In Case 75/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Second Chamber of the Belgian Cour de Cassation [Court of Cassation] for a preliminary ruling in the proceedings pending before that court between

JOSEPH HENRI THOMAS BLESGEN, an hotelier residing at 1 Rue Mont, Bevercé, represented by Jean Materne, of the Liège Bar, appellant in cassation from a judgment given on 4 November 1980 by the Cour d'Appel [Court of Appeal], Liège, Criminal Chamber,

and

STATE OF BELGIUM, represented by the Minister for Finance, whose offices are situated at 14 Rue de la Loi, Brussels, prosecution brought by the Director of Customs and Excise for the provinces of Liège and Luxembourg, whose offices are situated at 43 Rue Louvrex, Liège, represented by Antoine De Bruyn, Advocate at the Cour de Cassation,

on the interpretation of Articles 30 and 36 of the Treaty with regard to the Belgian national legislation prohibiting the stocking and the consumption of spirits of an alcoholic strength exceeding 22° in all places open to the public and in dwellings appurtenant thereto,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The Tribunal Correctionnel [Criminal Court], Verviers, found Mr Blesgen guilty of infringing Articles 1, 2 and 14 of the Law of 29 August 1919 (the Vandervelde Law) on alcohol inasmuch as, being a retailer of drinks for consumption on the premises and having one or more previous convictions, he held in stock and sold in his establishment spirits of an alcoholic strength exceeding 22 degrees at a temperature of 15 degrees Centigrade.

That judgment was confirmed by the Cour d'Appel, Liège, Criminal Chamber, on 4 November 1980, and Mr Blesgen thereupon appealed to the Cour de Cassation in reliance on Articles 30 and 36 of the EEC Treaty.

By judgment of 18 March 1981 the Cour de Cassation took the view that it was necessary for the Court of Justice to interpret the above-mentioned provisions and after staying the proceedings requested the Court to answer the following questions:

"1. Must the expression 'measures having an effect equivalent to quantitative restrictions on imports' contained in Article 30 of the Treaty establishing the European Economic Community be interpreted as meaning that the prohibition laid down by that provision covers:

(a) legislative measures prohibiting the consumption, the sale or the offering even without charge of spirits (that is to say drinks whose alcoholic strength exceeds 22° at a temperature of 15° Centigrade) for consumption on the premises in all places open to the public, in particular in establishments retailing drinks, hotels, restaurants, places of entertainment, shops, stalls, boats, trains, trams, stations, workshops or working sites as well as on the public thoroughfare, even if such a prohibition applies without distinction to national products and imported products and is not intended to protect national production?

(b) legislative measures prohibiting persons selling drinks for consumption on the premises from having in stock in any quantity whatsoever spirits (as defined above) either on the premises to which consumers are admitted or in other parts of the establishment and any appurtenant dwelling, even if such a prohibition applies without distinction to national products and to imported

products and is not intended to protect national production?"

In the event of Question 1 being answered in the affirmative:

"2. Must the expression measures 'justified on grounds of ... the protection of health and life of humans' contained in Article 36 of the Treaty establishing the European Economic Community be interpreted as meaning that measures such as those described under Parts (a) and (b) of Question 1 may or must be considered as justified on the grounds set out above in the operative part of this judgment?"

The order making the reference was registered at the Court on 7 April 1981.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on 17 June 1981 by the Commission of the European Communities, represented by its Agents François Lamoureux and Peter Oliver, on 22 June 1981 by the appellant in the main action, Joseph Henri Blesgen, represented by Jean Materne of the Liège Bar, on 22 June 1981 by the Belgian Government represented by the Minister for Foreign Affairs, on 6 July 1981 by the French Government and on 7 July 1981 by the United Kingdom represented by its Agent W. H. Godwin.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. It nevertheless invited the Commission to give certain information in writing concerning the laws and administrative provisions in the other Member States restricting the sale of spirits in public places. The Commission did so within the requisite period.

II — Written observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. After recalling the facts at the origin of the main proceedings, the terms of the order making the reference and the provisions of the Belgian legislation applicable to the matter, the Commission puts forward in essence the following observations of a legal nature:

As regards the first question put to the Court on the prohibition of sale the Commission thinks it right to recall that according to the case-law of the Court of Justice, and in particular the judgment of 26 June 1980 in Case 788/79 *Gilli* [1980] ECR 2071 and that of 19 February 1981 in Case 130/80 *Kelderman* [1981] ECR 527, the concept of measures having an effect equivalent to quantitative restrictions on imports appearing in Article 30 of the Treaty must be understood as meaning that a prohibition imposed by a Member State on importing or marketing certain classes of products whether of domestic origin or imported comes within that provision where the products are lawfully marketed in another Member State. The Commission considers that the prohibition in question on selling certain spirits in all places accessible to the public is akin to measures which the

Court has considered in the aforementioned judgments as measures having an effect equivalent to quantitative restrictions on imports. Although the Commission considers that not all rules on sale constitute *ipso facto* even potential obstacles to imports, undoubtedly such marketing rules are a direct or indirect, actual or potential obstacle to intra-Community trade. It follows that the ban on the sale of spirits in places accessible to the public as contained in Article 1 (1) of the Law of 1919 amounts to a measure having equivalent effect within the meaning of Article 30 since it affects spirits imported from other Member States.

