) Regulations 1983 provides as regards the Assay Office mark for differences between articles manufactured in Ireland and certain imported articles. Similarly, different hallmarks are prescribed as regards platinum for articles manufactured in Ireland and imported articles by Regulation 4 of the Hallmarking (Approved Hallmarks) Regulations 1983 and as regards gold of 10 carats by Regulation 4 of the Hallmarking (Approved Hallmarks) (Amendment) Regulations 1990.

Pre-litigation procedure

11 Taking the view that the Irish legislation on hallmarking was contrary to Article 30 of the Treaty, the Commission, by letter of 28 June 1993, gave Ireland formal notice that it should submit its observations within two months in accordance with the procedure laid down in Article 169 of the Treaty. The Irish authorities replied to that letter of formal notice by letter of 13 October 1993.

12 As it was not satisfied with that reply, the Commission sent Ireland a reasoned opinion on 11 November 1996 allowing it a period of two months to comply with it. In its reply of 3 April 1997 the Irish authorities disputed that the current Irish legislation was restricting the free movement of articles made from precious metal in a manner other than that permitted by Article 36 of the EC Treaty (now, after amendment, Article 30 EC).

13 As the correspondence between the services of the Commission and the Irish authorities did not achieve a satisfactory outcome, the Commission decided to bring this action.

Substance

The legislation concerning standards of fineness for articles made from precious metal

Arguments of the parties

14 The Commission submits that the Irish rules concerning standards of fineness for precious metals constitute measures having equivalent effect to quantitative restrictions since they prohibit the marketing in Ireland, with the description and indication of fineness which they bear in their country of origin, of articles made from precious metals lawfully manufactured and marketed in other Member States but not complying with those rules.

15 Such articles could not be imported and described in Ireland as articles made from gold, platinum or silver. Moreover, as those articles could not be sold with the standard of fineness given in their original hallmark, that hallmark would have to be removed and replaced by a hallmark indicating the official Irish standard of fineness immediately below.

16 The Commission recognises that the Irish rules serve to protect consumers and ensure fair trading. However, it observes that such interests must be safeguarded

whilst ensuring mutual respect for the fair and traditional practices of the different Member States.

17 A Member State may not, according to the Commission, require a new hallmark to be struck on products imported from another Member State where the information conveyed by the hallmarks prescribed by that State is equivalent in content and intelligible to a consumer in the State of importation. In this respect the Commission considers that a hallmark indicating the nominal fineness in parts per thousand provides equivalent information to the consumer. Moreover, means exist to give complete information to the consumer as to the meaning and significance of a non-Irish hallmark, by, for example, attaching labels or placing notices in display cases.

18 The Commission states that it has received from the Irish authorities a draft set of regulations amending the present standards of fineness regulations, so as to provide for the same standards of fineness as in the proposed directive of the European Parliament and the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to articles of precious metal, of 22 April 1996 (hereinafter 'the proposed directive'). The Commission states that it is prepared to accept as a proportionate measure a limitation of the standards of fineness to those most commonly used and applied in the Community. However, the draft regulations in question have not yet entered into force.

19 The Irish Government contends that Member States are allowed to prohibit the marketing of imported goods even where they comply with fair and traditional practice in another Member State where the public interest justifies it.

20 The Irish Government considers that the fineness hallmark ensures effective consumer protection and fair trading. In the absence of such a hallmark, a

consumer might easily be misled as to the exact content of precious metal. A labelling requirement could not, by its very nature, offer a consumer the same guarantee as an indelible and inseparable hallmark.

21 Moreover, the Irish Government considers that a restriction on the number of standards of fineness is a proportionate means of achieving the objective required, as the proposed directive establishes and the Commission appears itself to accept in its application.

22 In its reply, the Commission submits that the principle known as mutual recognition should apply to indications of fineness. As to the reference in the application to labelling of articles of precious metal, the Commission states that this should not be an alternative to the hallmark but complementary.

