JUDGMENT OF THE COURT (Sixth Chamber)
22 October 1998 *

In Case C-184/96,

Commission of the European Communities, represented by Hendrik van Lier, Legal Adviser, and Jean-Francis Pasquier, a national civil servant on secondment to its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Catherine de Salins, Deputy Director of the Department of Legal Affairs at the Ministry of Foreign Affairs, and Gautier Mignot, Secretary for Foreign Affairs in the same Department, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

APPLICATION for a declaration that, by adopting Decree No 93-999 of 9 August 1993 relating to preparations with *foie gras* as a base without taking account of the contents of the Commission's detailed opinion and reasoned opinion concerning mutual recognition, the French Republic has failed to fulfil its obligations under Article 30 of the EC Treaty,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. F. Mancini, J. L. Murray (Rapporteur), H. Ragnemalm and R. Schintgen, Judges,

Advocate General: A. La Pergola,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 1 July 1997, at which the Commission was represented by Jean-Francis Pasquier and the French Government by Philippe Lalliot, Secretary for Foreign Affairs in the Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 16 October 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 31 May 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by adopting Decree No 93-999 of 9 August 1993 relating to preparations with *foie gras* as a base ('the Decree'), without taking account of the contents of the detailed opinion and the reasoned opinion of the Commission concerning mutual recognition, the French Republic has failed to fulfil its obligations under Article 30 of the Treaty.

2 On 31 October 1991, pursuant to Council Directive 83/189/EEC of 28 March 1983, laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), the French Government notified to the Commission a draft decision of the Centre Technique de la Conservation des Produits Agricoles (Technical Centre for the Conservation of Agricultural Products) concerning preparations with *foie gras* as a base.

3 Consideration of that draft led the Commission in a detailed opinion of 1 February 1992, to raise an objection to the draft in so far as it reserved a series of trade descriptions to preparations with *foie gras* as a base which met various conditions as to their quality and composition laid down by the Decree and in so far as it made no provision for a mutual recognition clause for products lawfully marketed in the other Member States.

4 By note of 5 May 1992, the French authorities informed the Commission that they would maintain the reserved trade descriptions in all essential respects.

5 By letter of 3 July 1992 the Commission reminded the French authorities of the need to include a mutual recognition clause in the notified text.

6 In a note of 18 March 1993 the French authorities expressed their disagreement with the addition of such a clause to the notified draft.

7 On 9 August 1993 the French authorities adopted the Decree, which reserved the use of a series of trade descriptions for preparations with *foie gras* as a base to those which comply with the requirements imposed by the Decree in respect of the contents and quality of each of those products. The Decree applies in particular to the following descriptions: whole *foie gras, foie gras*, blocks of *foie gras* — with either goose or duck *foie gras* as a base —, liver *parfait*, liver medallions or paté, galantine of liver or liver mousse with goose *foie gras* as a base, or duck *foie gras,* or goose

and duck *foie gras*. For each of those products it specifies the minimum *foie gras* content, and also the ingredients which are permitted. In addition, it lays down for all the products concerned the maximum saccharose and seasoning content, the maximum percentage of fat given off and of homogenate and/or water, the maximum degree of humidity and specific detailed rules concerning presentation and packaging. The Decree does not contain a mutual recognition clause.

8 Article 1 of the Decree prohibits the possession with a view to sale or distribution for free, under the trade descriptions listed in the Decree, of preparations with *foie gras* as a base which do not comply with the provisions laid down therein. Preparations with *foie gras* as a base from a Member State which comply with the rules laid down by that State can, therefore, be marketed in France under the trade descriptions listed in the Decree only if they satisfy the conditions imposed by the Decree regarding *foie gras* content and manufacturing processes. If they do not, they can be sold under a trade description to which the Decree does not refer.

9 On 24 October 1994 the Commission sent the French Government a reasoned opinion in which it maintained that the provisions of French law were incompatible with Article 30 of the Treaty. The Commission also called upon the French Republic to take the measures necessary to comply with that reasoned opinion within two months of its notification.

10 By letter of 16 January 1995 the French Government challenged the Commission's position on its merits.

11 Those were the circumstances in which the Commission brought this action.

12 In its application to the Court, the Commission considers that the quality and composition requirements for preparations with *foie gras* as a base to which the use of the trade descriptions specified in the Decree is subjected are liable to hinder the free movement of goods.

13 Furthermore, the Commission claims that the French Republic did not include in the Decree a mutual recognition clause permitting preparations with *foie gras* as a base lawfully marketed in another Member State to be marketed in France. The Commission acknowledges, however, that the existence of such a clause would not have had an immediate effect, given that the other Member States have no equivalent rules and that the other Community producers would probably comply with the French requirements. The Commission adds that, in the other Member States, production of preparations with *foie gras* as a base, while not on any great scale, is constantly increasing.

