based on decisions which are binding upon undertakings. Even measures adopted by the government of a Member State which do not have binding effect may be capable of influencing the conduct of traders and consumers in that State and thus of frustrating the aims of the Community as set out in Article 2 and enlarged upon in Article 3 of the Treaty.

In Case 249/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Rolf Wägenbaur, acting as Agent, assisted by Peter Oliver, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

applicant,

v

IRELAND, represented by Louis J. Dockery, Chief State Solicitor, assisted by John D. Cooke, Senior Counsel and H. J. O'Flaherty, Senior Counsel, with an address for service in Luxembourg at the Irish Embassy,

defendant,

APPLICATION for a declaration that, by taking measures to promote Irish goods within Ireland, Ireland has failed to fulfil its obligations under Article 30 of the EEC Treaty,

THE COURT

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

Advocate General: F. Capotorti
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions and submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. In a speech delivered on 18 January 1978 Mr Desmond O'Malley, TD, Minister for Industry, Commerce and Energy, launched a three-year programme for the promotion of Irish goods in the following terms:

"Today, we are launching a three-year programme which, if fully successful, will have the effect of creating 10 000 additional full-time jobs in Irish manufacturing industry and services through increased support for Irish goods by the Irish consumer and Irish industry. The programme has set a target of a switch from imports to Irish products equivalent to 3% of total consumer spending, with a corresponding shift in industrial spending.

Meeting this target will not only achieve these 10 000 jobs; it will provide many additional benefits to the economy. Among other things, it will safeguard existing jobs threatened by the continued erosion of home market sales by manufactured imports and it will achieve a substantial reduction in the balance of payments deficit."

The Minister defined the four basic objectives of the programme as follows:

"(i) To bring home to the consumer the economic consequences — in terms of jobs, living standards and economic progress — of failing to give fair and reasonable support to Irish goods.

(ii) To communicate the home truth that Irish exports are proving daily around the world that Irish goods deserve support on their competitive merits, and that, by and large, Irish products compare at least as well — and often better — with the equivalent import in quality and value.

(iii) To secure the fullest support from the wholesale and retail trade sectors. We are asking for reasonable cooperation in buying, displaying and promoting Irish merchandise. It should be remembered that the economic benefits of this programme will be felt by the retail trade as much as by everyone else.

(iv) To create a new spirit of dynamism and cooperation among Irish manufacturers. It has been suggested that one reason why home market share

has dropped is that Irish manufacturers have tended to take it for granted. The experience of recent years is an indication of the serious consequences of such an approach."

2. In a letter of 28 May 1979, pursuant to the first paragraph of Article 169 of the EEC Treaty, the Commission of the European Communities requested the Irish Government to submit its observations on the compatibility with Article 30 of the Treaty of a series of measures taken in the context of the three-year programme for the promotion of Irish products, announced by the Irish Government in January 1978.

In its letter the Commission first referred to the above-mentioned speech by Mr O'Malley, as well as to a speech delivered on 11 May 1978 by Raphael Burke, TD, Minister of State at the Department of Industry, Commerce and Energy, from which it emerged that IRL 600 000 were to be devoted to the three-year programme which was designed to strengthen brand awareness of grocery goods made in Ireland. According to Mr Burke, the programme would be the biggest sectoral operation for Irish goods in 1978 under the "Guaranteed Irish" banner. Moreover, the private sector had proposed to participate in joint-venture promotions with the State and to provide one half of the funds.

The Commission went on to cite the following examples of measures for the promotion of Irish goods:

(a) The "Guaranteed Irish" symbol, which may be affixed to products made in Ireland. When a complaint is made about a product bearing the "Guaranteed Irish" symbol and the purchaser is unable to bring the complaint to a satisfactory conclusion, the matter is investigated by the Irish Goods Council. That scheme is designed to encourage the consumer to look for and buy products bearing that symbol and thus encourages the purchase of domestic products.

(b) The publication by the Irish Goods Council of documents such as "Expanding for Sales", "Guaranteed Irish — That's the ticket!" and "You and your shopping", which contain detailed information on the action taken by the Irish authorities to encourage Irish consumers to purchase only domestic products.

(c) The "Shoplink Service", which is free of charge and located in five centres in Dublin, Cork, Limerick, Waterford and Galway; its aim is to provide consumers with information as to the availability of products made in Ireland.

