European Court of Justice, 17 March 1983, Berliner Kindl Weisse Bier

FREE MOVEMENT OF GOODS

Prohibited application of national marketing rules

- **The extension to imported beer of national rules prohibiting the marketing of beer which does not comply with the conditions on acidity is an obstacle to the free movement of goods between member states that cannot be justified by the need to define the different types of beer traditionally brewed in a cer-tain part of the community and to protect their typical taste.**

The extension to imported beer of national rules prohibiting the marketing of beer which does not comply with the conditions on acidity is likely to preclude beer lawfully produced and marketed in other member states from being marketed in the member state in question. That obstacle to the free movement of goods between member states cannot be justified by the need to define the different types of beer traditionally brewed in a certain part of the community and to protect their typical taste. In particular, no consideration relating to the protection of the national consumer militates in favour of a rule preventing such consumer from trying a beer which is brewed according to a different tradition in another member state and the label of which clearly states that it comes from outside the said part of the community.

9 The answer to that part of the question for a preliminary ruling must therefor be that, if the rules on trading in beer, adopted by a member state in order to define the different types of beer traditionally brewed in a certain part of the community and to safeguard its typical taste, prohibit the marketing of any beer whose acidity exceeds a certain level, unless that beer is produced by processes traditionally used in that part of the community to obtain sour beer, the extension of that prohibition to beer lawfully produced and marketed in another member state must be regarded as a measure having an effect equivalent to a quantitative restriction, which is prohibited by article 30 of the treaty.

- **the extension by a member state of the prohibition of a statement of the strength of the original wort of beer on the prepackaging or the label to beer imported from other member states, necessitating an alteration of the label under which the imported beer is lawfully marketed in the exporting member state must be regarded as a measure having an effect equivalent to a quantitative restriction, which is prohibited by article 30 of the treaty, unless such statement, regard being had to its specific terms, is of such a kind as to mislead the purchaser.**

Source: **eur-lex.eu**

European Court of Justice, 17 March 1983

In case 94/82

Reference to the court under article 177 of the eec treaty by the economische politierechter (magistrate dealing with commercial offences) in the arrondissementsrechtbank (district court) Arnhem for a preliminary ruling in the criminal proceedings brought against

De kikvorsch groothandel-import-export bv,

Subject of the case

On the interpretation of the community provisions on the free movement of goods in order to enable it to determine the compatibility with articles 30 and 36 of the eec treaty of certain provisions of The Netherlands bierverordening (beer order) 1976,

Grounds

1 By judgment of 28 december 1981, which was received at the court registry on 22 march 1982, the economische politierechter (magistrate dealing with commercial offences) in the arrondissementsrechtbank (district court), Arnhem, referred to the court for a preliminary ruling under article 177 of the eec treaty a question on the interpretation of article 30 of the eec treaty, in order to enable him to determine the compatibility with community law of certain provisions of The Netherlands bierverordening (beer order) 1976, which was adopted by the produktschap voor bier (beer production board) (verordeningenblad bedrijfsorganisatie of 31 august 1976).

2 That question arose in the context of criminal proceedings brought against a beer importer, who was accused of marketing in The Netherlands a beer imported from the federal republic of Germany and described as "berliner kindl weisse", the acidity of which exceeded the limit laid down in article 6 (4) of the bierverordening, which had not been manufactured according to the processes provided for in article 1 (j) for the preparation of so-called "sour" beers and the label of which stated the strength of the original wort of the beer, contrary to article 7 (3) of the bierverordening.

3 Wregard to the provisions on acidity, it is clear from the file, as supplemented during the oral procedure before the court, that the bierverordening was adopted under a decision of the committee of ministers of the benelux economic union of 31 august 1973 on the harmonization of legislation concerning beer (basic text benelux 1973/1974, p. 1680 et seq.) And that the purpose of the relevant part of that decision was to define the different types of beer traditionally brewed in the Benelux countries and to protect their typical taste.

4 The prohibition of a statement of the strength of the original wort of the beer on the pre-packaging or label was taken from the verordening verbod vermelding stamwortgehalt van bier (order prohibiting any statement of the strength of the original wort of beer) of 1964. It is connected with the requirement that the alcoholic content must be stated on the packaging which is contained in article 14 (1) (b) of the drank- en horecawet (law on beverages and cafes, hotels and restaurants) of 7 December 1964 (staatsblad, p. 386). It is clear from the file that the produktschap wished to avoid the risk of confusion between those statements, which, in The Netherlands, are both normally expressed in percentages.

5 Under those circumstances, the economische politierechter referred to the court a question which in substance asks whether the extension of national prohibitory provisions such as those described above to beer imported from another member state, in which it is lawfully produced and marketed, must be regarded as a measure having an effect equivalent to a quantitative restriction on imports, prohibited by article 30 of the treaty.