In the Commission's view the same is true of the ban on offering spirits without charge in places accessible to the public. The fact that it is not a commercial transaction is irrelevant because the actual or potential effect of the ban is to prevent commercial transactions following such offer.

Finally the Commission considers that the ban on drinking spirits in places accessible to the public is likely directly or indirectly, actually or potentially, to impede imports. In that respect the Commission recalls that in its Directive 66/683 (*Journal Officiel* 1966, p. 3748) it treats national provisions prohibiting the consumption of an imported product as measures having equivalent effect within the meaning of Article 30. The Commission adheres to that interpretation.

As regards the second part of the first question dealing with the rule preventing persons selling drinks for consumption on the premises from having any quantity of spirits in stock on the premises or dwelling house appurtenant thereto the Commission regards such a measure, which is but the complement of the one previously referred to, as also an actual or potential, direct or indirect obstacle to imports. It is therefore to be regarded as a measure having an effect equivalent to a quantitative restriction referred to in Article 30 of the Treaty.

As regards the second question the Commission considers that in principle the object of a law of such general and absolute scope as that in question is to protect public health. Nevertheless in view of the disparity between the law and its application in practice the Commission thinks that a definitive position must be adopted in the light particularly of the information furnished by the Belgian State on the effects of the Law of 1919 on the consumption of alcohol. In doing so the Commission considers it is following the case-law of the Court to the effect that "it must always be the duty of a national authority relying on Article 36 to prove that the measures which it enforces satisfy these criteria" (paragraph 24 of the judgment of 8 November 1979 in Case 251/78 *Denkavit* [1979] ECR 3369).

In conclusion the Commission proposes the following answer to the first question put by the Cour de Cassation:

"Legislative measures prohibiting on the one hand the consumption, the sale or the offering even without charge of spirits for consumption on the premises in all places open to the public and on the other hand prohibiting persons selling drinks for consumption on the premises from having spirits in stock in

any quantity whatsoever constitute measures having an effect equivalent to quantitative restrictions on imports within the meaning of Article 30 of the EEC Treaty."

As regards the answer to the second question the Commission considers that the measures described in the first question may be justified on grounds of protecting public health where it appears that they are in practice effective therefor.

2. The appellant points out that the Belgian Law on the distribution and consumption of alcohol is singularly restrictive in comparison with the rules in force in other countries of the Community. He observes that only Belgium has adopted and maintained since 1919 a system totally prohibiting the consumption of spirits in places open to the public and allowing the purchase for consumption in private of not less than two litres at a time of spirits not complying with the descriptions in the Vandervelde Law of 22 August 1919.

He alleges that the effect of applying the system on the domestic market has been the reduction of the consumption of spirits, the virtual disappearance of distilleries and the development of a very large national brewing industry.

In the appellant's view the effect of the restrictive measures on intra-Community trade may be described as appreciable by reason of the protection conferred on the Belgian brewing industry which to a large extent is safe against competition from foreign spirits in the share of the market in alcohol in general.

The Belgian legislation is accordingly incompatible with Article 30 of the EEC Treaty since the prohibitions laid down by the Law of 1919 are likely to affect imports of spirits from other Member States of the Community and thereby constitute a measure having an effect equivalent to quantitative restrictions according to the case-law of the Court in the judgment of 5 February 1981 in Case 53/80 *Koninklijke Kaasfabriek Eyssen BV* [1981] ECR 409, paragraph 11.

The incompatibility with Community law of the provisions of the Belgian Law of 29 August 1919 can be avoided only by recourse to Article 36 of the EEC Treaty in so far as that provides that obstacles to intra-Community trade may be justified, as far as is relevant to the questions put to the Court by the Belgian Cour de Cassation on grounds of "the protection of health and life of humans".

In the appellant's view the Belgian legislation in question cannot be justified on that ground pursuant to Article 36 of the EEC Treaty. The benefit of the exception to the provisions of Article 30 provided for in Article 36 of the EEC Treaty is applicable only to the adoption of national provisions on grounds of the protection of the health and life of humans today.

On the other hand the Belgian legislation in question owed its origin and justification only to grounds which have ceased to apply.

