JUDGMENT OF THE COURT
17 October 1995 *

In Case C-70/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Verwaltungsgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court between

Fritz Werner Industrie-Ausrüstungen GmbH

and

Federal Republic of Germany,

on the interpretation of Article 113 of the EC Treaty,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, P. Jann and H. Ragnemalm, Judges,

* Language of the case: German.

Advocate General: F. G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, and Bernd Kloke, Regierungsrat at the same Ministry, acting as Agents,

— the French Government, by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry for Foreign Affairs, and Hubert Renié, Principal Deputy Secretary in the same Directorate, acting as Agents,

— the United Kingdom, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, Stephen Richards and Rhodri Thompson, Barristers,

— the Commission of the European Communities, by Peter Gilsdorf, Principal Legal Adviser, and Jörn Sack, Legal Adviser, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Fritz Werner Industrie-Ausrüstungen GmbH, represented by Peter Keil, Rechtsanwalt, Frankfurt on Main, the German Government, the Greek Government, represented by Panagiotis Kamarineas, State Legal Adviser, and Galateia Alexaki, Advocate in the special service for contentious Community affairs at the Ministry of Foreign Affairs, acting as Agents, the Spanish Government, represented by Rosario Silva de Lapuerta, Abogado del

Estado, of the Legal Service representing the Spanish Government before the Court of Justice, acting as Agent, the French Government, represented by Philippe Martinet, Secretary for Foreign Affairs at the Directorate of Legal Affairs of the Ministry of Foreign Affairs, acting as Agent, the United Kingdom and the Commission at the hearing on 21 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 18 May 1995,

gives the following

Judgment

1 By order of 4 February 1994, received at the Court on 22 February 1994, the Verwaltungsgericht (Administrative Court) Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 113 of the Treaty.

2 That question was raised in proceedings between Fritz Werner Industrie-Ausrüstungen GmbH (hereinafter 'Werner') and the Federal Republic of Germany, represented by the Federal Minister for Economic Affairs, himself represented by the Bundesausfuhramt (Federal Export Office).

3 Werner had received an order to supply a vacuum-induction smelting and cast oven as well as induction spools for that oven to Libya, where, between 1979 and 1982, it had installed a repair shop with a foundry. In the course of 1991 it applied to the Bundesamt für Wirtschaft (Federal Office for Economic Affairs, hereinafter 'the Bundesamt') for a licence to export the goods to Libya. However, a licence

was refused on the ground that supplying those goods would seriously jeopardize the interests to be protected under Paragraph 7 of the Außenwirtschaftsgesetz (Law on Foreign Trade) (hereinafter 'the AWG'), subparagraph 1 of which provides:

'Legal transactions and activities in the sphere of foreign trade may be curtailed in order to:

1. guarantee the security of the Federal Republic of Germany;

2. prevent disturbance to the peaceful co-existence of nations;

3. prevent the external relations of the Federal Republic of Germany from being seriously disrupted.'

4 Under Paragraph 2 of the AWG the Government is empowered to prescribe by regulation which legal transactions and activities may be prohibited or require a licence. In that context, Annex AL of the Außenwirtschaftsverordnung of 18 December 1986 (BGBl. I, p. 2671) (Regulation on Foreign Trade, hereinafter 'the AWV') specified the goods for which a licence was required; under Article 27 of the AWG it is possible to amend or supplement that annex by regulation. The 76th Regulation of 11 September 1991, which is relevant in the main proceedings, added item nos. 1204 and 1356, under which the following are subject to licence;

'1204

Vacuum or inert-gas furnaces suitable for operating temperatures of more than 1073K (800°C), specially constructed components, adjustment and guiding devices and specially developed software for such furnaces. Components or installations if the purchasing or destination country is Libya.

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Coiling machines whose movements for positioning, winding, or rolling up can be coordinated and programmed, suitable for the production of compound material structures and steering devices for coordinating or programming, specially constructed components, specially constructed accessories and specially developed software in that connection, if the country of purchase or destination is Libya.'