23 Moreover, the Commission observes that the hallmarks recognised and lawfully applied in other Member States generally indicate the standard of fineness in parts per thousand. In accordance with the Convention, Ireland already recognises hallmarks which indicate fineness solely in terms of parts per thousand without any reference to carats. The Commission infers that standards of fineness different from those currently recognised by the Irish system should also be acceptable.

24 In its rejoinder, the Irish Government states that while the Commission has accepted that a restriction of the number of standards of fineness may be justified

as a means of protecting consumers and ensuring fair trading, it has not demonstrated why such a restriction is proportionate only if it authorises the standards of fineness most commonly used in the Community.

Findings of the Court

25 According to settled case-law, any measure of the Member States which is capable, directly or indirectly, actually or potentially, of hindering intra-Community trade must be considered to be a measure having equivalent effect to quantitative restrictions (Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5).

26 According to the '*Cassis de Dijon*' case-law (Case 120/78 *Rewe-Zentral* [1979] ECR 649), in the absence of harmonisation of legislation, obstacles to free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods (such as those relating to designation, form, size, weight, composition, presentation, labelling, packaging) constitute measures of equivalent effect prohibited by Article 30, even if those rules apply without distinction to all products, unless their application can be justified by a public-interest objective taking precedence over the free movement of goods (Case C-293/93 *Houtwipper* [1994] ECR I-4249, paragraph 11).

27 The Court has already held that national legislation which requires articles of precious metal imported from other Member States, in which they are lawfully

traded and hallmarked in accordance with the legislation of those States, to be given an additional hallmark in the importing Member State, renders the imports more difficult and costly (*Houtwipper*, cited above, paragraph 13).

28 This is true of the Irish legislation on standards of fineness for articles of precious metal. Where such articles do not comply with its provisions they can be imported into and marketed in Ireland only after having a new hallmark affixed indicating the lower standard of fineness provided for by the Irish legislation.

29 As regards a possible justification for the restrictive effects of the Irish legislation, it is true that the requirement that an importer cause to be affixed on articles of precious metal a hallmark indicating their fineness is in principle of a nature such as to ensure effective protection for consumers and to promote fair trading (*Houtwipper*, cited above, paragraph 14).

30 However, the Court stated in its judgment in Case 220/81 (*Robertson and Others* [1982] ECR 2349, paragraph 12), that a Member State cannot require a fresh hallmark to be affixed to products imported from another Member State in which they have been lawfully marketed and hallmarked in accordance with the legislation of that State, where the information provided by that hallmark, in whatever form, is equivalent to that prescribed by the Member State of importation and intelligible to consumers of that State.

31 In that connection, it is important to note that the Irish legislation provides for standards of fineness for articles of precious metal to be indicated in parts per thousand.

32 In order to determine whether an indication in parts per thousand of a standard of fineness not provided for by that legislation provides consumers with equivalent and intelligible information, the Court must take into account, as it has done on several occasions when called upon to consider whether a description, trade mark or promotional description or statement was liable to mislead the purchaser, the presumed expectations of an average consumer who is reasonably well-informed and reasonably observant and circumspect (see *inter alia* Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 31).

33 A consumer familiar with the Irish system of indicating standards of fineness for articles of precious metal is given equivalent and intelligible information by a hallmark struck on an article of precious metal from another Member State which indicates the standard of fineness in parts per thousand.

34 Accordingly, it is not necessary to consider the extent to which a possible lack of clarity in the information supplied by such a hallmark can be remedied by attaching labels or placing notices in display cases.

35 Nor is it necessary to consider whether Ireland is bound to authorise the indication in parts per thousand of all standards of fineness for articles of precious metal or if it can confine itself to those most frequently used in the Community. It is common ground that the Commission merely complains that Ireland does not accept the standards of fineness most frequently used in the Community and that the Irish legislation in force on expiry of the period prescribed in the reasoned opinion does not even allow the use of such standards of fineness.