The appellant observes in that respect that when the Belgian Law of 1919 was adopted it was necessary to deal with certain economic and social conditions which have ceased to exist today by

counteracting certain forms of dangers created by alcohol and thus to ensure the protection of the health and well-being of families, wives and children.

The reasons which were behind the adoption of the Law at the time are different from those contained in the order making the reference which mentions mainly combating "alcoholism in general" and in particular "its association with crime" which "is more serious owing to the traffic on the roads".

In the appellant's view the kinds of danger caused by alcohol are today statistically and sociologically identical in all countries and in particular the countries of the Community whether from the point of view of human physiology, public safety by reason of the risks of road accidents or by reason of criminal associations.

Consequently what is universally valid for all the other countries of the Community cannot provide reasons for one of them alone justifying the adoption or maintenance of provisions contrary to Article 30 of the EEC Treaty on the basis of Article 36 thereof.

Neither the special circumstances at the time when the Law in question was adopted in Belgium nor the social and human context of Belgium today make it lawful therefore to have national rules relating to spirits which are so restrictive in relation to the rules of other Member States. The universality of the actual conditions relating to the consumption of alcohol in the Community makes disparity between the Belgian national legislation and the laws of other countries of the Community singular and unacceptable.

Moreover, the appellant in the main proceedings observes in the alternative that the Belgian rules are contrary to the principle of proportionality according to which where a choice is possible between several courses of action to tackle a social problem which is of the same nature throughout the Community the remedy least obstructing trade such as the licensing system should be adopted.

Since it cannot come within the exceptions of Article 36, the Belgian legislation on spirits falls under the prohibition in Article 30 of the EEC Treaty.

3. After referring to the facts of the case and the relevant Belgian legislation in question, the Belgian Government makes the following observations:

With regard to the first question put to the Court the Belgian Government considers that the Law of 29 August 1919 has no restrictive effect upon intra-Community trade since it makes no distinction between imported and national products and affects only drinks the strength of which is in excess of 22° at a temperature of 15° C consumed in public places.

In the view of the Belgian Government the system in question is comparable to the systems adopted by other governments for combating alcoholism such as determing the closing time for licensed premises and in the absence of common rules for the market in alcohol is consistent with the interpretation given by the Court to Article 30. It refers to

the judgment of the Court of 20 February 1979 in Case 120/78 *Rewe-Zentrale AG* v *Bundesmonopolverwaltung für Branntwein* where it was held that obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products in question (alcohol and spirituous beverages) must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and consumer protection. The same consideration is mentioned again by the Court in Case 788/79 *Gilli and Andres.*

The Belgian Government maintains that those observations which apply to the ban on the consumption of spirits in places accessible to the public as provided for in Article 1 of the Law of 29 August 1919 apply *a fortiori* to the ban on keeping spirits in places to which consumers are admitted and other parts of the establishment as well as in any dwelling appurtenant thereto, as provided by Article 2 of the Law. The latter provision is in fact necessary to ensure the effectiveness of the provisions of Article 1 without in itself being capable of impeding intra-Community trade.

The answer proposed by the Belgian Government to the first question put to the Court is therefore that the provisions of Articles 1 and 2 of the Belgian Law of 29 August 1919 are not in conflict with the prohibition of measures having an effect equivalent to quantitative restrictions as contained in Article 30 of the EEC Treaty.

As regards the second question the Belgian Government considers that the provisions in dispute are in any event covered by Article 36 of the EEC Treaty. It stresses that the provisions aim to meet social imperatives, namely combating alcoholism, the maintenance of public morality and public safety threatened both by road accidents caused by drivers affected by drink and crime caused by alcoholism.

The legislation in dispute not only allows the Belgian State to deal with the quite specific problem of public drunkenness in a way which it considers most effective, like other Member States which have adopted similar measures, but also makes it possible to achieve the objectives referred to in Article 36 of the EEC Treaty. The Belgian Government contends that according to the Court's consistent case-law at the present stage of European integration the Member States are entitled to maintain or introduce measures meeting the objectives referred to in Article 36 of the Treaty. It refers in particular to the judgment in Case 34/79 *Regina* v *Henn and Darby* [1979] ECR 3795 where it was recognized that "in principle it is for each Member State to determine in accordance with its own scale of values and in the form selected by it the requirements of public morality in its territory" (paragraph 15 at p. 3813).

Moreover the Belgian Government stresses that the provisions in question constitute neither arbitrary discrimination nor a disguised restriction on trade between Member States. There is no arbitrary discrimination because similar situations are not treated

differently since the provisions in dispute concern consumption as such in public places without distinction between the kind of products, the manufacturers, the sellers and importers.