6 Before that question is answered, it should be recalled, as the court has repeatedly held since its **judgment of 20 february 1979 in case 120/78, rewe, (1979) ecr 649**, that in the absence of common rules relating to the production and marketing of the products concerned, obstacles to free movement within the community resulting from disparities between the national laws must be accepted in so far as such rules, applicable to domestic and to imported products without distinction, may be recognized as being necessary in order to satisfy mandatory requirements relating inter alia to fariness in commercial dealings and consumer protection.

7 Consequently it is necessary to consider whether the extension to imported products of national provisions such as those in question in the main action is capable of impeding the free movement of goods between member states and, if so, to what extent such obstacles are justified on the ground of the public interest underlying the national provisions. For that purpose, it is necessary to consider separately the two types of prohibition at issue in this case.

8 The extension to imported beer of national rules prohibiting the marketing of beer which does not comply with the conditions on acidity is likely to preclude beer lawfully produced and marketed in other member states from being marketed in the member state in question. That obstacle to the free movement of goods between member states cannot be justified by the need to define the different types of beer traditionally brewed in a certain part of the community and to protect their typical taste. In particular, no consideration relating to the protection of the national consumer militates in favour of a rule preventing such consumer from trying a beer which is brewed according to a different tradition in another member state and the label of which clearly states that it comes from outside the said part of the community.

9 The answer to that part of the question for a preliminary ruling must therefor be that, if the rules on trading in beer, adopted by a member state in order to define the different types of beer traditionally brewed in a certain part of the community and to safeguard its typical taste, prohibit the marketing of any beer whose acidity exceeds a certain level, unless that beer is produced by processes traditionally used in that part of the community to obtain sour beer, the extension of that prohibition to beer lawfully produced and marketed in another member state must be regarded as a measure having an effect equivalent to a quantitative restriction, which is prohibited by article 30 of the treaty.

10 Although the extension to imported products of a prohibition of the statement of certain information on the packaging of a product is not an absolute barrier to the importation into the member states concerned of products originating in other member states, it is none the less of such a nature as to render the marketing of those products more difficult or more expensive, through the need to alter the label under which the product is lawfully marketed in the member state in which it is produced.

11 Article 30 of the treaty in no way prevents a member state from protecting its consumers against labelling which is of such a kind as to mislead the purchaser. Such protection is indeed required by article 2 (1) of council directive 79/112/eec of 18 december 1978 on the approximation of the laws of the member states relating to the labelling, presentation and advertising of food-stuffs for sale to the ultimate consumer (official journal 1979, l 33, p. 1).

12 Such consumer protection may also entail a prohibition of the provision of certain information on the products, particularly if that information may be confused by the consumer with other information required by the national rules. For such a prohibition to be applied to products from another member state, in such a way as to necessitate the alteration of the original labels of such products, the original labels must actually be of such a kind as to give rise to the confusion which the rules seek to avoid. The findings of fact necessary in order to establish whether or not there is such a risk of confusion are a matter for the national court.

13 The answer to the latter part of the question referred to the court for a preliminary ruling should therefore be that the extension by a member state of the prohibition of a statement of the strength of the original wort of beer on the pre-packaging or the label to beer imported from other member states, necessitating an alteration of the label under which the imported beer is lawfully marketed in the exporting member state must be regarded as a measure having an effect equivalent to a quantitative restriction, which is prohibited by article 30 of the treaty, unless such statement, regard being had to its specific terms, is of such a kind as to mislead the purchaser.

Decision on costs

Costs

The costs incurred by the governments of the French Republic and the kingdom of The Netherlands and by

the commission of the European communities, which have submitted observations to the court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

Operative part

On those grounds,

The court (second chamber),

In answer to the questions submitted to it by the economische politierechter of the arrondissementsrechtbank, Arnhem, by judgment of 28 December 1981, hereby rules:

1. If the rules on trading in beer, adopted by a member state in order to define the different types of beer traditionally brewed in a certain part of the comunity and to safeguard its typical taste, prohibit the marketing of any beer whose acidity exceeds a certain level, unless that beer is produced by processes traditionally used in that part of the community to obtain sour beer, the extension of that prohibition to beer lawfully produced and marketed in another member state must be regarded as a measure having an effect equivalent to a quantitative restriction, which is prohibited by article 30 of the treaty.

2. If such rules prohibit a statement of the strength of the original wort of the beer on the pre-packaging or the label thereof, the extension of that prohibition to beer imported from other member states, necessitating an alteration of the label under which the imported beer is lawfully marketed in the exporting member state, must be regarded as a measure having an effect equivalent to a quantitative restriction, which is prohibited by article 30 of the treaty, unless such statement, regard being had to its specific terms, is of such a kind as to mislead the purchaser.