(d) The exhibition facilities available solely for domestic products in the Ireland House Trade Centre, which is operated in Dublin by the Irish Goods Council.

Finally, the Commission emphasized in its letter the decisive role played by the Irish Goods Council, which is associated with all the above-mentioned activities. That body is a company limited by guarantee and not having a share capital, arising out of the amalgamation of certain existing organizations which were set up by the Irish Government for the

development and promotion of Irish goods. The chairman and members of the Management Committee of the Irish Goods Council are appointed by the Minister for Industry, Commerce and Energy, and his prior approval is required for any alterations to its Memorandum or Articles of Association.

In its letter to the Irish Government, the Commission stated that in its opinion the Irish Goods Council was a public authority within the meaning of Commission Directive No 70/50/EEC of 22 December 1969, based on the provisions of Article 33 (7), 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 (Official Journal, English Special Edition, 1970 (I), p. 17). According to the second recital in the preamble to that directive, "measures", for the purposes of Article 30 et seq., include "any instruments issuing from a public authority which, while not legally binding on the addressees thereof, cause them to pursue a certain conduct".

In the Commission's opinion, the above-mentioned speeches, documents and activities are "instruments", within the meaning of that directive, which appear to be of such a nature as to cause the addressees thereof to purchase domestic products and which therefore constitute measures having an effect equivalent to quantitative restrictions prohibited by Article 30 of the Treaty. Whilst admitting that Member States may take measures to promote the sale of their own products, the Commission drew the Irish Government's attention to the fact that those measures had to be compatible with the EEC Treaty and in particular with the principle of the free movement of goods.

In that regard, it referred in particular to the provisions of Article 2 (3) (k) and (l) of the above-mentioned directive, which are worded as follows:

"The measures referred to must be taken to include those measures which:

...

(k) hinder the purchase by private individuals of imported products only, or encourage, require or give preference to the purchase of domestic products only;

(l) totally or partially preclude the use of national facilities or equipment in respect of imported products only, or totally or partially confine the use of such facilities or equipment to domestic products only;"

3. By a letter of 20 July 1979, the Irish Government replied that it understood the Commission's objections as meaning that it was not opposed to the three-year programme *per se*, but only to certain features of it, and in particular to the fact that the exhibition facilities available at the Ireland House Trade Centre and the facilities of the Shoplink Service could be used only for domestic products. It stated that it was prepared to extend those facilities to products from other Member States.

A meeting between Irish officials and Commission officials on 22 November 1979 failed to produce the desired results and in a letter of 9 March 1981 the Commission forwarded to the Irish

Government the reasoned opinion of 25 February 1981, addressed to Ireland pursuant to the first paragraph of Article 169 of the Treaty, concerning the "Buy Irish" campaign.

At a second meeting on 5 May 1981, the Commission was informed of the fact that it had been decided to terminate the Shoplink Service scheme and the exhibition facilities available at the Ireland House Trade Centre instead of extending them to products from other Member States.

4. The Commission lodged this application on 15 September 1981.

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. However, it requested the Commission:

(a) To indicate precisely which of the measures adopted by the Irish authorities are considered by it to be measures having equivalent effect [to quantitative restrictions] within the meaning of Article 30 of the EEC Treaty;

(b) To state which of these measures continued to be applied after the "Buy Irish" campaign was supposed to end, early in 1981;

(c) To give the Court details of the results of any investigations made by it of similar advertising campaigns in other Member States.

At the same time, the Court requested the Irish Government:

(a) To supply the Court with a copy of the Memorandum of Association and of the Articles of Association of the Irish Goods Council, and to state how much it granted to that body by way of annual subsidies during the three-year period from 1978 to 1981 and how much was available to the Council from private sources during those years;

(b) To supply further information concerning the joint working party referred to in the speech given by the Irish Minister for the Environment on 9 April 1981.

II — Conclusions of the parties

The applicant claims that the Court should:

1. Declare that, by promoting the sale and purchase of Irish goods within its territory, Ireland has failed to fulfil its obligations under Article 30 of the EEC Treaty;

2. Order the Irish Government to pay the costs.

The defendant contends that the Court should:

1. Dismiss the Commission's application;

2. Order the Commission to pay the costs.

III — Submissions and arguments of the parties

In its application, the *applicant*, the *Commission of the European Communities*, first states that the campaign for the promotion of Irish goods continues unabated in spite of the fact that three years have elapsed since the three-year programme was launched in 1978. The promotion takes the form in particular of advertisements in the Irish press and on radio and television with slogans such as "Tip just a few purchases over to Irish products and tip jobs in Ireland's favour".