36 It follows that the head of claim concerning the Irish legislation on standards of fineness for articles of precious metal is well founded.

The legislation concerning the sponsor's mark

Arguments of the parties

37 As regards the sponsor's mark required by Section 9 of the Act, the Commission submits that a system in which the maker, worker of or dealer in articles of precious metal from other Member States must have a sponsor's mark registered in his name in Ireland is liable to restrict the importation into Ireland of such articles from other Member States. Importers must either deal with an importer who already holds a sponsor's mark registered in Ireland, which would entail the re-hallmarking of articles bearing a sponsor's mark registered in another Member State, or themselves complete the formalities required to register their mark in Ireland.

38 In several cases the Court has held that an obligation to maintain a representative in the Member State of importation constitutes a measure having equivalent effect to a quantitative restriction and is a breach of Article 30 of the Treaty (Case 155/82 *Commission* v *Belgium* [1983] ECR 531 and Case 247/81 *Commission* v *Germany* [1984] ECR 1111).

39 According to the Commission, the purpose of identifying, in the public interest, a person who can be held responsible for an article of precious metal can as a rule be achieved if the article bears a sponsor's mark struck in accordance with the legislation of another Member State. Only in exceptional cases, where confusion

might arise, might additional formalities be required to maintain the effectiveness of the control system. However, there is no justification for requiring such additional formalities as a matter of course.

40 The Irish Government contends, in that regard, that there is no requirement for the sponsor to be an Irish national, to reside in Ireland, to appoint a representative in Ireland or to maintain a branch office in Ireland. The class of persons who can register a mark is, in practice, unlimited. Moreover the sponsor's mark does not have to be struck in Ireland. Furthermore, where the Assay Office strikes a hallmark, it will also strike a sponsor's mark at no additional charge.

41 The Irish Government considers that the requirement of a sponsor's mark is compatible with Community law since it applies only to articles of precious metals that have not been struck with a hallmark offering guarantees equivalent to those offered by an Irish hallmark. Such equivalence is recognised *inter alia* in respect of articles imported from Member States which are parties to the Convention.

42 Moreover, Ireland has already stated that it is prepared to accept articles of precious metal struck with a sponsor's mark in another Member State, where the legislation of that State authorises the marking of the article and upon proof supplied by the Member State that the sponsor's mark is in fact registered in that Member State. However the Commission has not established the equivalence of a sponsor's mark struck on articles of precious metal from other Member States.

43 The Irish Government observes that the Commission accepts that the Irish authorities can request proof that the sponsor's mark in question is in fact registered in another Member State and can require additional formalities to maintain the effectiveness of the control system. The Commission therefore appears to accept that it may be necessary for a Member State to maintain an *a priori* system of control over sponsor's marks on articles of precious metal. The Irish Government contends that a system such as that suggested by the Commission is no less disruptive of the free movement of goods than the system of sponsor's marks that Ireland currently operates.

44 The Commission points out in that connection that imported articles of precious metal bearing an international hallmark within the meaning of Section 2 of the Act are exempted by Ireland from the requirement to bear a sponsor's mark registered by the Assay Master. It infers that it should be sufficient if the hallmark meets the relevant conditions laid down by the Convention which provides that 'the responsibility mark... shall consist of the name of the sponsor, an abbreviation thereof or a symbol, which has been entered into an official register of the Contracting State or one of its authorised assay offices in whose territory the article is controlled'. Official registers of the sponsor's marks also exist in Member States other than those party to the Convention. There should in general be no risk of confusion since the sponsor's mark can be considered together with the other hallmarks. The Commission considers that it should be possible to establish a network for exchange of information whereby it can rapidly be verified that a mark has been registered and the identity of the responsible person can be established.