The Belgian Government stresses that to accept the claim that there is a disguised restriction would mean disregarding the nature of the law in dispute, its basic *raison d'être*, the conditions in which it was adopted and the reasons at present justifying its continuance. In that respect the Government cites the statement by the Commission on 27 January 1978 in answer to a question put to it by Mr Cousté recognizing that the provisions in question were lawful, necessary and not disproportionate for attaining the objectives pursued by the Belgian Government; further there is no discrimination between domestic products and products imported from other Member States. The same is true of the European Commission of Human Rights which recognized the validity of Article 2 of the Law of 29 August 1919 from the point of view of the Convention for the Protection of Human Rights.

In conclusion the Belgian Government proposes the following answer to the second question:

"The provisions of Article 1 and 2 of the Belgian Law of 29 August 1919 must be regarded as justified having regard to the provisions of Article 36 of the EEC Treaty."

4. The French Government observes that the contested provisions would certainly be incompatible with Article 30 of the EEC Treaty if the prohibitions they contain were intended to protect certain national products.

There would however be a different conclusion if it is considered that the prohibitions apply both to domestic and foreign products and are justified by the aim of protecting an overriding general interest of a kind prevailing over the requirements of a single market or by the grounds set out in Article 36 and in particular those relating to the protection of human health.

In that respect the French Government states that the solution to problems of voluntary intoxication or dependence on drugs is to restrict the availability of a product and to change public behaviour in order to reduce demand as was concluded by the Community deliberations conducted since November 1977 in liaison with the World Health Organization and the International Council on Alcohol and Addictions.

The French Government observes that in the deliberations it was stressed that among the courses of action by States with regard to the prevention of alcoholism there is mention of legislative measures the content of which may vary at the discretion of each country. Thus the French Government, among other measures opted for restricting the availability of alcoholic drinks by limiting the number of places where they were served.

The French Government therefore considers that the Belgian legislative measures are neither a means of arbitrary discrimination nor a disguised restriction on trade between Member States and that, regard being had to the facts mentioned in the order making the reference, the measures are intended to satisfy essential requirements and as such

entitled to exemption from the obligations under Article 30 of the EEC Treaty.

In support of that conclusion the French Government cites Directive 70/50/EEC of 22 December 1969 and the grounds of certain judgments of the Court and in particular those given in Cases 120/78 *"Cassis de Dijon"* and 788/79 *Criminal Proceedings against H. Gilli and P. Andres.*

5. The United Kingdom also refers to the judgment of the Court in Case 120/78 *"Cassis de Dijon"* where it was held that in the absence of common rules relating to the production and marketing of alcohol it was for the Member States to regulate all matters relating thereto provided that where the national law operated as an obstacle to movement within the Community that law had to be justified on a ground of general interest such as the protection of public health.

In the submission of the United Kingdom, the Belgian Law of 29 August 1919 falls within the prohibition laid down in Article 30 of the EEC Treaty. The ban on the sale of drinks which have an alcoholic content of more than 22° has the effect of reducing their potential sales. Belgium is moreover a major producer of beer but not an important producer of spirits. The Law thus favours products of which there is a substantial local production. It impedes competition from imported products and has an adverse effect on intra-Community trade.

The United Kingdom also considers that the measures provided for by the Belgian Law involve discrimination against spirit producers in other Member States whose internationally established brands are impeded from entering the Belgian market, whereas local producers can easily adapt themselves to the law of their own country by producing spirits for their domestic market below 22°, and in practice have done so.

The United Kingdom maintains that the tests laid down by the Court in a number of recent cases and reaffirmed in its judgment in Case 113/80 *Commission* v *Ireland* have established that the maintenance of the Belgian Law can be justified only if the Law is necessary in order to satisfy mandatory requirements relating (for present purposes) to the protection of public health.

It submits that the Belgian Law is not capable of such justification in the absence of medical evidence to demonstrate that:

The consumption of a given quantity of alcohol in the form of spirit of a strength of over 22° is more damaging to health than the consumption of the same quantity of alcohol consumed in a more diluted form in products of a strength below 22° by volume;

The availability for consumption in public places of spirits above 22° would facilitate or encourage the consumption of a greater total quantity of alcohol than alcoholic beverages of lower alcoholic strength;

Consumption in public places of spirits above 22° would be more harmful to public health than the consumption of such drinks in premises at present permitted by the law.

Finally, it is necessary to inquire whether the disputed Law has been diverted from its proper purpose and is being used in such a way as either to create discrimination in respect of goods originating in other Member States or indirectly to protect certain national products (Case 34/79 *Regina* v *Henn and Darby*, paragraph 21 of the judgment).

III — Information given by the Commission

At the request of the Court the Commission, within the period stipulated, supplied information on the laws and administrative provisions in the other Member States restricting the sale of spirits in public places.