An article published on page 17 of the Irish Times of 24 June 1981 stated as follows:

"Last year [1980] the role of import substitution was given increased attention as an efficient and effective instrument of industrial policy in a free trade situation. During the year the Industrial Division of the [Irish Goods] Council identified IRL 64 million worth of import substitution opportunities of which IRL 18 million of new business was secured for Irish manufacturers . . .

The Irish Goods Council has set up a target of IRL 30 million worth of import substitution business for this year and it is intended to intensify promotional work with manufacturers and retailers . . ."

That article forms part of a feature containing six unsigned articles, which are assumed by the Commission to emanate from the Irish Goods Council and which bear the subtitle "Advertisement Feature".

The Commission draws attention in particular to the phrase "import substitution" appearing in the extract quoted above. That concept also appeared in a speech delivered on 9 April 1981 by Mr Burke, Minister for the Environment, who announced new government initiatives, in the following manner:

"In August last year [1980] new government initiatives on the promotion of import substitution were announced. A working party was set up under my chairmanship as the then Minister of State at the Department of Industry, Commerce and Tourism, to consider possible measures to promote import substitution and greater purchases of Irsih goods. The working party included representatives of the Irish Congress of Trade Unions, Confederation of Irish Industry, Construction Industry Federation, Federated Union of Employers, Irish Goods Council, Industrial Development Authority, Department of Finance and Department of Industry, Commerce and Tourism.

The working party introduced an intensive programme involving all sectors of industry and the compilation of a directory of Irish building materials formed part of the building sector programme . . .

I believe that this document [the directory of Irish building materials] is central to the whole import substitution programme."

Among the main aspects of the promotion of Irish goods, the applicant mentions the use of the "Guaranteed Irish" symbol and the considerable financial aid provided by the Irish Government to the Irish Goods Council: IRL 940 000 in the 1980 budget and IRL 922 000 in the 1981 budget.

Moreover, the measures taken by the Irish authorities to promote Irish goods within Ireland are so many and varied that it is not possible to list them all. The promotion campaign as a whole covers all categories of Irish goods and all categories of purchasers, be they individual consumers, industrial or commercial undertakings or State bodies. Thus there is not only a "Buy Irish" campaign, but also a "Sell Irish" campaign, designed to encourage wholesalers and retailers to sell Irish goods in preference to imported goods.

The Commission considers that the measures in question constitute measures "which encourage the purchase of domestic products only" within the meaning of Article 2 (3) (k) of Commission Directive No 70/50 and that they are attributable to the Irish State.

Those measures constitute actual or potential, direct or indirect hindrances to imports, which fall within the prohibition on measures having an effect equivalent to quantitative restrictions. In the circumstances, it is irrelevant whether those measures have actually had the effect of reducing imports.

Furthermore, in view of the economic nature of the objectives of the promotion campaign, the contested measures are not justified under Article 36 of the Treaty, which is concerned solely with non-economic matters.

Finally, the Commission emphasizes that the measures referred to are fundamentally different from those by which a Member State promotes the sale of its national products outside its territory. When such measures to promote Irish exports are carried out in another Member State, they serve to increase trade between Member States and are therefore entirely compatible with Article 30 and 34. On the other hand, a Member State may not promote domestic products within its own territory.

The *Government of Ireland*, the *defendant*, admits that the speeches of the various ministers were made as quoted and that the three-year programme, generally referred to as the "Buy Irish" campaign, took place and in broad terms accorded with the outline presented by the Commission. However, it disputes the significance attributed by the Commission to the various elements of the campaign and the Commission's interpretation thereof.

In that regard, the defendant draws attention first to the fact that, in view of the withdrawal of the Shoplink Service and of the exhibition facilities at the Ireland House Trade Centre, the Commission's application is directed in essence towards one type of activity alone, that is to say the publicity and advertising operations of the Irish Goods Council. Those promotions take the form of a general public advertising campaign for the most part with some ancillary operation such as the publication of information about Irish products in particular categories. The primary objective of the "Buy Irish" campaign is the creation of new employment. It does not seek to promote particular brand-names or individual products, but seeks to create a general sense of awareness of the availability of Irish products. Thus the campaign in no way seeks to restrict, prohibit, eliminate or penalize the importation of competing products.

