JUDGMENT OF THE COURT
12 March 1987 *

In Case 178/84

Commission of the European Communities, represented by R. C. Béraud, Principal Legal Adviser, and J. Sack, a member of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, also a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by M. Seidel, Ministerialrat at the Federal Ministry of Economic Affairs, J. Dietrich, Ministerialrat at the Federal Ministry of Youth, Family Affairs and Health, J. Sedemund, Rechtsanwalt, Cologne, and R. Lukes, Professor of Law in the University of Münster, acting as Agents, with an address for service in Luxembourg at the office of the Chancellor of the Embassy of the Federal Republic of Germany, 20-22 avenue E. Reuter,

defendant,

concerning the application of the 'Reinheitsgebot' (purity requirement) to beers imported from other Member States,

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: German.

having regard to the Report for the Hearing as supplemented following the hearing on 13 and 14 May 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 September 1986,

gives the following

Judgment

1 By an application lodged at the Court Registry on 6 July 1984, the Commission of the European Communities has brought an action under Article 169 of the EEC Treaty for a declaration that, by prohibiting the marketing of beers lawfully manufactured and marketed in another Member State if they do not comply with Articles 9 and 10 of the Biersteuergesetz (Law on beer duty) (Law of 14 March 1952, *Bundesgesetzblatt* I, p. 149), the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty.

2 Reference is made to the Report for the Hearing for the facts of the case, the course of the procedure and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The applicable national law

3 In the course of the proceedings before the Court, the German Government gave the following account of its legislation on beer, which was not contested by the Commission and is to be accepted for the purposes of these proceedings.

4 As far as the present proceedings are concerned, the Biersteuergesetz comprises, on the one hand, manufacturing rules which apply as such only to breweries in the Federal Republic of Germany and, on the other, rules on the utilization of the designation 'Bier' (beer), which apply both to beer brewed in the Federal Republic of Germany and to imported beer.

5 The rules governing the manufacture of beer are set out in Article 9 of the Biersteuergesetz. Article 9 (1) provides that bottom-fermented beers may be manufactured only from malted barley, hops, yeast and water. Article 9 (2) lays down the same requirements with regard to the manufacture of top-fermented beer but authorizes the use of other malts, technically pure cane sugar, beet sugar or invert sugar and glucose and colourants obtained from those sugars. Article 9 (3) states that malt means any cereal artificially germinated. It must be noted in that connection that under Article 17 (4) of the Durchführungsbestimmungen zum Biersteuergesetz (Implementing provisions to the Biersteuergesetz) of 14 March 1952 (*Bundesgesetzblatt* I, p. 153) rice, maize and sorghum are not treated as cereals for the purposes of Article 9 (3) of the Biersteuergesetz. Under Article 9 (7) of the Biersteuergesetz, derogations from the manufacturing rules laid down in Article 9 (1) and (2) may be granted on application in specific cases in respect of the manufacture of special beers, beer intended for export or beer intended for scientific experiments. In addition, under Article 9 (8), Article 9 (1) and (2) do not apply to breweries making beer for consumption on their premises (Hausbrauer). Under Article 18 (1) (1) of the Biersteuergesetz fines may be imposed for contraventions of the manufacturing rules set out in Article 9.

6 The rules on the commercial utilization of the designation 'Bier' are set out in Article 10 of the Biersteuergesetz. Under that provision only fermented beverages satisfying the requirements set out in Article 9 (1), (2), (4), (5) and (6) of the Biersteuergesetz may be marketed under the designation 'Bier' — standing alone or as part of a compound designation — or under other designations, or with pictorial representations, giving the impression that the beverage in question is beer. Article 10 of the Biersteuergesetz entails merely a partial prohibition on marketing in so far as beverages not manufactured in conformity with the aforementioned manufacturing rules may be sold under other designations, provided that those designations do not offend against the restrictions laid down in that provision. Contraventions of the rules on designation may give rise to a fine under Article 18 (1) (4) of the Biersteuergesetz.

7 Imports into the Federal Republic of Germany of beers containing additives will also be confronted by the absolute prohibition on marketing in Article 11 (1) (2) of the Gesetz über den Verkehr mit Lebensmitteln, Tabakerzeugnissen, kosmetischen Mitteln und sonstigen Bedarfsgegenständen (Law on foodstuffs, tobacco products, cosmetics and other consumer goods), hereinafter referred to as the 'Foodstuffs Law', of 15 August 1974 (*Bundesgesetzblatt* I, p. 1945).

