JUDGMENT OF THE COURT (Third Chamber)

14 June 2001 *

In Case C-84/00,

Commission of the European Communities, represented by R. Wainwright, acting as Agent, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger and S. Seam, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by failing to allow the marketing within France of articles of precious metals which come from other Member States and purport to have a standard of fineness of '999 parts per thousand', despite the fact that that standard is commonly used in commercial practice, the French Republic has failed to comply with its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC),

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

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

gives the following

Judgment

1 By application lodged at the Court Registry on 7 March 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to allow the marketing within France of articles of precious metals which come from other Member States and which purport to have a standard of fineness of '999 parts per thousand', despite the fact that that standard is commonly used in commercial practice, the French Republic has failed to comply with its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC).

Community legislative background

2 Under Article 30 of the Treaty, '[q]uantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States'.

National legislative background

3 Article 521 of the Code générale des impôts (General Tax Code), as amended by Law No 94-6 of 4 January 1994 adjusting the legislation on guaranteed

standards for precious metals and the supervisory powers of customs agents concerning the administrative situation of certain persons (JORF of 5 January 1994, p. 245, hereinafter 'the CGI'), provides:

'Manufacturers of articles made of gold or containing gold, silver or platinum shall be subject to the rules on guaranteed standards in this chapter, not only in respect of their own production but also in respect of articles which they have manufactured for them by third parties using materials belonging to them. Any person who markets such articles which come from other Member States of the European Union or third countries, or their representatives, shall also be subject to these rules.'

4 Under Article 522 of the CGI:

'The statutory standards of fineness for articles of gold or containing gold and for articles of silver or platinum are as follows:

(a) 916 and 750 parts per thousand for articles of gold; 585 and 375 parts per thousand for articles containing gold;

(b) 925 and 800 parts per thousand for articles of silver;

(c) 950, 900 and 850 parts per thousand for articles of platinum.'

Pre-litigation procedure

5 By letter of 20 December 1988, the Commission drew the attention of the French Government to the problems which, in its view, were raised by certain provisions applicable to the import and marketing in France of articles made of precious metals in relation to Article 30 et seq. of the Treaty.

6 In their reply of 15 June 1989, the French authorities stated that they envisaged taking a number of measures in the relevant area which would, in part, take account of the Commission's complaints.

7 On 23 April 1991 the Commission sent the French Republic a letter of formal notice, to which the French Government replied on 6 August 1991.

8 By letter of 18 January 1994, the Commission suggested to the French Government a number of ways in which the points at issue between them might be resolved

9 On 22 February 1994, the French authorities sent the Commission a copy of Law No 94-6.

10 The arguments put forward in response to the letter of formal notice and the legislative changes made did not fully satisfy the Commission, which therefore

issued, on 10 July 1996, a reasoned opinion under Article 169 of the EC Treaty (now Article 226 EC) accusing the French Republic of failing to fulfil its obligations under Community law by not allowing the marketing in France of articles of precious metals coming from other Member States under descriptions borne by those articles in their countries of origin and with an indication of the standard of fineness used in that country, even though that standard of fineness is commonly used in commercial practice. The Commission called on the French Government to take the measures necessary to comply with the reasoned opinion within a period of two months after receipt thereof.

11 The French authorities replied by letter of 21 August 1996 that the term '999 parts per thousand' could be easily incorporated in the French rules. It contended that the obligation to market, at the retail stage, articles of a standard of fineness of 916 and 750 parts per thousand under the description 'gold' and articles of a standard of fineness of 585 and 375 parts per thousand under the description 'gold alloy' did not, contrary to the Commission's view, infringe the requirements of Community law.

12 By letter of 8 January 1997, the Commission called on the French Government to forward to it a draft measure incorporating a standard of fineness of '999 parts per thousand' in the French rules. As regards the restrictions confining the use of the description 'gold' to articles with a standard of fineness of 916 or 750 parts per thousand, the Commission contends that it constitutes an impediment to the free movement of goods, prohibited by Article 30 of the Treaty.

13 By letter of 6 February 1997, the French authorities forwarded to the Commission draft rules intended to introduce into French legislation the standard of fineness of '999 parts per thousand'. However, their view remained unchanged

regarding the complaint concerning the distinction drawn regarding the description under which articles were sold depending on whether the standard of fineness thereof was more or less than 585 parts per thousand.

14 By letter 16 April 1997, the Commission, although reserving its position regarding the matter of the description under which goods were sold, informed the French Government that, pending the adoption of the draft measure amending the General Tax Code so as to introduce the standard of fineness of '999 parts per thousand', the Treaty-infringement proceedings would be suspended.

