JUDGMENT OF THE COURT
28 January 1986 *

In Case 188/84

Commission of the European Communities, represented by Michel van Ackere, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

French Republic, represented by François Renouard, acting as Agent, with an address for service in Luxembourg at the French Embassy, 2 rue Bertholet,

defendant,

APPLICATION for a declaration that by adopting certain measures regarding the inspection of woodworking machines the French Republic has failed to fulfil its obligations under the EEC Treaty and in particular Article 30 thereof,

THE COURT

composed of: Lord Mackenzie Stuart, President, U. Everling, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, Y. Galmot and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 15 October 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 13 July 1984, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that, by requiring manufacturers and importers to comply with certain safety regulations for machines and apparatuses used for woodworking, the French Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty.

2 Between 1979 and 1982 France adopted new safety rules for different types of woodworking machines and apparatuses. Those rules were laid down in Decrees Nos 80-542, 80-543 and 80-544 of 15 July 1980 on hygiene and safety provisions applicable to certain machine tools, Decrees Nos 81-170, 81-171, 81-172 and 81-173 of 20 February 1981 and Nos 81-408, 81-409, 81-410 and 81-411 of 15 April 1981 specifying the conditions of hygiene and safety with which the main types of woodworking machines must comply, the Orders of the Ministers of Labour and Agriculture of 1, 2 and 3 April 1981 and of 22 June 1981 laying down technical requirements, Decree No 79-229 of 20 March 1979, the Orders of the Minister of Labour of 18 November 1980 and 5 November 1981 on the procedure for making a declaration, the Order of the Minister of Labour of 30 October 1981 and his 'Opinion' of 27 December 1981 on the procedure for obtaining a certificate, and the Order of that Minister of 12 March 1982 on the approval procedure.

3 The basic principles of those new rules are set out in Decree No 80-543 which lays down the general rule that 'the apparatuses, machines and their component parts must be so constructed that their operation, adjustment and maintenance present no risk for workers if those operations are carried out under the conditions laid down by the manufacturer or importer'. That decree also lays down other general

rules regarding the materials used and the manner in which the apparatuses, machines and their components must be manufactured.

4 Those general rules were supplemented by Decrees Nos 81-170, 81-171,81-172 and 81-173 and Nos 81-408, 81-409, 81-410 and 81-411 which lay down specific technical requirements for the various types of woodworking machines. Those decrees were themselves supplemented by the abovementioned orders establishing the technical details necessary for their implementation.

5 The rules also classify the machines in three categories, according to the degree of danger which they represent. The first category covers machines for which the manufacturer is required only to make a declaration of conformity with French standards, without prior inspection. The second category concerns machines for which the Institut national de recherche et de sécurité [National Institute for Research and Safety] (hereinafter referred to as 'the INRS') must issue a certificate. Finally, the third category consists of the machines which, in addition to undergoing a technical examination by the INRS or the national testing laboratory, must be approved by the Minister of Labour. A machine cannot lawfully be marketed in France without the requisite declaration of conformity, certificate or approval.

6 The fees which applicants for certificates of technical examination must pay to the INRS for the prior inspection are laid down in a fixed tariff which is revised each year (Opinion of the Minister of Labour of 30 October 1981). They vary between FF 1 961 and FF 5 109 (tariff applying on 10 April 1985). However, when the material is examined not at the premises of the INRS but at the factory or on site, any travel expenses must be paid in addition to those standard fees.

7 All the decrees which provided the basis for the inspection procedures were to be implemented within nine months of their publication. The obligation to obtain a certificate or an approval, depending on the type of machine, came into force between 1 August 1983 and 1 January 1985.

8 By a letter dated 18 June 1982 the Commission requested the competent French authorities to provide it with certain information concerning the rules in question

before 7 July 1982. The French authorities communicated to it only details of the date by which the rules were to enter into force. Moreover, the French Government did not reply to the Commission's letter dated 21 February 1983 inviting it to submit its observations on the view that the rules infringed Article 30 of the EEC Treaty. Furthermore, the reasoned opinion delivered by the Commission on 29 August 1983 failed to elicit a reply from the French authorities. At a meeting with Commission representatives on 1 and 2 February 1984, the French authorities agreed to provide additional information. Since that information was not forthcoming, the Commission brought this action.

9 The Commission makes four complaints concerning the French rules, relating to the French approach to the protection of users, the periods within which the rules became compulsory, the costs involved and finally the administrative practice followed by the French authorities.

The approach to protection

10 While the Commission does not contest the principle of the prior inspection of woodworking machines, it notes in the first place that the rules in question require manufacturers to take into account safety at the stage of the manufacture of the machines. The French legislation is based on the idea that the users of the machines must be protected from their own mistakes and that the machine must be designed so that the users' intervention is limited to the strict mimimum. In other Member States, the predominant approach to the protection of users is different. In the Federal Republic of Germany in particular the basic principle is that the worker should receive thorough and continuing training so that he is capable of responding correctly if a machine malfunctions. The Commission considers that, more generally, Articles 30 and 36 of the Treaty require the Member States either to take account in their national rules of such different approaches or to apply their rules only to machines manufactured in their territory; they must not prevent the importation of machines which are designed in accordance with a different approach but which are proved to provide the same level of safety and to give rise to no more accidents than apparatuses which are in conformity with their national rules.