8 Under the Foodstuffs Law, which is based on considerations of preventive health protection, all additives are in principle prohibited, unless they have been auth-

orized. Article 2 of the law defines additives as 'substances which are intended to be added to foodstuffs in order to alter their characteristics or to give them specific properties or produce specific effects'. It does not cover 'substances which are of natural origin or are chemically identical to natural substances and which, according to general trade usage, are mainly used on account of their nutritional, olfactory or gustatory value or as stimulants, and drinking and table water'.

9 Article 11 (1) (1) of the Foodstuffs Law prohibits the use of unauthorized additives, whether pure or mixed with other substances, for the manufacture or processing by way of trade of foodstuffs intended to be marketed. Article 11 (2) (1) and Article 11 (3) provide that that prohibition does not cover processing aids or enzymes. Article 11 (2) (1) defines processing aids as 'additives which are eliminated from the foodstuff altogether or to such an extent that they . . . are present in the product for sale to the consumer . . . only as technically unavoidable and technologically insignificant residues in amounts which are negligible from the point of view of health, odour and taste'.

10 Article 11 (1) (2) of the Foodstuffs Law prohibits the marketing by way of trade of products manufactured or processed in contravention of Article 11 (1) (1) or not conforming with a regulation issued pursuant to Article 12 (1). Under Article 12 (1) a ministerial regulation approved by the Bundesrat may authorize the use of certain additives for general use, for use in specific foodstuffs or for specific applications provided that it is compatible with consumer protection from the point of view of technological, nutritional and dietary requirements. The relevant authorizations are set out in the annexes to the Verordnung über die Zulassung von Zusatzstoffen zu Lebensmitteln (Regulation on the authorization of additives in foodstuffs) of 22 December 1981 (*Bundesgesetzblatt* I, p. 1633), hereinafter referred to as 'the Regulation on Additives').

11 As a foodstuff, beer is subject to the legislation on additives, but it is governed by special rules. The rules on manufacture in Article 9 of the Biersteuergesetz preclude the use of any substances, including additives, other than those listed therein. As a result, those rules constitute specific provisions on additives within the meaning of Article 1 (3) of the Regulation on Additives. That paragraph provides that the Regulation on Additives is to be without prejudice to any contrary provisions prohibiting, restricting or authorizing the use of additives in particular foodstuffs. In this way, additives authorized for general use or for

specific uses in the annexes to the Regulation on Additives may not be used in the manufacture of beer. However, that exception applies only to substances which are additives within the meaning of the Law on Foodstuffs and whose use is not covered by an exception laid down in the Foodstuffs Law itself, which was enacted after the Biersteuergesetz. Consequently, the prohibition on the use of additives in beer does not cover processing aids or enzymes.

12 As a result, Article 11 (1) (2) of the Foodstuffs Law, in conjunction with Article 9 of the Biersteuergesetz, has the effect of prohibiting the importation into the Federal Republic of Germany of beers containing substances covered by the ban on the use of additives laid down by Article 11 (1) (1) of the Foodstuffs Law.

The subject-matter of the proceedings

13 It must first be established whether the proceedings are limited to the prohibition of the marketing under the designation 'Bier' of beer manufactured in other Member States in accordance with rules inconsistent with Article 9 of the Biersteuergesetz or whether they extend to the ban on the importation of beer containing additives which are authorized in the Member State of origin but prohibited in the Federal Republic of Germany.

14 In its letter giving the Federal Republic of Germany formal notice, the Commission's objections were directed against Articles 9 and 10 of the Biersteuergesetz in so far as they precluded the importation into the Federal Republic of Germany of beers which, although lawfully manufactured in other Member States, had not been brewed in conformity with the rules applicable in the Federal Republic of Germany. The Commission took the view that that marketing prohibition could not be justified on grounds of the public interest relating to the protection of consumers or the safeguarding of public health.