5 The Federal Minister for Economic Affairs stated that the introduction of that licensing requirement was intended to prevent furnaces and coiling machines from being used for military purposes, in particular in Libya's missile development programme.

6 When the Federal Export Office rejected its objection to the decision of the Bundesamt, Werner brought an action before the Verwaltungsgericht Frankfurt am Main. According to the Verwaltungsgericht, the arguments put forward by the Federal Export Office seem to be based more on grounds concerning the reputation of the Federal Republic of Germany than on considerations of public security: so the Federal Republic of Germany could be prevented from adopting its own measures prohibiting exports only if the common commercial policy covered

commercial measures which, although affecting trade, were primarily intended to achieve foreign policy aims or objectives. The national court therefore decided to stay the proceedings and submit the following question to the Court for a preliminary ruling:

'Does Article 113 of the EEC Treaty preclude national provisions on foreign trade requiring a licence for the export of a vacuum-induction oven to Libya which in the present case was refused on the ground that such a refusal was necessary in order to protect the public security of the Member State owing to a feared disruption of foreign relations?'

7 It is therefore apparent from the order for reference that the national court is seeking clarification of the scope of Article 113 of the Treaty. More particularly, it asks whether the common commercial policy solely concerns measures which pursue commercial objectives, or whether it also covers commercial measures having foreign policy and security objectives.

8 Article 113 of the Treaty provides that the common commercial policy is to be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade.

9 Implementation of such a common commercial policy requires a non-restrictive interpretation of that concept, so as to avoid disturbances in intra-Community trade by reason of the disparities which would then exist in certain sectors of economic relations with non-member countries (see Opinion 1/78 of the Court [1979] ECR 2871, paragraph 45).

10 So, a measure such as that described in the national court's question, whose effect is to prevent or restrict the export of certain products, cannot be treated as falling outside the scope of the common commercial policy on the ground that it has foreign policy and security objectives.

11 The specific subject-matter of commercial policy, which concerns trade with non-member countries and, according to Article 113, is based on the concept of a common policy, requires that a Member State should not be able to restrict its scope by freely deciding, in the light of its own foreign policy or security requirements, whether a measure is covered by Article 113.

12 Since full responsibility for commercial policy was transferred to the Community by Article 113(1), national measures of commercial policy are therefore permissible only if they are specifically authorized by the Community (judgments in Case 41/76 *Donckerwolke* v *Procureur de la République* [1976] ECR 1921, paragraph 32, and Case 174/84 *Bulk Oil* v *Sun International* [1986] ECR 559, paragraph 31).

13 The export of goods from the Community to non-member countries is therefore governed by Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports (OJ, English Special Edition 1969 (II), p. 590, hereinafter 'the Export Regulation').

14 Article 1 of the Export Regulation provides that: 'The exportation of products from the European Economic Community to third countries shall be free, that is to say, they shall not be subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of this Regulation.'

15 Article 11 of the Export Regulation provides for such an exception by providing that: 'Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by a Member State of quantitative restrictions on exports on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.'

16 The first question to be examined, therefore, is whether national measures, such as those at issue, fall within the scope of the Export Regulation and then whether such measures, adopted on the ground that they are necessary in order to protect the security of a Member State because of the risk of a disturbance to its foreign relations, are permitted under Article 11 of the Export Regulation.

17 The German Government doubts that the requirement to obtain a licence constitutes a quantitative restriction; rather, on its view, the Export Regulation prohibits only quantitative restrictions on imports and not measures having equivalent effect.

18 That view cannot be accepted.

19 It is true that Article 34 of the Treaty, which concerns the free movement of goods within the Community, distinguishes between quantitative restrictions and measures having equivalent effect.