According to that information the law of each Member State is basically as follows:

In Germany the sale of spirits is conditional upon obtaining a licence. It is generally banned otherwise than in a restaurant or a permanent bar. A general exception applies to the sale of beer and wine in closed containers where the sale takes place in the district where the seller lives. Other exceptions may be made in particular for markets and festivals.

In Denmark the sale of what are called "strong drinks" (wine, wine from fruit and other drinks fermented with alcohol which contain more than 2.5% alcohol, distilled alcoholic drinks containing ethanol, beer containing 2.25% or more alcohol (ethanol) and drinks to which the aforementioned beverages have been added) is allowed only by persons holding a licence which lasts for eight years and is granted by the local authority. There is exemption for canteens which upon licence by the police may serve beer and wine solely during meal-times.

"Strong drinks" may not be served in business undertakings save specialized shops which upon licence from the police may offer free samples in their shops, at fairs or at exhibitions. There is a general exemption with regard to serving strong drinks free of charge at exhibitions which are not open to the public. Finally it is not permitted to serve "strong drinks" to persons less than eighteen years of age or who are under withdrawal treatment as decided by the public authority or who are drunk.

In France the Code des Débits de Boissons [Code for Retail Sale of Liquor] divides establishments for the sale of drinks to be consumed on the premises into four classes according to the scope of the licence they posses. The distinction partly follows the one made for drinks themselves which are divided into five groups by Article L 1 of the Code which provides:

"For the purpose of regulating their manufacture, sale and consumption, beverages are divided into five groups:

1. Non-alcoholic beverages; . . .

Alcoholic beverages:

2. Undistilled fermented beverages namely wine, beer, cider, perry and mead, to which are added natural sweet wines coming under the tax arrangements applying to wine as well as blackcurrant liqueurs and fermented fruit or vegetable juices containing 1 to 3° of alcohol;

3. Natural sweet wines other than those belonging to Group 2, liqueur wines, wine-based aperitifs and strawberry, raspberry, blackcurrant or cherry liqueurs containing no more than 18° of pure alcohol;

4. Rums, tafias, spirits obtained from the distillation of wines, ciders, perries or fruits not containing any added essence, as well as liqueurs sweetened with sugar, glucose or honey in a minimum amount of 400 grams per litre in regard to aniseed-flavoured liqueurs and 200 grams per litre in regard to other liqueurs which do not contain more than half a gram of essence per litre;

5. All other alcoholic beverages."

The sale of alcoholic drinks of the second group is allowed in bars falling within the second category, the sale of drinks of the second and third groups is allowed in bars falling within the third category (restricted licence) and the full licence allows the sale of drinks of the fourth and fifth groups in bars of the fourth category.

Special rules apply to restaurants, off-licences, temporary bars, canteens, private clubs and exhibitions.

The opening of bars for alcoholic drinks is subject to various restrictions relating in particular to the population of the municipality. Anyone wishing to open a bar for drinks must by law make a preliminary declaration (administrative document) and be in possession of a licence (revenue document).

Prefects may make orders specifying the radii within which there may be no bars around certain establishments (hospitals, schools, barracks, buildings intended for worship and so forth).

Special provisions prohibit the sale of drinks of the third, fourth and fifth groups to minors.

The sale of the following drinks is prohibited:

1. Apéritifs with a wine basis of more than 18° of alcohol;

2. Spirits flavoured with aniseed of more than 45° of alcohol without prejudice to the application of the provisions of the first and second paragraphs of Article 1 of the Decree of 24 October 1922 as amended;

3. Apéritifs, bitters, tars, gentian-bitters and all similar products containing less than 200 grammes of sugar per litre and more than 30° of alcohol.

To that list there must be added the prohibition on selling absinthe and similar liquors.

It is to be observed that the obligation for owners of cafés and bars to sell drinks of the third, fourth and fifth groups in containers of less than half a litre was abolished by a decree of

29 September 1964. All that remains is the prohibition of the retail sale of alcoholic drinks on credit.

Local police authorities, the mayor and prefect, are empowered to take all necessary measures for preserving and guaranteeing public order and may in consequence regulate night-clubs, cafés and bars in the municipality or police district.

Thus administrative case-law gives the mayor the right to fix the opening and closing times of bars. The mayor may validly prohibit the sale of spirits before 11 a.m. in bars and prohibit access to bars by minors of 16 and even 18 years of age.

In Greece the law on the subject is very liberal.

Presidential Decree No 180 of 19 February and 10 March 1979, which concerns the conditions for operating places for the sale of spirits and gaming centres, lays down the following conditions which must be satisfied for the grant of a licence for operating one of the above-mentioned establishments:

Clean record;

Applicant must be more than 21 years of age.

The sale is moreover prohibited if it may create problems for public safety and health or if the neighbourhood may be affected aesthetically.