With regard to the role and position of the Irish Goods Council, the defendant considers that the suggested influence and impact upon the public, which the Commission seems to attribute to that body as a "public authority", are widely exaggerated. In fact the Council was established to create a framework in which diverse industries could come together to cooperate for their common good. The members of the Management Committee are chosen so as to be representative of the interested sectors of the economy, and the only purpose of the government sponsorship was to encourage Irish industry to help itself. The Government has not enacted any

legislation or exercised any form of compulsion. Therefore, in so far as the advertising by the Irish Goods Council may be thought to be successful, it is not because of the original financial support or moral encouragement of the Government, but rather because members of the public respond to the way in which it appeals to their patriotic instincts.

Next, the Irish Government contends that, by their very nature, the contested activities are not "measures" within the meaning of Article 30 of the Treaty. Even if it is accepted for the purposes of argument that activities promoting public awareness of domestic products are capable of placing imported products at a disadvantage, it is submitted that they cannot fall to be considered under Article 30 for that reason alone.

In this regard, the defendant states that in all the interpretations of the phrase "measures of equivalent effect" in the judgments of the Court there is found the common element of some direct regulatory intervention emanating from a public authority and carrying some degree of compelling force. Thus the general definition adopted by the Court in its judgment of 11 July 1974 in Case 8/74 (*Procureur du Roi* v *Dassonville*, [1974] ECR 837) refers to "all trading rules enacted by Member States ...", and in the vast majority of cases decided by the Court the contested measure is a legally binding act or instrument. In the defendant's opinion, the word "measures" for purposes of Article 30 of the Treaty contemplates laws, decrees, rules, administrative practices or arrangements or some other form of direct interference by a public authority in trading activities, or, at the very least, some degree of intervention in which a burden is placed upon the addressee or some advantage is removed from the addressee as a means of obliging him to comply with the object of the intervention.

There is no basis in Article 30 itself or in the scheme of the Treaty or the case-law of the Court, however, which would warrant extending the meaning of the word "measures" so as to include purely gratuitous statements in speeches or advertisements which may well be ignored by those receiving them.

The Commission does not suggest any way in which the campaign achieves its objective otherwise than by persuasion of the general public in the manner described, nor does it seek to argue that the sponsorship of the campaign by the Irish Government involves the creation or imposition of any "trading rule" such as is mentioned above.

The defendant states that, in order to establish the proposition that gratuitous advertisements constitute measures of equivalent effect, the Commission relies exclusively on the definition found in Directive No 70/50, which provides that for the purpose of Article 30 et seq. of the Treaty, the term "measures" means "all instruments issuing from a public authority, including recommendations" (first recital in the preamble) "which, while not legally binding on the addressees thereof, cause them to pursue a certain conduct" (second recital therein).

It considers, however, that that definition is of no legal effect and that in adopting that directive the Commission was clearly acting *ultra vires.* Indeed, Article 33 (7) of the Treaty, on which the directive was based, does not authorize the Commission to elaborate an extended definition of the word "measures", but only to establish the procedure and timetable for the abolition of any measures which have an effect equivalent to quotas.

Moreover, the Irish Government considers that the Commission's approach in this case derives from a confusion between the effect and the nature of a measure. Whilst it is true that the Court's interpretation of Article 30 has emphasized the significance of the words "equivalent effect", it has nevertheless always presupposed the existence of measures likely to cause such an effect. With regard to the applicability of Article 30, the Commission points to the effects of the "Buy Irish" campaign upon imports as if those effects were the sole determining factor. The Irish Government observes, however, that the effect does not determine the character of its own cause. By way of example, it points out that a publicity campaign similar in its nature, extent and effect to the "Buy Irish" campaign but organized and financed by private enterprise, would not fall within the field of application of Article 30, since it would not involve any legislative intervention by the Member State. It might possibly fall to be considered under Article 85 of the Treaty.