20 However, it does not follow that the concept of quantitative restrictions used in a regulation concerning trade between the Community and non-member countries must be interpreted as excluding any measure having equivalent effect within the meaning of Article 34 of the Treaty.

21 As the Court has emphasized in previous judgments, in interpreting a provision of Community law it is necessary to consider not only its wording but also the context in which it occurs and the objectives of the rules of which it is part (Case 292/82 *Merck* v *Hauptzollamt Hamburg-Jonas* [1983] ECR 3781, paragraph 12, and Case 337/82 *St Nikolaus Brennerei* v *Hauptzollamt Krefeld* [1984] ECR 1051, paragraph 10).

22 A regulation based on Article 113 of the Treaty, whose objective is to implement the principle of free exportation at the Community level, as stated in Article 1 of the Export Regulation, cannot exclude from its scope measures adopted by the Member States whose effect is equivalent to a quantitative restriction where their application may lead, as in the present case, to an export prohibition.

23 Moreover, that finding is supported by Article XI of the General Agreement on Tariffs and Trade, which can be considered to be relevant for the purposes of interpreting a Community instrument governing international trade. That article, headed 'General Elimination of Quantitative Restrictions', refers in its first paragraph to 'prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures'.

24 It must therefore be examined whether such measures, adopted on the ground that they are necessary for the protection of the security of a Member State because of the risk of disturbance to its foreign relations, are permissible under Article 11 of the Export Regulation.

25 It follows from the Court's judgment in Case C-367/89 *Richardt and 'Les Accessoires Scientifiques'* [1991] ECR I-4621, paragraph 22) that the concept of public security within the meaning of Article 36 of the Treaty covers both a Member State's internal security and its external security. To interpret the concept more restrictively when it is used in Article 11 of the Export Regulation would be tantamount to authorizing the Member States to restrict the movement of goods within the internal market more than movement between themselves and non-member countries.

26 As the Advocate General stated in point 41 of his Opinion, it is difficult to draw a hard and fast distinction between foreign-policy and security-policy considerations. Moreover, as he observes in point 46, it is becoming increasingly less possible to look at the security of a State in isolation, since it is closely linked to the security of the international community at large, and of its various components.

27 So, the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations may affect the security of a Member State.

28 Although it is for the national court to decide whether Article 11, as interpreted by the Court of Justice, applies to the facts and measures which it is called on to appraise, it should, however, be observed that it is common ground that the exportation of goods capable of being used for military purposes to a country at war with another country may affect the public security of a Member State within the meaning referred to above (see the judgment in Case C-367/89 *Richardt and 'Les Accessoires Scientifiques'*, cited above, paragraph 22).

29 The answer to the question submitted by the national court must therefore be that Article 113 of the Treaty, and in particular Article 11 of the Export Regulation, do not preclude national provisions applicable to trade with non-member countries under which the export of a product capable of being used for military purposes is subject to the issue of a licence on the ground that this is necessary in order to avoid the risk of a serious disturbance to its foreign relations which may affect the public security of a Member State within the meaning of Article 11 of the Export Regulation.

Costs

30 The costs incurred by the German, Greek, Spanish and French Governments, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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,

in answer to the question referred to it by the Verwaltungsgericht Frankfurt am Main, by order of 4 February 1994, hereby rules:

Article 113 of the EC Treaty, and in particular Article 11 of Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports, do not preclude national provisions applicable to trade with non-member countries under which the export of a product capable of being used for military purposes is subject to the issue of a licence on the ground that this is necessary in order to avoid the risk of a serious disturbance to its foreign relations which may affect the public security of a Member State within the meaning of Article 11 of the regulation.

Rodríguez Iglesias Kakouris Edward

Puissochet Hirsch Mancini

Schockweiler Moitinho de Almeida Kapteyn

Gulmann Murray Jann Ragnemalm

Delivered in open court in Luxembourg on 17 October 1995.

R. Grass G. C. Rodríguez Iglesias

Registrar President