15 In its reply to that letter the German Government argued that the Reinheitsgebot was vital in order to safeguard public health: if beer was manufactured using only the raw materials listed in Article 9 of the Biersteuergesetz the use of additives could be avoided. In a supplementary letter dated 15 December 1982 to a Member of the Commission, the German Government repeated that argument and made it clear that the requirement to use only the raw materials listed in Article 9 of the Biersteuergesetz included the prohibition of the use of additives, which was designed to protect public health.

16 In its reasoned opinion the Commission adhered to its point of view. It considered that the fact that beer brewed according to the German tradition of the Reinheitsgebot could be manufactured without additives did not signify generally that there was no technological necessity for the use of additives in beer brewed according to other traditions or using other raw materials. The question of the technological necessity for the use of additives could be decided only in the light of the manufacturing methods employed and in relation to specific additives.

17 In its reply to the reasoned opinion the German Government reiterated its arguments relating to preventive health protection which, in its view, justified the provisions in Articles 9 and 10 of the Biersteuergesetz. However, it did not elucidate the exact scope of that legislation or its relationship with the rules on additives.

18 In the statement of the grounds it relies on in its application, the Commission complains of the barriers to imports resulting from the application of the Biersteuergesetz to beers manufactured in other Member States from other raw materials or using additives authorized in those States.

19 It was only when it submitted its defence that the German Government stated that the rules on the purity of beer were contained in two separate but complementary pieces of legislation, and provided the description of its legislation which is given above.

20 In its reply the Commission set out its separate objections to the rules on designation in Article 10 of the Biersteuergesetz and to the absolute ban on additives in beer. In the Commission's view, the German Government's comprehensive description of the applicable law does not fundamentally alter the facts underlying this case. The Commission stresses that its application is not aimed exclusively at Articles 9 and 10 of the Biersteuergesetz but generally at the prohibition on the marketing of beer from other Member States which does not satisfy the manufacturing criteria set out in those provisions. In its opinion, the precise statutory basis for that prohibition is of no importance.

21 In those circumstances there are two reasons why it must be considered that the application is directed both against the prohibition on the marketing under the designation 'Bier' of beers manufactured in other Member States in accordance with rules not corresponding to those in Article 9 of the Biersteuergesetz, and against the prohibition on the importation of beers containing additives whose use is authorized in the Member State of origin but forbidden in the Federal Republic of Germany.

22 In the first place, the Commission identified the substance of the infringement from the outset in so far as from the beginning of the pre-litigation procedure it challenged the prohibition on marketing beer imported into the Federal Republic of Germany from other Member States which is not brewed in accordance with the rules in force in the Federal Republic of Germany. It referred to Article 9 of the Biersteuergesetz only in order to specify those rules more precisely. As the German Government stated, the scope of Article 9 is not restricted to raw materials but also covers additives. Besides, the arguments developed by the Commission during the pre-litigation procedure to the effect that an absolute ban on additives is inappropriate show that it intended its action to cover that prohibition.

23 In the second place, it must be observed that, from the start of the procedure, the German Government itself raised in its defence mainly arguments concerning additives and the protection of public health, which shows that it understood and acknowledged that the subject-matter of the proceedings also covered the absolute ban on the use of additives and makes it clear that it has not been denied the right to a fair hearing in that respect.

The prohibition on the marketing under the designation 'Bier' of beers not complying with the requirements of Article 9 of the Biersteuergesetz

24 It must be noted in the first place that the provision on the manufacture of beer set out in Article 9 of the Biersteuergesetz cannot in itself constitute a measure having an effect equivalent to a quantitative restriction on imports contrary to Article 30 of the EEC Treaty, since it applies only to breweries in the Federal Republic of Germany. Article 9 of the Biersteuergesetz is at issue in this case only in so far as Article 10 of that law, which covers both products imported from other Member States and products manufactured in Germany, refers thereto in order to determine the beverages which may be marketed under the designation 'Bier'.

25 As far as those rules on designation are concerned, the Commission concedes that as long as harmonization has not been achieved at Community level the Member States have the power in principle to lay down rules governing the manufacture, the composition and the marketing of beverages. It stresses, however, that rules which, like Article 10 of the Biersteuergesetz, prohibit the use of a generic designation for the marketing of products manufactured partly from raw materials, such as rice and maize, other than those whose use is prescribed in the national territory are contrary to Community law. In any event, such rules go beyond what is necessary in order to protect the German consumer, since that could be done simply by means of labelling or notices. Those rules therefore constitute an impediment to trade contrary to Article 30 of the EEC Treaty.