The Royal Decree No 592/1963 provides that everything concerning the operation of public establishments on the day of elections (prohibition of consumption from sunrise to sunset) is to be governed by order of the Minister for Public Order.

In Ireland the sale of alcoholic drinks is governed by a system of specific licensing (Intoxicating Liquor Acts).

Licences are in principle issued by magistrates.

A distinction is made between on-licences and off-licences.

Special rules are provided for the sale of wine.

An application for a special licence must be made for the sale of alcoholic drinks for certain events (festivals and sporting clubs for example).

The opening hours of bars are also regulated. Thus bars must be closed to the public at certain times. Exemptions may be obtained especially for restaurants.

In Italy the sale to the public of all drinks whether spirituous or not is subject to a licence from the provinicial authority for public security.

The sale of spirits of any strength by itinerant traders is prohibited.

The sale in bars, restaurants and so forth of spirits of more than 21% alcohol is subject to a special licence from the prefect.

Such licences and authorizations are granted subject to satisfying certain conditions relating to hygiene and public decency.

In every municipality the number of sales outlets for spirits of no matter what strength may not exceed the ratio of one for every four hundred inhabitants. For drinks of more than 4½% alcohol the ratio is 1:1 000. However vintners selling their own products are not taken into account.

The sale of spirits of more than 21% alcohol is (theoretically) prohibited during festivities and on election days.

The provincial authorities specify the minimum distances between bars selling spirits (of no matter what strength) and hospitals, works sites, factories, schools, barracks, churches and other places of worship).

In Luxembourg the law in force involves varied provisions of a fiscal nature and provisions specifying the conditions which a person must satisfy before being allowed to open a bar.

The sale of alcoholic drinks in the open air, under canvas or in huts occasionally and on special or periodic occasions is also subject to regulation.

The hours for opening (nor before 7 a.m.) and closing (in principle 11 p.m.) are also regulated.

The sale of drinks to certain categories of persons is also prohibited. They include persons under interdiction or subject to judicial guardianship, minors less than 18 years of age not accompanied by persons *in loco parentis* except when travelling, and persons in a state of inebriation.

Minors less than 18 years of age are not allowed to be offered or served liquors, spirits or other drinks more than 18% alcohol even if travelling or accompanied by persons *in loco parentis*.

In the Netherlands, as in Belgium, the law in force since 1 November 1967 is not concerned with offering the public alcoholic drinks free of charge.

The law is concerned with the commerial and non-commercial sales to the public of alcoholic drinks for consumption on the premises and the retail sale of alcoholic drinks of more than 15% alcohol and in certain cases other alcoholic drinks.

For such commercial and non-commercial sales a licence from a committee of the mayor and aldermen is necessary. A licence is required for every establishment. A licence is not granted for the above-mentioned sales otherwise than in an establishment.

To obtain a licence the directors and managers of an establishment and the establishment itself must satisfy certain criteria.

Although the law makes no distinction between the two types of licence there is in fact a distinction between less strong drinks (less than 15%) and strong drinks. The latter distinction is of some importance in relation to the delegation to local authorities of the power to issue licences. The law provides that "bye-laws may prohibit in establishments, or in establishments of a specified category as defined in the bye-law, in the municipality or in areas specified in the bye-law:

(a) the offering of alcoholic drinks for consumption on the premises otherwise than free of charge;

(b) the offering of drinks containing more than 15% alcohol for consumption on the premises otherwise than free of charge.

In its report on the provisions in force the Government considered it desirable for local authorities to be able to prohibit strong drinks in certain establishments such as for example youth centres or the premises of sports clubs. In the same way it thought it proper for the local council to be able to prohibit the serving of such drinks for a specified period in an area where there is a fair or fête.

A literal interpretation of the provisions in force would allow the district council to prohibit the serving of all alcoholic drinks in all establishments throughout the district. However, there is no mention of such a ban in commentary on the law in force or in administrative practice. It seems unlikely that such a complete ban has ever been adopted by a district council. Before any such regulations may be adopted the Provincial Council for Public Health and the local Chamber of Commerce must be heard and moreover any such regulations must be approved by the Gedeputeerde Staten (committee of local aldermen).

In England and Wales the sale of alcoholic drinks, namely spirits, wine, beer and cider, is conditional upon the grant of a licence. The law therefore applies to all alcoholic drinks whatever their strength.

The law distinguishes between wholesale and retail sales. Any sale to one person on a single occasion of 2 gallons or one case of spirits or wine or 4½ gallons or 2 cases of beer or cider is treated as a retail sale. Any sales outside those limits are deemed to be wholesale dealings.

A licence from the Inland Revenue is required for wholesale dealings but the system is to be abolished with effect from 1 July 1982 according to the Finance Act 1981.