14 The French Government argues that the infringement with which it is charged is highly hypothetical and theoretical, given that very little *foie gras* is produced in the other Member States, that those other Member States have no specific rules concerning preparations with *foie gras* as a base and that products from those States generally comply with the French requirements.

15 On that point, it should be observed that Member States other than France produce *foie gras*, albeit in small quantities, and that some of that production is imported into France.

16 In any event, according to settled case-law (Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5), the prohibition laid down in Article 30 of the Treaty covers all trading rules enacted by Member States which are capable of hindering directly or indirectly, actually or potentially, intra-Community trade.

17 Article 30 applies therefore not only to the actual effects but also to the potential effects of legislation. It cannot be considered inapplicable simply because at the present time there are no actual cases with a connection to another Member State (see, to this effect, Joined Cases C-321/94 to C-324/94 *Pistre and Others* [1997] ECR I-2343, paragraph 44).

18 In those circumstances, national legislation prohibiting a product from a Member State which complies with the rules laid down by that State but which does not fully satisfy the requirements imposed by that legislation from being marketed under a given trade description must be regarded as capable of hindering, at least potentially, inter-State trade.

19 In addition, the French Government maintains that in any event the Decree is justified by the imperative requirements of consumer protection and the prevention of offences with respect to false descriptions, and that it is proportionate to those requirements.

20 With regard to the protection of consumers, the French Government claims in particular that the use of certain trade descriptions must be regulated in order to enable consumers to know the real nature of products and thus to be effectively protected.

21 On that point, it must be observed that it is legitimate to enable consumers, who attribute specific qualities to products which are manufactured from particular raw materials or which have a given content of a characteristic ingredient, to make their choice in the light of such criteria.

22 However, that objective may be attained by means, other than the reservation of certain trade descriptions to products possessing particular qualities, which would be less restrictive of the marketing of products coming from a Member State which satisfy the rules laid down by that State, such as affixing suitable labels concerning the nature and characteristics of the product for sale (see, to this effect, Case 178/84 *Commission* v *Germany* [1987] ECR 1227, paragraph 35).

23 So far as concerns the argument based on the necessity to prevent offences with respect to false descriptions, the Court, in its judgment in *Deserbais*, did not exclude the possibility that Member States could require those concerned to alter the denomination of a foodstuff where a product presented under a particular denomination is so different, as regards its composition or production, from the products generally known under that denomination in the Community that it cannot be regarded as falling within the same category (Case 286/86 *Ministère Public* v *Deserbais* [1988] ECR 4907).

24 None the less, the mere fact that a product does not wholly conform to the requirements laid down in national legislation on the composition of certain foodstuffs with a particular denomination does not mean that its marketing can be prohibited.

25 The competent national authorities are, admittedly, entitled to monitor preparations in order to establish whether the raw materials used and the production methods are in accordance with the information on the labels and in order to bring proceedings against those responsible for selling foodstuffs which bear descriptions identical to those provided for by national legislation, but which are so different in content as to give rise to suspicion of deceit. However, that possibility applies only

to situations in which a foodstuff coming from a Member State and complying with the rules enacted by that State departs markedly from the requirements imposed by the legislation of the State concerned.

26 The risk that a preparation with *foie gras* as a base coming from a Member State and complying with the rules enacted by that State may bear a trade description referred to in the Decree, but may not wholly satisfy the conditions as to the *foie gras* content or the manufacturing process laid down in the Decree, is not in itself capable of justifying a total prohibition of the sale of such a product in France in order to prevent offences with respect to false descriptions.

27 It follows that the Decree cannot be regarded as proportionate to the need to prevent offences with respect to false descriptions.

28 In the light of the foregoing considerations, it is declared that, by adopting the Decree without including in it a mutual recognition clause for products coming from a Member State and complying with the rules laid down by that State, the French Republic has failed to fulfil its obligations under Article 30 of the Treaty.

Costs

29 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1) Declares that, by adopting Decree No 93-999 of 9 August 1993 relating to preparations with *foie gras* as a base without including in it a mutual recognition clause for products coming from a Member State and complying with the rules laid down by that State, the French Republic has failed to fulfil its obligations under Article 30 of the Treaty;

2) Orders the French Republic to pay the costs.

Kapteyn Mancini Murray

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 22 October 1998.

R. Grass P. J. G. Kapteyn

Registrar President of the Sixth Chamber