26 The German Government has first sought to justify its rules on public-health grounds. It maintains that the use of raw materials other than those permitted by Article 9 of the Biersteuergesetz would inevitably entail the use of additives. However, at the hearing the German Government conceded that Article 10 of the Biersteuergesetz, which is merely a rule on designation, was exclusively intended to protect consumers. In its view, consumers associate the designation 'Bier' with a beverage manufactured from only the raw materials listed in Article 9 of the Biersteuergesetz. Consequently, it is necessary to prevent them from being misled as to the nature of the product by being led to believe that a beverage called 'Bier' complies with the Reinheitsgebot when that is not the case. The German Government maintains that its rules are not protectionist in aim. It stresses in that regard that the raw materials whose use is specified in Article 9 (1) and (2) of the Biersteuergesetz are not necessarily of national origin. Any trader marketing products satisfying the prescribed rules is free to use the designation 'Bier' and those rules can readily be complied with outside the Federal Republic of Germany.

27 According to a consistent line of decisions of the Court (above all, the judgment of 11 July 1974 in Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837) the prohibition of measures having an effect equivalent to quantitative restrictions under Article 30 of the EEC Treaty covers 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade'.

28 The Court has also consistently held (in particular in the judgment of 20 February 1979 in Case 120/78 *REWE-Zentrale AG* v *Bundesmonopolverwaltung* [1979] ECR 649, and the judgment of 10 November 1982 in Case 261/81 *Walter Rau Lebensmittelwerke* v *De Smedt* [1982] ECR 3961) that 'in the absence of common rules relating to the 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 consumer protection. It is also necessary for such rules to be proportionate to the aim in view. If a Member State has a choice between various measures to attain the same objective it should choose the means which least restricts the free movement of goods'.

29 It is not contested that the application of Article 10 of the Biersteuergesetz to beers from other Member States in whose manufacture raw materials other than malted barley have been lawfully used, in particular rice and maize, is liable to constitute an obstacle to their importation into the Federal Republic of Germany.

30 Accordingly, it must be established whether the application of that provision may be justified by imperative requirements relating to consumer protection.

31 The German Government's argument that Article 10 of the Biersteuergesetz is essential in order to protect German consumers because, in their minds, the designation 'Bier' is inseparably linked to the beverage manufactured solely from the ingredients laid down in Article 9 of the Biersteuergesetz must be rejected.

32 Firstly, consumers' conceptions which vary from one Member State to the other are also likely to evolve in the course of time within a Member State. The establishment of the common market is, it should be added, one of the factors that may play a major contributory role in that development. Whereas rules protecting consumers against misleading practices enable such a development to be taken into account, legislation of the kind contained in Article 10 of the Biersteuergesetz prevents it from taking place. As the Court has already held in another context (judgment of 27 February 1980 in Case 170/78 *Commission* v *United Kingdom*

[1980] ECR 417), the legislation of a Member State must not 'crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to comply with them'.

33 Secondly, in the other Member States of the Community the designations corresponding to the German designation 'Bier' are generic designations for a fermented beverage manufactured from malted barley, whether malted barley on its own or with the addition of rice or maize. The same approach is taken in Community law as an be seen from heading No 22.03 of the Common Customs Tariff. The German legislature itself utilizes the designation 'Bier' in that way in Article 9 (7) and (8) of the Biersteuergesetz in order to refer to beverages not complying with the manufacturing rules laid down in Article 9 (1) and (2).

34 The German designation 'Bier' and its equivalents in the languages of the other Member States of the Community may therefore not be restricted to beers manufactured in accordance with the rules in force in the Federal Republic of Germany.

35 It is admittedly legitimate to seek to enable consumers who attribute specific qualities to beers manufactured from particular raw materials to make their choice in the light of that consideration. However, as the Court has already emphasized (judgment of 9 December 1981 in Case 193/80 *Commission* v *Italy* [1981] ECR 3019), that possibility may be ensured by means which do not prevent the importation of products which have been lawfully manufactured and marketed in other Member States and, in particular, 'by the compulsory affixing of suitable labels giving the nature of the product sold'. By indicating the raw materials utilized in the manufacture of beer 'such a course would enable the consumer to make his choice in full knowledge of the facts and would guarantee transparency in trading and in offers to the public'. It must be added that such a system of mandatory consumer information must not entail negative assessments for beers not complying with the requirements of Article 9 of the Biersteuergesetz.