45 The Irish Government challenges the Commission's argument that official registers of sponsor's marks in Member States not party to the Convention are equivalent to those held in those States which are party to the Convention. It points out that, in the absence of real equivalence of hallmarks, in respect of

which the hallmark as a whole should be assessed, Ireland is not obliged to apply the provisions of the Convention to sponsor's marks registered in Member States which are not party to it. It observes, further, that the Commission has taken no steps towards establishing a network for exchange of information between keepers of official registers and that no proposal to that effect is included in the proposed directive.

Findings of the Court

46 The Irish legislation on the sponsor's mark constitutes a measure having equivalent effect to a quantitative restriction on imports, since it makes the marketing in Ireland of a product lawfully marketed in another Member State subject either to re-hallmarking or to the additional formality of registering the sponsor's mark in Ireland.

47 It is not relevant in that connection that such formalities, specifically attached to importation, are, as the Irish Government contends, relatively simple to accomplish and not very onerous.

48 Nor is it necessary, in order to establish that the legislation at issue is liable to act as an obstacle to intra-Community trade, to prove that Ireland has

actually refused to recognise a sponsor's mark registered in another Member State.

49 As regards possible justifications for such legislation, the Court has held that the obligation on the part of a manufacturer or importer to stamp articles of precious metal with hallmarks indicating the manufacturer is in principle capable of affording effective protection to consumers and of promoting fair trading (*Robertson and Others*, cited above, paragraph 11).

50 The requirement of a sponsor's mark registered in Ireland is, however, justified by such considerations only if the articles of precious metal from other Member States do not already bear hallmarks which fulfil the same purpose, that is to say, in this case, the identification of the person who is responsible.

51 In that connection the Commission rightly argues that identification of the person responsible for an article of precious metal is as a rule possible if that article bears a sponsor's mark struck in accordance with the legislation of another Member State.

52 First, the risk of confusion, which does not seem very high given that the sponsor's mark must be considered not in isolation but together with the other

features of the hallmark, does not suffice to justify a blanket obligation to register a sponsor's mark in Ireland.

53 Second, the fact that, in the context of the Convention, Ireland already accepts the equivalence of sponsor's marks registered in other Member States which are party to the Convention shows that Ireland itself considers that registration in Ireland is not indispensable.

54 Further, since the Irish legislation in force on expiry of the period prescribed in the reasoned opinion excludes the possibility of recognising the equivalence of a sponsor's mark registered in a Member State which is not party to the Convention, it goes further than is necessary to fulfil the purpose intended.

55 Finally, the argument put forward by Ireland that a system of control based on exchange of information between Member States would be just as restrictive of the free movement of goods as the requirement for the registration of a sponsor's mark in Ireland cannot be accepted. Such a system of control would be based on the principle that articles of precious metal bearing a sponsor's mark struck in a Member State must be allowed to move freely in the Community while the routine requirement of the registration of a mark in Ireland is from the outset an obstacle to that free movement.

56 Accordingly, the head of claim concerning the Irish legislation on the sponsor's mark is also well founded.

The legislation concerning the approved hallmark

Arguments of the parties

57 After observing that the Act provides that articles of precious metal must bear an approved hallmark which is either a mark struck by the Assay Master in accordance with the Irish legislation or an international hallmark, the Commission submits that such an obligation infringes Article 30 of the Treaty if it prohibits the marketing of articles of precious metal bearing a hallmark which is applied by a body offering sufficient guarantees of independence and contains information equivalent to that provided by the hallmarks required by Ireland and intelligible to Irish consumers.

58 The Commission points out in that regard that separate proceedings for failure to fulfil obligations have been initiated over the question whether a hallmark struck by the manufacturer (or his laboratory) may also be considered to offer sufficient guarantees of independence.

59 The Irish Government accepts that a Member State must recognise equivalent hallmarks applied to products imported from other Member States. However, not only the content of the hallmark but also its clarity and the guarantee offered by the control of standards of fineness must be equivalent.

60 According to the Irish Government, the Commission must furnish evidence that the hallmarks struck on articles of precious metal in certain Member States are in

fact equivalent to those which the Irish legislation requires for such articles. The Commission has furnished no such evidence.