In that regard, the Irish Government points out in particular that a State subsidy to an industry will place the domestic products of that industry at an advantage and may thereby make the sale of competing imported products more difficult. Nevertheless, such a subsidy is not within the ambit of Article 30 but falls to be considered under Articles 92 and 93 of the Treaty.

Moreover, the defendant considers that Article 92 of the Treaty is the more appropriate provision under which to consider the matters concerned in this application. Indeed, the advantage conferred by the "Buy Irish" campaign on Irish domestic products as compared with imported products, is derived from activities of general publicity and general financial assistance rather than from direct intervention by means of "trading rules". Such efforts to aid industries in general are precisely the kind of measures in relation to which the Commission exercises a discretion under Articles 92 and 93. The Commission's claim that the "Buy Irish" campaign leads to a distortion in the free movement of goods in the common market is but another way of stating its incompatibility with the common market, to which reference is made in Article 92 (1) of the Treaty.

As is clear from the sixteenth recital in the preamble and from Article 2 (2) of Commission Directive No 70/50, Articles 30 and 92 cannot apply to the same measure or activity simultaneously. In this regard, the Irish Government also refers to the judgment of 22 March 1977 in Case 74/76 (*Iannelli* v *Meroni* [1977] ECR 557), where it was held that the effect of an interpretation of Article 30 so wide as to treat an aid within the meaning of Article 92 as a quantitative restriction within the meaning of Article 30 would be to impair the scope of Articles 92 and 93 of the Treaty and to interfere with the division of powers

which the authors of the Treaty sought to effect by establishing the procedure described in Article 93.

In view of the fact that an aid within the meaning of Articles 92 and 93 is characterized by the conferment of a gratuitous benefit by a public authority to promote the development of certain sectors or industries, the effect of which is to distort competition, recourse to the extended definition of the word "measures" in Article 30 is unhelpful for the purposes of the promotional activities objected to by the Commission. Furthermore, by basing this action exclusively on Article 30, the Commission has deprived Ireland of the opportunity for a detailed appraisal of the nature and effects of the "Buy Irish" campaign in the context of the Community as a whole; it has also deprived Ireland of the opportunity of altering aspects of the aid, if necessary, so as to render it compatible with the Treaty, in accordance with the procedures laid down in Article 93 (2).

In its *reply,* the *Commission* points out first that in the absence of a definition in the Treaty of the concept of measures having an effect equivalent to quantitative restrictions, the adoption of a non-exhaustive definition of that concept in Directive No 70/50 is not *ultra vires,* but rather arises from a power inherent in the Commission's obligation under Article 33 (7) to fix the procedure and timetable for the abolition of such measures. Otherwise, the Commission would have been bound sooner or later to make known its interpretation of that concept in order to avoid total uncertainty in that regard.

Next, the Commission maintains that a purely moral inducement emanating from a public authority will suffice to bring a measure under Article 30. The fact that the Court has not had occasion to give judgment on the question whether a recommendation or inducement may constitute a measure of equivalent effect does not cause it to change its position.

While recognizing that the same measure cannot at one and the same time fall under Article 30 and Article 92, the Commission finally argues that Article 92 applies only to aids which favour certain undertakings or the production of certain goods. State action favouring all domestic products as against imports is too general to fall within the scope of Article 92.

In its *rejoinder,* with regard to the alleged necessity to define the concept of measures of equivalent effect in Directive No 70/50, the *defendant* submits that any definition will become unnecessary if the particular measures which are to be abolished are specified.

With regard to the designation of the "Buy Irish" campaign, it further adds that that constitutes an encouragement to Irish manufacturers, in the form of an appeal to the patriotic sentiment of the public, in order to combat domestic economic problems. The campaign does not involve any element of restrictions upon, or obstacles to, imported products.

Finally, the Irish Government challenges the restrictive interpretation of Article 92 proposed by the Commission. In that regard, it refers to the Court's judgment of 10 December 1969 in Joined Cases 6 and 11/1969 (*Commission* v *France*

[1969] ECR 523), from which it is clear that a general aid in the form of a preferential re-discount rate for exports, granted in favour of national products exported, constitutes an aid within the meaning of Article 92.

IV — Answers to the written questions put by the Court

The *Commission* states that the measures taken by the Irish Government may be divided into two categories, namely:

(i) the payment of considerable amounts of money to the Irish Goods Council, and

(ii) coordination and organization of the promotion campaign.