Retail licences are issued by Justices of the Peace. They are of two kinds:

On-licences authorizing the sale of alcoholic drinks for comsumption on the premises or elsewhere;

Off-licences authorizing the sale of such drinks to be consumed only off the premises.

Further the holder of an on-licence or off-licence may sell alcoholic drinks only during the hours laid down by law.

In addition there are various specific rules applying for example to theatres, restaurants, trains and ships.

As regards Scotland and Northern Ireland the Commission states that the law applicable follows the principles of English law.

As regards wholesale dealings Scotland and Northern Ireland have the same system as England which is described above. As regard retail sales, subject to any recent amendments, the principal differences in relation to the English system are as follows:

In Scotland the retail sale of alcoholic liquor is governed by the Licensing (Scotland) Act 1976 which makes such sale conditional upon possession of a licence. Whereas such licences are granted by Justices of the Peace in England that task in Scotland devolves upon licensing boards made up of district councillors. Under section 29 the licensing board may grant a licence authorizing the sale of wine, port, beer, cider and perry to the exclusion of spirits.

In Northern Ireland the retail sale of intoxicating liquor is governed by the Licensing Act (Northern Ireland) 1971. Licences are issued by county courts.

IV — Oral procedure

At the hearing on 8 December 1981 oral argument was presented by the following: Jean Materne of the Liège Bar for the appellant in the main action, Mr Van Rossem of the Brussels Bar, assisted by Thierry Terwagne as expert, for the Belgian Government, Bernard Botte, Attaché at the Central Administration of the Ministry for External Relations, acting as Agent, for the French Government, and Peter Oliver and François Lamoureux, acting as Agents, for the Commission of the European Communities.

The Advocate General delivered his opinion on 9 February 1982.

Decision

1 By judgment of 18 March 1981, received at the Court on 7 April 1981, the Belgian Cour de Cassation referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 30 and 36 of the EEC Treaty to enable it to judge whether certain provisions of the Belgian Law of 29 August 1919 on the sale and consumption of alcohol were compatible with Community law.

2 The questions were raised in criminal proceedings brought by the Belgian authorities against a restaurateur accused of infringing Articles 1, 2 and 14 of the aforesaid Law inasmuch as, being a retailer of drinks for consumption on the premises, he held in stock and sold in his establishment spirits of an alcoholic strength exceeding 22 degrees at a temperature of 15 degrees Centigrade.

3 Both before the Cour de Cassation and in his observations to the Court of Justice the accused maintained that even if they applied without distinction to domestic and imported products the rules laid down by Articles 1 and 2 of the Law of 29 August 1919 constituted measures having an effect equivalent to quantitative restrictions on the importation of spirits contrary to Article 30 of the EEC Treaty. Further those measures could not be justified on any of the grounds listed in Article 36 of the Treaty and in particular the protection of the health and life of humans since there was no certain and present need for them which would be recognized as such throughout the Community.

4 The Belgian Cour de Cassation considered that the case involved problems of the interpretation of Community law and referred the following questions to the Court for a preliminary ruling:

"1. Must the expression 'measures having an effect equivalent to quantitative restrictions on imports' contained in Article 30 of the Treaty establishing the European Economic Community be interpreted as meaning that the prohibition laid down by that provision covers:

(a) legislative measures prohibiting the consumption, the sale or the offering even without charge of spirits (that is to say drinks whose alcoholic strength exceeds 22° at a temperature of 15° Centigrade) for consumption on the premises in all places open to the public, in particular in establishments retailing drinks, hotels, restaurants, places of entertainment, shops, stalls, boats, trains, trams, stations, workshops or working sites as well as on the public thoroughfare, even if such a prohibition applies without distinction to national products and imported products and is not intended to protect national production?

(b) legislative measures prohibiting persons selling drinks for consumption on the premises from having in stock in any quantity whatsoever spirits (as defined above) either on the premises to which consumers are admitted or in other parts of the establishment and any adjoining dwelling, even if such a prohibition applies without distinction to national products and to imported products and is not intended to protect national production?"

"2. In the event of Question 1 being answered in the affirmative: Must the expression measures 'justified on grounds of ... the protection of health and life of humans' contained in Article 36 of the Treaty establishing the European Economic Community be interpreted as meaning that measures such as those described under Parts (a) and (b) of Question I may or must be considered as justified on the grounds set out above in the operative part of this judgment?""

First question

The first question inquires whether the concept of measures having an effect equivalent to quantitative restrictions as set forth in Article 30 of the EEC Treaty also covers measures prohibiting the consumption for payment or free of charge (Question 1 (a)) and the holding in stock (Question 1 (b)) in all places open to the public or in other parts of the premises and any dwelling appurtenant thereto, of spirits in excess of 22° of alcohol even if such prohibition applies without distinction to domestic and imported products and not intended to protect domestic production.