15 By letter of 19 August 1997, the French Government informed the Commission that, according to its calculations, the provisions intended to legalise the standard of fineness of '999 parts per thousand' for gold, silver and platinum would enter into force on 1 January 1998.

16 On 21 January 1998, the French authorities forwarded to the Commission a draft text providing, in particular, for recognition of the standard of fineness of '999, parts per thousand'. By letter of 5 March 1998, they informed the Commission that the new text had been incorporated in the draft law amending and simplifying indirect taxes and related rules, which was to be submitted to parliamentary vote at the end of the first half of 1998.

17 Finally, by letter of 31 May 1999, the Commission informed the French authorities that, according to the information available to it, that draft law had not yet been included in the parliamentary agenda. It therefore called on the French Government to ensure that the draft was adopted as soon as possible and to forward precise information on the point. That letter drew no response.

18 In those circumstances, the Commission commenced the present proceedings.

Substance

19 The Commission submits that Articles 521 and 522 of the CGI are contrary to Article 30 of the Treaty, in that they constitute an obstacle to the marketing in France of articles of precious metals lawfully manufactured and marketed in other Member States bearing an indication of a standard of fineness of '999 parts per thousand' that they bear in their country of origin.

20 The Commission observes that reliance on the mandatory requirement of fairness of commercial transactions cannot justify the prohibition of marketing under a particular description products imported from other Member States which do not comply with the requirements of the Member State of importation even though those products are lawfully and traditionally manufactured and marketed in the Member State of origin under the same description (see, in particular, Case C-269/89 *Bonfait* [1990] ECR I-4169 and Case C-293/93 *Houtwipper* [1994] ECR I-4249). Moreover, the protection of consumers could be achieved by other means which would not frustrate the free movement of goods.

21 According to the Commission, the French authorities must allow, if not all the standards of fineness commonly accepted in the other Member States, at least some of the standards of fineness commonly used in trade which do not in any way undermine consumer protection and the fairness of commercial transactions. The Commission refers in that respect to, in particular, the standards of fineness listed in Annex I to the Proposal for a Council Directive on articles of precious metal (93/C 318/06 — OJ 1993 C 318, p. 5), as amended by the Proposal for a

European Parliament and Council Directive on articles of precious metal (94/C 209/04 — OJ 1994 C 209, p. 4). It emphasises that the standard '999 parts per thousand' appears in that annex, which sets out the standards used in the Member States with the exception of those which are too close and might be liable to mislead consumers.

22 According to the Commission, the introduction of a standard of fineness of '999 parts per thousand' does not undermine the aim of consumer protection pursued by the French rules, since there is an affinity with the standards of fineness already recognised. Furthermore, the French authorities would retain the right to require that all information regarding the standard of fineness be clearly indicated, in particular by means of labelling or the provision of information where the articles are displayed.

23 In response to that criticism, the French Government states that it has forwarded to the Commission draft measures intended to include the standard of fineness of '999 parts per thousand' in French legislation and that it is endeavouring to ensure that those draft measures are passed as soon as possible, having regard to the constraints of the governmental and parliamentary timetable.

24 In that regard, it should be borne in mind that, in the absence of harmonisation of legislation, obstacles to the 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 having equivalent effect which are prohibited by Article 30 of the Treaty, 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 (see, in particular, Case 120/78 *Rewe-Zentral* [1979] ECR 649, '*Cassis de Dijon*', paragraph 14, and *Houtwipper*, cited above, paragraph 11).

25 In this case, it is undisputed that the rules at issue, in so far as they have the effect of prohibiting the marketing in France of articles of precious metals purporting to have a standard of fineness of '999 parts per thousand' which come from other Member States where they are lawfully manufactured and marketed, constitute an impediment to intra-Community trade.

26 Moreover, the French Government has not put forward any reason in the public interest with a view to justifying that impediment.

27 Consequently the action brought by the Commission must be considered to be well founded.

28 Therefore, it must be held that, by failing to allow the marketing within France of articles of precious metals which come from other Member States and purport to have a standard of fineness of '999 parts per thousand', despite the fact that that standard is commonly used in commercial practice, the French Republic has failed to comply with its obligations under Article 30 of the Treaty.

Costs

29 Under Article or 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 the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Declares that, by failing to allow the marketing within France of articles of precious metals which come from other Member States and purport to have a standard of fineness of '999 parts per thousand', despite the fact that that standard is commonly used in commercial practice, the French Republic has failed to comply with its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC);

2. Orders the French Republic to pay the costs.

Gulmann Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 14 June 2001.

R. Grass — Registrar

C. Gulmann — President of the Third Chamber