The Commission considers that the measures of both categories constitute measures having equivalent effect within the meaning of Article 30 of the Treaty. It claims that the Irish Goods Council either forms part of the Irish Government or carries out its promotional activities as the agent of the Irish Government.

According to the Commission, all the measures complained of have continued to be applied after the end of the three-year "Buy Irish" campaign, which was supposed to be at the beginning of 1981.

Finally, the Commission states that it is not aware of any similar advertising campaign in any other Member State. However, since the end of 1981 it has been investigating certain activities to promote domestic products in two other Member States, of which it has been informed.

The *Irish Government* lodged a copy of the Memorandum and Articles of Association of the Irish Goods Council, as well as the following table showing contributions from the State and from private sources to the Council from 1978 to 1981.

Year	Government financing	Private contributions
Period from the creation of the IGC on 25 August 1978 until 31 December 1979	IRL 1 005 000	IRL 175 000
1980	IRL 940 000	IRL 194 000
1981	IRL 922 000	IRL 218 000

In relation to the working party referred to in the speech delivered by the Irish Minister for the Environment on 9 April 1981, the Irish Government states that it was to deal with the problem of import substitution. While the working party's discussions covered a wide range, its life was nevertheless too short to have any concrete results. Seven meetings were held between August 1980 and May 1981. Since the formation of a new government following the general election in June 1981, no decision has been taken to re-convene the working party.

IV — Oral procedure

At the sitting on 9 June 1981 the parties delivered oral argument.

The Advocate General delivered his opinion at the sitting on 15 September 1982.

Decision

1 By an application lodged at the Court Registry on 15 September 1981 the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that by organizing a campaign to promote the sale and purchase of Irish products in its territory Ireland has failed to fulfil its obligations under the Treaty.

I — The subject-matter of the application

2 In a reasoned opinion addressed to Ireland on 25 February 1981 concerning the "Buy Irish" campaign, the Commission noted that in January 1978 the Irish Government had introduced a three-year programme to help to promote Irish products. The campaign was launched on 18 January 1978 in a speech delivered by the Irish Minister for Industry, Commerce and Energy. The Minister declared on that occasion that the aim of the campaign was to achieve "a switch from imports to Irish products equivalent to 3% of total consumer spending" and that the campaign was "a carefully thought out set of initiatives that add up to an integrated programme for promoting Irish goods, with specific proposals to involve the producer, distributor and consumer".

3 The Irish Government, it was said, had taken and was continuing to take a series of measures designed to promote Irish products in accordance with the terms of that speech. The reasoned opinion cited the following measures:

(a) The organization of a free information service for consumers wishing to know which products in a particular category of goods are made in Ireland and where they may be obtained (the Shoplink Service);

(b) The provision of exhibition facilities, exclusively for exhibiting Irish products, in a large exhibition centre in Dublin run by the Irish Goods Council, which is, it is claimed, a public authority;

(c) The encouragement of the use of the "Guaranteed Irish" symbol for products made in Ireland together with the organization by the Irish

Goods Council of a special system for investigating complaints about products bearing that symbol;

(d) The organization of a big publicity campaign by the Irish Goods Council in favour of Irish products, involving in particular the publication and distribution by that institution of literature encouraging consumers to buy only domestic products.

4 The Commission notes in the application that the activities connected with the Shoplink Service and the exhibition facilities in Dublin have now been abandoned by the Irish Government. However, the other two activities have continued, even after the expiry of the three-year period for which the campaign was to last. Moreover, the publicity campaign has been gradually extended, in particular by means of widespread advertising in favour of Irish products in the press and on television.

5 The Irish Government admits that there was a three-year programme in favour of buying Irish products in Ireland. It says that since the Shoplink Service and the exhibition facilities in Dublin were abandoned at the request of the Commission the programme consists merely of an advertising campaign, by means of the press and television, the publication of posters and pamphlets and the use of the "Guaranteed Irish" symbol, designed to make Irish consumers better acquainted with products made in Ireland and to stimulate awareness in the Irish public of the link between the marketing of such products in Ireland and the unemployment problem in that country.

6 As far as the advertising campaign is concerned, the Irish Government confirms that it forms part of the activities of the Irish Goods Council. However, that institution cannot be regarded as a public authority; it is merely an arrangement whereby the various industries in Ireland may cooperate for their common good. The activities of the Irish Goods Council are not based on any official enactment and the involvement of the Government consists exclusively of financial aid and moral support.