61 In its reply the Commission explains that its complaint is that the Irish legislation excludes even the possibility of recognising hallmarks struck in other Member States. No further evidence is necessary to establish an infringement of Article 30 of the Treaty. The Commission also points out that Article 30 of the Treaty applies to the potential effects of the legislation at issue.

62 The Irish Government disputes that argument of the Commission. The relevant provisions of the Irish legislation indicate, rather, that Ireland has at no time refused to recognise equivalent hallmarks struck in Member States which are not party to the Convention. The amendments which Ireland intends to make to the Hallmarking (Approved Hallmarks) Regulations 1983, in order to make express provision for such recognition, bear witness to this. Those legislative amendments are to form part of the structure set up by the Act, which remains unchanged, and this demonstrates its consistency with Community law. It follows that the Commission had to prove that the absence in Irish law of an express provision for such recognition constitutes at least a potential obstacle to intra-Community trade in precious metal.

63 Moreover, the fact that the Commission, in the course of separate proceedings, has raised the question whether Ireland can refuse to accept as equivalent a hallmark struck by a manufacturer in the framework of a procedure of product quality assurance raises the possibility of the dismissal of this action for

procedural reasons, since matters not raised in the reasoned opinion cannot constitute a ground of a judgment of the Court.

64 The United Kingdom Government contends that even a system of occasional supervision by an independent body would fall far short of the guarantees provided by a system where the assaying and hallmarking are actually carried out by such a body. If this claim is to be understood as seeking a declaration that a hallmark struck by the manufacturer himself or by his laboratory is equivalent to a hallmark struck by an independent body, the United Kingdom considers that it must be dismissed.

65 In its observations on the statement in intervention of the United Kingdom Government, the Commission confirms that in the present proceedings it is not asking the Court to decide the question whether hallmarking carried out by a manufacturer in the context of a product quality assurance scheme offers sufficient guarantees of independence to be regarded as equivalent to hallmarking by an independent body.

Findings of the Court

66 First it is clear from the explanations given by the Commission that the present action does not concern the question whether a hallmark struck by a manufacturer or his laboratory offers sufficient guarantees of independence to be considered equivalent to a hallmark struck by an independent body. It follows

that the observations made by the Irish and United Kingdom Governments to that effect are beside the point.

67 Second, as regards, more generally, the requirement of an approved hallmark, this must be considered to constitute a measure having equivalent effect to a quantitative restriction on imports.

68 Contrary to the contention of the Irish Government, the Commission is not bound to furnish evidence that hallmarks struck in other Member States are in fact equivalent to those required by the Irish legislation. As the representative of the Irish Government had to concede when questioned on the subject at the hearing, the Irish legislation in force on the expiry of the period prescribed in the reasoned opinion excluded the possibility of recognition for hallmarks struck in Member States which were not parties to the Convention. Such an exclusion has at the very least potential effects on intra-Community trade.

69 As the Court held in *Robertson*, cited above, paragraph 12, and *Houtwipper*, cited above, paragraph 15, the requirement of a hallmark consistent with the national legislation is not justified where the information provided by a hallmark struck by an independent body in another Member State is equivalent to that prescribed by the Member State of importation and intelligible to consumers of that State.

70 Since the Irish legislation in force on the expiry of the period prescribed in the reasoned opinion only recognises hallmarks struck in accordance with the legislation of Member States which are parties to the Convention and system-

atically rules out such recognition for articles of precious metal hallmarked in other Member States, it cannot be justified.

71 Accordingly, the head of claim concerning the Irish legislation on approved hallmarks is also well founded.

Discriminatory provisions on hallmarking

Arguments of the parties

72 The Commission points out that the Irish legislation referred to in paragraphs 9 and 10 of this judgment makes a distinction between the hallmarks struck on articles manufactured in Ireland and hallmarks of the same type struck on imported articles. Such a distinction is contrary to the provisions of the Treaty on the free movement of goods.