36 Contrary to the German Government's view, such a system of consumer information may operate perfectly well even in the case of a product which, like beer, is not necessarily supplied to consumers in bottles or in cans capable of bearing the appropriate details. That is borne out, once again, by the German legislation itself.

Article 26 (1) and (2) of the aforementioned regulation implementing the Biersteuergesetz provides for a system of consumer information in respect of certain beers, even where those beers are sold on draught, when the requisite information must appear on the casks or the beer taps.

37 It follows from the foregoing that by applying the rules on designation in Article 10 of the Biersteuergesetz to beers imported from other Member States which were manufactured and marketed lawfully in those States the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty.

The absolute ban on the marketing of beers containing additives

38 In the Commission's opinion the absolute ban on the marketing of beers containing additives cannot be justified on public-health grounds. It maintains that the other Member States control very strictly the utilization of additives in foodstuffs and do not authorize the use of any given additive until thorough tests have established that it is harmless. In the Commission's view, there should be a presumption that beers manufactured in other Member States which contain additives authorized there represent no danger to public health. The Commission argues that if the Federal Republic of Germany wishes to oppose the importation of such beers then it bears the onus of proving that such beers are a danger to public health. The Commission considers that in this case that burden of proof has not been discharged. In any event, the rules on additives applying to beer in the Federal Republic of Germany are disproportionate in so far as they completely preclude the use of additives whereas the rules for other beverages, such as soft drinks, are much more flexible.

39 For its part, the German Government considers that in view of the dangers resulting from the utilization of additives whose long-term effects are not yet known and in particular of the risks resulting from the accumulation of additives in the organism and their interaction with other substances, such as alcohol, it is necessary to minimize the quantity of additives ingested. Since beer is a foodstuff of which large quantities are consumed in Germany, the German Government considers that it is particularly desirable to prohibit the use of any additive in its

manufacture, especially in so far as the use of additives is not technologically necessary and can be avoided if only the ingredients laid down in the Biersteuergesetz are used. In those circumstances, the German rules on additives in beer are fully justified by the need to safeguard public health and do not infringe the principle of proportionality.

40 It is not contested that the prohibition on the marketing of beers containing additives constitutes a barrier to the importation from other Member States of beers containing additives authorized in those States, and is to that extent covered by Article 30 of the EEC Treaty. However, it must be ascertained whether it is possible to justify that prohibition under Article 36 of the Treaty on grounds of the protection of human health.

41 The Court has consistently held (in particular in the judgment of 14 July 1983 in Case 174/82 *Sandoz BV* [1983] ECR 2445) that 'in so far as there are uncertainties at the present state of scientific research it is for the Member States, in the absence of harmonization, to decide what degree of protection of the health and life of humans they intend to assure, having regard however to the requirements of the free movement of goods within the Community'.

42 As may also be seen from the decisions of the Court (and especially the judgment of 14 July 1983 in the *Sandoz* case, cited above, the judgment of 10 December 1985 in Case 247/84 *Motte* [1985] ECR 3887, and the judgment of 6 May 1986 in Case 304/84 *Ministère public* v *Muller and Others* [1986] ECR 1511), in such circumstances Community law does not preclude the adoption by the Member States of legislation whereby the use of additives is subjected to prior authorization granted by a measure of general application for specific additives, in respect of all products, for certain products only or for certain uses. Such legislation meets a genuine need of health policy, namely that of restricting the uncontrolled consumption of food additives.

43 However, the application to imported products of prohibitions on marketing products containing additives which are authorized in the Member State of production but prohibited in the Member State of importation is permissible only in so far as it complies with the requirements of Article 36 of the Treaty as it has been interpreted by the Court.