7 The Commission maintains that the actions of the Irish Goods Council are unquestionably attributable to the Irish Government. It points out, in particular, that the members of the Management Committee of the Council are appointed, under the Articles of Association of that body, by the Minister for Industry, Commerce and Energy.

8 The Commission is of the opinion that the campaign to promote the sale and purchase of Irish products in Ireland must be regarded as a measure having an effect equivalent to a quantitative restriction on imports. Ireland contends, first, that the Irish Government has never adopted "measures" within the meaning of Article 30 of the Treaty and, secondly, that the financial aid given to the Irish Goods Council must be judged in the light of Articles 92 and 93 of the Treaty, and not Article 30.

9 Before assessing the merits of those arguments the position of the Irish Goods Council must be considered.

II — The Irish Goods Council

10 The Irish Goods Council was created on 25 August 1978, a few months after the disputed campaign was launched, in the form of a company limited by guarantee and not having a share capital; it was registered in accordance with Irish company law (Companies Act 1963). The Council is in fact the result of the amalgamation of two bodies, the National Development Council, a company limited by guarantee and registered under the Companies Act, and the Working Group on the Promotion and Sale of Irish Goods.

11 The Irish Government maintains that the Irish Goods Council was created under the sponsorship of the government in order to encourage Irish industry to overcome its own difficulties. The Council was established for the purpose of creating a framework within which the various industries could come together in order to cooperate for their common good.

12 The Management Committee of the Irish Goods Council consists, according to the Articles of Association of that institution, of 10 persons appointed in their individual capacities by the Minister for Industry, Commerce and Energy; the same Minister appoints the chairman from among the members of the Management Committee. The members and the chairman are appointed for a period of three years, and their appointments may be renewed. In practice, the members of the Management Committee are selected by the Minister in such a manner as to represent the appropriate sectors of the Irish economy.

13 It appears from the information supplied by the Irish Government at the request of the Court that the activities of the Irish Goods Council are financed by subsidies paid by the Irish Government and by private industry. The subsidies from the State and from the private sector amounted, respectively to IRL 1 005 000 and IRL 175 000 for the period between August 1978 and December 1979; IRL 940 000 and IRL 194 000 for 1980; and IRL 922 000 and IRL 238 000 for 1981.

14 The Irish Government has not denied that the activities of the Irish Goods Council consist in particular, after the abandonment of the Shoplink Service and the exhibition facilities offered to Irish manufacturers in Dublin, in the organization of an advertising campaign in favour of the sale and purchase of Irish products, and in promoting the use of the "Guaranteed Irish" symbol.

15 It is thus apparent that the Irish Government appoints the members of the Management Committee of the Irish Goods Council, grants it public subsidies which cover the greater part of its expenses and, finally, defines the aims and the broad outline of the campaign conducted by that institution to promote the sale and purchase of Irish products. In the circumstances the Irish Government cannot rely on the fact that the campaign was conducted by a private company in order to escape any liability it may have under the provisions of the Treaty.

III — The applicability of Articles 92 and 93 of the Treaty

16 The Irish Government maintains that, even if the purpose or the effect of the campaign was to discourage imports from other Member States, it must be judged on the basis of Articles 92 and 93 of the Treaty, which deal with State aids. The applicability of those provisions excludes the applicability of Article 30 of the Treaty, upon which the Commission has based its case.

17 The Irish Government states that the campaign has in fact been conducted by the Irish Goods Council and that the role of the government has been

restricted to moral support and financial assistance. If, as the Commission maintains, the campaign was liable to hinder the free movement of goods within the Community by promoting domestic products at the expense of imported ones that circumstance is attributable solely to a single government decision, namely the decision to subsidize the Irish Goods Council.

18 It must be observed, however, that the fact that a substantial part of the campaign is financed by the Irish Government, and that Articles 92 and 93 of the Treaty may be applicable to financing of that kind, does not mean that the campaign itself may escape the prohibitions laid down in Article 30.

19 In any case, if the Irish Government considered that such financing amounted to aid within the meaning of Articles 92 and 93 it ought to have notified the aid to the Commission in accordance with Article 93 (3).