11 As regards the specific details of the French rules, the Commission observes that, at least in certain cases, machines which are manufactured in accordance with the

legal requirements of other Member States and which provide at least the same guarantees of safety may not be supplied on the French market. The Commission cites as a specific example the protective device for planing machines required under the German rules. That device is not permitted under the French technical provisions, which allow only one type of protective device. The Commission considers in addition that it is possible to comply with the extremely detailed requirements of the French rules only by manufacturing highly automated machines. Indeed machines which are fully automated do not have to undergo prior inspection.

12 The French Government replies that it is for the Member States to decide what degree of protection of the health and the life of humans they intend to ensure. A Member State may have its own preoccupations and its own approach to prevention. Although it is true that machines which comply with German standards or provisions are not permitted in France, that is because the French safety experts consider that the protection provided by the German provisions is less effective than that existing under the French rules. Finally the automation of machines has never been required although, clearly, the complete automation of certain particularly dangerous apparatuses is sometimes a means of eliminating the risks which they represent.

13 It should be noted in the first place that there are no Community rules governing the safety of woodworking machines and that the national laws on the matter have not been harmonized. Consequently the Member States are entitled to introduce rules for the protection of the health and life of users of those machines.

14 Such rules fall within the scope of Articles 30 *et seq.* of the Treaty if, as in this case, they impede directly and actually the importation of machines which are lawfully in free circulation in another Member State.

15 The Court has consistently held that under Article 36 such national rules are compatible with the Treaty only to the extent to which they are necessary for the effective protection of the health and life of humans. Although it is for the Member States to decide what degree of that protection they intend to ensure, that protection must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

16 It follows that whilst a Member State is free to require a product which has already received approval in another Member State to undergo a fresh procedure of examination and approval, it is nevertheless under a duty to assist in bringing about a relaxation of the controls existing in intra-Community trade (see judgment of 17 December 1981 in Case 272/80 *Frans-Nederlandse Maatschappij voor Biologische Producten* [1981] ECR 3277). Moreover, it is not entitled to prevent the marketing of a product originating in another Member State which provides a level of protection of the health and life of humans equivalent to that which the national rules are intended to ensure or establish. It is therefore contrary to the principle of proportionality for national rules to require such imported products to comply strictly and exactly with the provisions or technical requirements laid down for products manufactured in the Member State in question when those imported products afford users the same level of protection.

17 However, as Community law now stands Member States are not required to allow into their territory dangerous machines which have not been proved to afford users on their territory the same level of protection.

18 In that respect it should be noted that the Commission has not cited specific examples showing that the importation into France of machines providing the same level of protection as machines manufactured according to the rules at issue has been prevented. It was not claimed in the complaints which drew the Commission's attention to the new French rules that the machines in free circulation in the other Member States provided the same level of protection as French machines. On the contrary, those complaints commended the French Government's efforts to reduce the risks of accident, whilst expressing opposition to the substantive requirements of the rules regarding safety techniques.

19 In addition, as regards the legal provisions on safety in force in the other Member States, the Commission merely stated that in its view the provisions and measures applying under the French rules were more strict than those prevailing in other Member States. It conceded that, in view of the differences in the fundamental approach to control, it was difficult to determine whether the measures and provisions in force in other Member States were as detailed as those applied under the French rules.

20 With regard to the specific example cited by the Commission concerning the protective device for planing machines, it should be noted that, according to the Commission, the approach to protection prescribed by the German technical provision is different to that of the French rules. It has not been established that the two approaches guarantee users the same level of protection. As far as highly automated machines are concerned, it should be pointed out that the rules in question do not have the effect either of requiring manufacturers to manufacture automated machines or of according preferential treatment to such machines.

21 In connection with the Commission's observation that statistics prove that the machines manufactured in accordance with the approaches to protection adopted by other Member States do not give rise to more accidents than the machines which are in conformity with the French rules, it should be noted that such statistics are not in themselves capable of establishing that other approaches to safety provide the same level of protection as the approach adopted in France. Reference to statistics alone leaves out of account other factors, such as, for example, the extensive training of users, which preclude a comparative assessment of the levels of protection of the health and life of humans.

22 Consequently, it has not been established that the machines in free circulation in the other Member States provide the same level of protection for users.

23 It follows from the foregoing that the first complaint must be dismissed in its entirety.

The periods within which the rules became compulsory

24 The Commission claims that the periods between the dates of the publication of the decrees and orders laying down the new rules and the dates on which certificates or approval became compulsory were too short. In many cases the French authorities were unable to process in sufficient time the documents submitted to them in support of applications for certificates or approval. Thus, for instance, it proved impossible to deliver by 1 March 1982 any of the certificates requested for surfacing machines although 125 applications had been submitted.

25 The French Government points out that the objective of the rules required that the time-limits should be as short as possible. The departments concerned were asked to avoid any delay in the inspection procedure. The delays which occurred stemmed solely from the failure of manufacturers of other Member States to submit the relevant documentation in good time. Applicants for certificates are notified on average within two months from the date of submitting the application.