44 It must be borne in mind, in the first place, that in its judgments in the *Sandoz*, *Motte* and *Muller* cases, cited above, the Court inferred from the principle of proportionality underlying the last sentence of Article 36 of the Treaty that prohibitions on the marketing of products containing additives authorized in the Member State of production but prohibited in the Member State of importation must be restricted to what is actually necessary to secure the protection of public health. The Court also concluded that the use of a specific additive which is authorized in another Member State must be authorized in the case of a product imported from that Member State where, in view, on the one hand, of the findings of international scientific research, and in particular of the work of the Community's Scientific Committee for Food, the Codex Alimentarius Committee of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization, and, on the other hand, of the eating habits prevailing in the importing Member State, the additive in question does not present a risk to public health and meets a real need, especially a technical one.

45 Secondly, it should be remembered that, as the Court held in its judgment of 6 May 1986 in the *Muller* case, cited above, by virtue of the principle of proportionality, traders must also be able to apply, under a procedure which is easily accessible to them and can be concluded within a reasonable time, for the use of specific additives to be authorized by a measure of general application.

46 It should be pointed out that it must be open to traders to challenge before the courts an unjustified failure to grant authorization. Without prejudice to the right of the competent national authorities of the importing Member State to ask traders to produce the information in their possession which may be useful for the purpose of assessing the facts, it is for those authorities to demonstrate, as the Court held in its judgment of 6 May 1986 in the *Muller* case, cited above, that the prohibition is justified on grounds relating to the protection of the health of its population.

47 It must be observed that the German rules on additives applicable to beer result in the exclusion of all the additives authorized in the other Member States and not the exclusion of just some of them for which there is concrete justification by

reason of the risks which they involve in view of the eating habits of the German population; moreover those rules do not lay down any procedure whereby traders can obtain authorization for the use of a specific additive in the manufacture of beer by means of a measure of general application.

48 As regards more specifically the harmfulness of additives, the German Government, citing experts' reports, has referred to the risks inherent in the ingestion of additives in general. It maintains that it is important, for reasons of general preventive health protection, to minimize the quantity of additives ingested, and that it is particularly advisable to prohibit altogether their use in the manufacture of beer, a foodstuff consumed in considerable quantities by the German population.

49 However, it appears from the tables of additives authorized for use in the various foodstuffs submitted by the German Government itself that some of the additives authorized in other Member States for use in the manufacture of beer are also authorized under the German rules, in particular the Regulation on Additives, for use in the manufacture of all, or virtually all, beverages. Mere reference to the potential risks of the ingestion of additives in general and to the fact that beer is a foodstuff consumed in large quantities does not suffice to justify the imposition of stricter rules in the case of beer.

50 As regards the need, and in particular the technological need, for additives, the German Government argues that there is no need for additives if beer is manufactured in accordance with the requirements of Article 9 of the Biersteuergesetz.

51 It must be emphasized that mere reference to the fact that beer can be manufactured without additives if it is made from only the raw materials prescribed in the Federal Republic of Germany does not suffice to preclude the possibility that some additives may meet a technological need. Such an interpretation of the concept of technological need, which results in favouring national production methods, constitutes a disguised means of restricting trade between Member States.

52 The concept of technological need must be assessed in the light of the raw materials utilized and bearing in mind the assessment made by the authorities of the Member State where the product was lawfully manufactured and marketed. Account must also be taken of the findings of international scientific research and in particular the work of the Community's Scientific Committee for Food, the Codex Alimentarius Committee of the FAO and the World Health Organization.

53 Consequently, in so far as the German rules on additives in beer entail a general ban on additives, their application to beers imported from other Member States is contrary to the requirements of Community law as laid down in the case-law of the Court, since that prohibition is contrary to the principle of proportionality and is therefore not covered by the exception provided for in Article 36 of the EEC Treaty.

54 In view of the foregoing considerations it must be held that by prohibiting the marketing of beers lawfully manufactured and marketed in another Member State if they do not comply with Articles 9 and 10 of the Biersteuergesetz, the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty.

Costs

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

On those grounds,

THE COURT

hereby:

(1) Declares that, by prohibiting the marketing of beers lawfully manufactured and marketed in another Member State if they do not comply with Articles 9 and 10 of the Biersteuergesetz, the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty;

(2) Orders the Federal Republic of Germany to pay the costs.

Mackenzie Stuart Galmot Kakouris O'Higgins

Schockweiler Bosco Koopmans Due Everling

Bahlmann Joliet Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 12 March 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President