73 The Irish Government states its intention to amend its legislation so that it is no longer necessary to strike articles of precious metal with a different hallmark according to their origin.

Findings of the Court

74 It is common ground that the requirement that different hallmarks must be struck on certain articles of precious metal depending on whether they are of Irish origin or are imported constitutes a measure having equivalent effect to a quantitative restriction on imports, which cannot be justified in the light of the provisions of the Treaty on the free movement of goods.

75 The claim concerning the discriminatory provisions in the Irish legislation on hallmarking is, accordingly, also well founded.

76 For all the foregoing reasons it must therefore be held that:

— by prohibiting the marketing in Ireland with the description and indication of fineness which they bear in their country of origin, of articles made from precious metals (gold, silver or platinum) lawfully manufactured and marketed in other Member States but not complying with the Irish provisions concerning standards of fineness, or by obliging these imports to replace their hallmarks with those for the appropriate lower official Irish standard of fineness;

— by requiring articles made from precious metals imported from another Member State, and marketed in Ireland, to bear a sponsor's mark indicative of the maker, worker or dealer in such articles, registered by the Wardens and Commonalty of Goldsmiths of the city of Dublin which appoints the Assay Master by which these articles are intended to be struck with the approved hallmark, when these articles already bear a sponsor's mark conforming to the legislation of the Member State of origin;

— by requiring articles made from precious metals imported from another Member State, and marketed in Ireland, which have been lawfully struck in another Member State with a hallmark stamped by a body which offers guarantees of independence, and which offers appropriate information to consumers, to bear an approved hallmark struck by the Assay Master which is appointed by the Wardens and Commonalty of Goldsmiths of the city of Dublin or an international hallmark notified in accordance with the Convention on the Control and Marking of Articles of Precious Metals; and

— by establishing differences between approved hallmarks struck on articles manufactured in Ireland and those hallmarks of the same type struck on articles imported from other Member States,

Ireland has failed to fulfil its obligations under Article 30 of the EC Treaty.

Costs

-- Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been unsuccessful, Ireland must be ordered to pay the costs. Pursuant to the first subparagraph of Article 69(4), the United Kingdom, which intervened in the dispute, must bear its own costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. Declares that:

— by prohibiting the marketing in Ireland with the description and indication of fineness which they bear in their country of origin, of articles made from precious metals (gold, silver or platinum) lawfully manufactured and marketed in other Member States but not complying with the Irish provisions concerning standards of fineness, or by obliging

these imports to replace their hallmarks with those for the appropriate lower official Irish standard of fineness;

— by requiring articles made from precious metals imported from another Member State, and marketed in Ireland, to bear a sponsor's mark indicative of the maker, worker or dealer in such articles, registered by the Wardens and Commonalty of Goldsmiths of the city of Dublin which appoints the Assay Master by which these articles are intended to be struck with the approved hallmark, when these articles already bear a sponsor's mark conforming to the legislation of the Member State of origin;

— by requiring articles made from precious metals imported from another Member State, and marketed in Ireland, which have been lawfully struck in another Member State with a hallmark stamped by a body which offers guarantees of independence, and which offers appropriate information to consumers, to bear an approved hallmark struck by the Assay Master which is appointed by the Wardens and Commonalty of Goldsmiths of the city of Dublin or an international hallmark notified in accordance with the Convention on the Control and Marking of Articles of Precious Metals; and

— by establishing differences between approved hallmarks struck on articles manufactured in Ireland and those hallmarks of the same type struck on articles imported from other Member States,

Ireland has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC);

2. Orders Ireland to pay the costs;

3. Orders the United Kingdom of Great Britain and Northern Ireland to pay its own costs.

La Pergola Wathelet Edward

Jann Timmermans

Delivered in open court in Luxembourg on 21 June 2001.

R. Grass A. La Pergola

Registrar President of the Fifth Chamber