26 It should be noted that frequent and substantial delays on the part of the supervisory authorities in processing applications for certificates or approval may make importation more difficult and more costly and, accordingly, such delays may constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty.

27 However, it appears from the documents before the Court that the delays affected the applications submitted by French manufacturers as well as those submitted by manufacturers from other Member States. There is no evidence to suggest that the French authorities gave priority to applications from French manufacturers.

28 Consequently the Commision's second complaint must also be dismissed.

The costs of complying with the French rules

29 The Commission's third complaint against the French Government is that the cost for importers of complying with the procedures applicable to machines subject to the requirement of obtaining a certificate or approval serves to discourage applications and therefore to impede potential imports even if the controls are in themselves justified. Where it is necessary to transport the machine to the French national test laboratory or for the engineers from that laboratory to inspect the machine at the manufacturer's premises the amounts which must be paid to the INRS by a manufacturer from another Member State may well also exceed those payable by a French manufacturer. If the other Member States adopted a similar tariff, the costs, at least for small and medium-sized undertakings, would be excessive. In addition, those costs are a greater burden for a manufacturer from another Member State, who sells only part of his output on the French market, than for a French manufacturer who must necessarily submit his machine to a technical inspection.

30 The French Government replies that the costs of the inspection procedures are justified by the thoroughness of the checks carried out. The same rates are applicable to all manufacturers, irrespective of their nationality.

31 As regards the level of costs borne by the applicant for a certificate or approval, the Commission has been able to contest the abovementioned French statements only by its own assessment that the amounts are considerable and liable to discourage imports. It has neither supported that submission by statistics regarding inspection costs in other Member States nor shown that those costs are more than is necessary to cover the costs of the inspection procedure.

32 In connection with the costs of transporting the machine or of reimbursing the technical examiner's travel expenses, it should be noted, in the first place, that that obligation arises for the manufacturer because the French market has been opened to his products, which are potentially dangerous and in respect of which the Commission does not contest the need for a prior inspection, and, secondly, that the costs incurred by a foreign manufacturer in transporting the machine or reimbursing the examiner's travel expenses are the same as those borne by a French manufacturer who is at the same distance from the test centre.

33 With regard to the cumulative effect of such rules for a manufacturer marketing his goods in the Community if the other Member States were to impose similar tariffs, it should be recalled that the Court has repeatedly held that the authorities of the Member States are not entitled unnecessarily to require laboratory tests where those tests have already been carried out in another Member State and their results are available to those authorities or may at their request be placed at their disposal (judgment of 17 December 1981, cited above, and of 6 June 1984, Case 97/83, *Melkunie* [1984] ECR 2367). In addition, where machines are imported from another Member State, the national supervisory authorities must always consider whether the effective protection of the life and health of humans requires them to carry out an additional inspection.

34 Consequently the hypothetical argument advanced by the Commission regarding the cumulative effect of the rules in question is not relevant.

35 The third complaint must therefore be dismissed.

The administrative practice followed by the French authorities

36 The Commission's fourth complaint against the French Government is that the abovementioned delays and the costs of the inspection procedures are liable to increase as a result of the following three factors: the fact that the decision whether or not the documentation is sufficient is at the discretion of the French authorities; the administrative practice of requiring a new certificate or approval procedure even for machines belonging to the same 'family' as a machine which has already obtained a certificate or approval and differing from such a machine only in terms of performance; and, finally, the requirement by the French authorities of a separate test procedure for each machine forming part of a composite machine.

37 The French Government contends, in the first place, that the authorities' decision regarding the sufficiency of the documentation is in no way discretionary. Secondly, in so far as possible the examiners group together machines of the same type. Finally, composite machines, which represent special risks, cannot be regarded as assemblies of component machines. It is therefore generally necessary to carry out separate tests.

38 In that respect it should be noted in the first place that if a Member State is entitled to subject a product of the type in question to an inspection, it is also entitled to establish the administrative procedure for that inspection. Even where the precise contents of the documentation which must accompany an inspection are not specified, such an administrative procedure is not in itself such as to impede intra-Community trade. Moreover, the Commission has produced no factual evidence showing that the administrative practices regarding the sufficiency or insufficiency of documentation have created such an impediment.

39 As regards the practice of the French authorities of carrying out a test even where machines belong to the same 'family' as a machine which has already been tested or where they form part of a composite machine, the Commission has been unable to cite examples of specific cases in which that practice was superfluous, disproportionate or discriminatory. In those circumstances, the fourth complaint must also be dismissed.

Costs

40 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs, if the Court has been asked to make such an order. However, under the first subparagraph of Article 69 (3), where the circumstances are exceptional the Court may order that the parties bear their own costs in whole or in part.

41 By its lack of cooperation in the pre-litigation stage, the French Government left the Commission in ignorance as to the majority of the aspects of the new rules. That conduct therefore compelled the Commission to bring this action. The parties should therefore bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Mackenzie Stuart Everling Bahlmann Joliet

Bosco Koopmans Due Galmot Kakouris

Delivered in open court in Luxembourg on 28 January 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President