In the view of the Belgian Government the law in question does not fall under the prohibition of Article 30 of the EEC Treaty because it has no restrictive effect upon intra-Community trade in the absence of any discrimination between imported and domestic products. The objective of the Law of 29 August 1919 is a general one and forms part of the campaign against alcoholism. The Belgian Government points out that the ban on keeping and consuming certain spirits in places open to the public is intended to combat alcoholism and its spread and in particular to protect youth against its harmful effects both from a personal and social point of view. It therefore constitutes a legitimate choice of social policy in accordance with the objectives of general interest pursued by the Treaty. The absence of Community rules in the matter justifies national action in so far as it is considered necessary to satisfy imperative requirements which in any event have precedence over the requirements of free movements of goods.

Article 30 of the EEC Treaty provides that quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States. It follows that any national measure likely to hinder, directly or indirectly, actually or potentially, intra-Community trade is to be

regarded as a measure having an effect equivalent to quantitative restrictions. As the Court pointed out in its judgment of 10 July 1980 in Case 152/78 *Commission* v *French Republic* [1980] ECR 2299, even though a law on the marketing of products does not directly concern imports, it may, according to the circumstances, affect prospects for importing products from other Member States and thus fall under the prohibition in Article 30 of the Treaty.

8 Moreover according to Article 3 of Commission Directive 70/50 of 22 December 1969 (Official Journal, English Special Edition 1970 (I) p. 17) on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty, the prohibition in Article 30 of the Treaty also covers national measures governing the marketing of products even though equally applicable to domestic and imported products, where the restrictive effect of such measures on the free movement of goods exceeds the effects intrinsic to trade rules.

9 That is not however the case with a legislative provision concerning only the sale of strong spirits for consumption on the premises in all places open to the public and not concerning other forms of marketing the same drinks. It is to be observed in addition that the restrictions placed on the sale of the spirits in question make no distinction whatsoever based on their nature or origin. Such a legislative measure has therefore in fact no connection with the importation of the products and for that reason is not of such a nature as to impede trade between Member States.

10 The same considerations also apply to the prohibition of keeping the drinks in question in premises appurtenant to the establishment open to the public. In so far as that provision is ancillary to the prohibition of consumption on the premises its effect cannot be to restrict the importation of products originating in other Member States.

11 The first question must therefore be answered to the effect that the concept in Article 30 of the EEC Treaty of measures having an effect equivalent to

quantitative restrictions on imports is to be understood as meaning that the prohibition laid down by that provision does not cover a national measure applicable without distinction to domestic and imported products which prohibits the consumption, sale or offering even without charge of spirituous beverages of a certain alcoholic strength for consumption on the premises in all places open to the public as well as the stocking of such drinks on premises to which consumers are admitted or in other parts of the establishment or in the dwelling appurtenant thereto, in so far as the latter prohibition is complementary to the prohibition of consumption on the premises.

Second question

12 Since the second question was put only in the event of an answer in the affirmative to the first question, it does not call for consideration.

Costs

13 The costs incurred by the Governments of the Kingdom of Belgium, the French Republic and the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since the proceedings are, in so far as the parties to the main action 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

hereby rules:

The concept in Article 30 of the EEC Treaty of measures having an effect equivalent to quantitative restrictions on imports is to be understood as meaning that the prohibition laid down by that provision does not cover a national measure applicable without distinction to domestic and imported products which prohibits the consumption, sale or

offering even without charge of spirituous beverages of a certain alcoholic strength for consumption on the premises in all places open to the public as well as the stocking of such drinks on premises to which consumers are admitted or in other parts of the establishment or in the dwelling appurtenant thereto, in so far as the latter prohibition is complementary to the prohibition of consumption on the premises.

Mertens de Wilmars Bosco Touffait
Due Pescatore Mackenzie Stuart O'Keeffe
Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 31 March 1982.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 9 FEBRUARY 1982 [1]

Mr President,
Members of the Court,

The present case, concerned once again with the interpretation of Articles 30 and 36 of the EEC Treaty, has its origin in criminal proceedings brought by the Belgian authorities against a Belgian hotelier and restaurateur Joseph Blesgen. A judgment of the Tribunal Correctionnel, Verviers, of 21 December 1977 found Joseph Blesgen guilty of infringing Articles 1, 2 and 14 of the Belgian Law of 29 August 1919 concerning rules on alcohol (the so-called "Lex Vandervelde") because, being a retailer of drinks for consumption on the premises, and having one or more previous convictions, he held in stock and sold in his establishment spirits of an alcoholic strength exceeding 22° at a temperature of 15° C.

[1] — Translated from the German.