IV — The application of Article 30 of the Treaty

20 The Commission maintains that the "Buy Irish" campaign and the measures taken to prosecute the campaign must be regarded, as a whole, as measures encouraging the purchase of domestic products only. Such measures are said to be contrary to the obligations imposed on the Member States by Article 30. The Commission refers to Article 2 (3) (k) of Commission Directive No 70/50/EEC of 22 December 1969, based on the provisions of Article 33 (7), 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 (Official Journal, English Special Edition 1970 (I), p. 17). According to Article 2 (3) (k), measures which encourage the purchase of domestic products only must be regarded as contrary to the prohibitions contained in the Treaty.

21 The Irish Government maintains that the prohibition against measures having an effect equivalent to quantitative restrictions in Article 30 is concerned only with "measures", that is to say, binding provisions emanating from a public authority. However, no such provision has been adopted by the Irish Government, which has confined itself to giving moral support and financial aid to the activities pursued by the Irish industries.

22 The Irish Government goes on to emphasize that the campaign has had no restrictive effect on imports since the proportion of Irish goods to all goods sold on the Irish market fell from 49.2% in 1977 to 43.4% in 1980.

23 The first observation to be made is that the campaign cannot be likened to advertising by private or public undertakings, or by a group of undertakings, to encourage people to buy goods produced by those undertakings. Regardless of the means used to implement it, the campaign is a reflection of the Irish Government's considered intention to substitute domestic products for imported products on the Irish market and thereby to check the flow of imports from other Member States.

24 It must be remembered here that a representative of the Irish Government stated when the campaign was launched that it was a carefully thought-out set of initiatives constituting an integrated programme for promoting domestic products; that the Irish Goods Council was set up at the initiative of the Irish Government a few months later; and that the task of implementing the integrated programme as it was envisaged by the government was entrusted, or left, to that Council.

25 Whilst it may be true that the two elements of the programme which have continued in effect, namely the advertising campaign and the use of the "Guaranteed Irish" symbol, have not had any significant success in winning over the Irish market to domestic products, it is not possible to overlook the fact that, regardless of their efficacity, those two activities form part of a government programme which is designed to achieve the substitution of domestic products for imported products and is liable to affect the volume of trade between Member States.

26 The advertising campaign to encourage the sale and purchase of Irish products cannot be divorced from its origin as part of the government programme, or from its connection with the introduction of the "Guaranteed Irish" symbol and with the organization of a special system for investigating complaints about products bearing that symbol. The establishment of the system for investigating complaints about Irish products provides adequate confirmation of the degree of organization surrounding the "Buy Irish" campaign and of the discriminatory nature of the campaign.

27 In the circumstances the two activities in question amount to the establishment of a national practice, introduced by the Irish Government and prosecuted with its assistance, the potential effect of which on imports from other Member States is comparable to that resulting from government measures of a binding nature.

28 Such a practice cannot escape the prohibition laid down by Article 30 of the Treaty solely because it is not based on decisions which are binding upon undertakings. Even measures adopted by the government of a Member State which do not have binding effect may be capable of influencing the conduct of traders and consumers in that State and thus of frustrating the aims of the Community as set out in Article 2 and enlarged upon in Article 3 of the Treaty.

29 That is the case where, as in this instance, such a restrictive practice represents the implementation of a programme defined by the government which affects the national economy as a whole and which is intended to check the flow of trade between Member States by encouraging the purchase of domestic products, by means of an advertising campaign on a national scale and the organization of special procedures applicable solely to domestic products, and where those activities are attributable as a whole to the government and are pursued in an organized fashion throughout the national territory.

30 Ireland has therefore failed to fulfil its obligations under the Treaty by organizing a campaign to promote the sale and purchase of Irish goods within its territory.

Costs

31 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by organizing a campaign to promote the sale and purchase of Irish products within its territory Ireland has failed to fulfil its obligations under the Treaty;**

2. **Orders the defendant to pay the costs.**

Mertens de Wilmars Pescatore O'Keeffe

Everling Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 24 November 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 15 SEPTEMBER 1982 [1]

Mr President,
Members of the Court,

1. In this case the procedure provided for in the second paragraph of Article 169 of the EEC Treaty is being used by the Commission to charge Ireland with infringing Article 30 of that Treaty by adopting certain initiatives, in particular in the form of advertising, intended to

1 — Translated from the Italian.