

In Case 120/78

REFERENCE to the Court under [Article 267 TFEU] by the Hessisches Finanzgericht for a preliminary ruling in the action pending before that court between

REWE-ZENTRAL AG, having its registered office in Cologne,

and

BUNDESMONOPOLVERWALTUNG FÜR BRANNTWEIN (Federal Monopoly Administration for Spirits),

on the interpretation of [Articles 34 and 37 TFEU] in relation to Article 100 (3) of the German Law on the Monopoly in Spirits,

THE COURT

composed of : H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General : F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Decision

- 1 By order of 28 April 1978, which was received at the Court on 22 May, the Hessisches Finanzgericht referred two questions to the Court under [Article 267 TFEU] for a preliminary ruling on the interpretation of [Articles 34 and 37 TFEU], for the purpose of assessing the compatibility with [Union] law of a provision of the German rules relating to the marketing of alcoholic beverages fixing a minimum alcoholic strength for various categories of alcoholic products.
- 2 It appears from the order making the reference that the plaintiff in the main action intends to import a consignment of "Cassis de Dijon" originating in France for the purpose of marketing it in the Federal Republic of Germany.

The plaintiff applied to the Bundesmonopolverwaltung (Federal Monopoly Administration for Spirits) for authorization to import the product in question and the monopoly administration informed it that because of its insufficient alcoholic strength the said product does not have the characteristics required in order to be marketed within the Federal Republic of Germany.

- 3 The monopoly administration's attitude is based on Article 100 of the Branntweinmonopolgesetz and on the rules drawn up by the monopoly administration pursuant to that provision, the effect of which is to fix the minimum alcohol content of specified categories of liqueurs and other potable spirits (Verordnung über den Mindesteingeistgehalt von Trinkbranntweinen of 28 February 1958, Bundesanzeiger No 48 of 11 March 1958).

Those provisions lay down that the marketing of fruit liqueurs, such as "Cassis de Dijon", is conditional upon a minimum alcohol content of 25%, whereas the alcohol content of the product in question, which is freely marketed as such in France, is between 15 and 20%.

- 4 The plaintiff takes the view that the fixing by the German rules of a minimum alcohol content leads to the result that well-known spirits products from other Member States of the [Union] cannot be sold in the Federal Republic of Germany and that the said provision therefore constitutes a restriction on the free movement of goods between Member States which exceeds the bounds of the trade rules reserved to the latter.

In its view it is a measure having an effect equivalent to a quantitative restriction on imports contrary to [Article 34 TFEU].

Since, furthermore, it is a measure adopted within the context of the management of the spirits monopoly, the plaintiff considers that there is also an infringement of Article 37 [TFEU], according to which the Member States shall progressively adjust any State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured or marketed exists between nationals of Member States.

- 5 In order to reach a decision on this dispute the Hessisches Finanzgericht has referred two questions to the Court, worded as follows:
 1. Must the concept of measures having an effect equivalent to quantitative restrictions on imports contained in [Article 34 TFEU] be understood as meaning that the fixing of a minimum wine-spirit content for potable spirits laid down in the German Branntweinmonopolgesetz, the result of which is that traditional products of other Member States whose wine-spirit content is below the fixed limit cannot be put into circulation in the Federal Republic of Germany, also comes within this concept?
 2. May the fixing of such a minimum wine-spirit content come within the concept of "discrimination regarding the conditions under which goods are procured and marketed ... between nationals of Member States" contained in Article 37 [TFEU]?
- 6 The national court is thereby asking for assistance in the matter of interpretation in order to enable it to assess whether the requirement of a minimum alcohol content may be covered either by the prohibition on all measures having an effect equivalent to quantitative restrictions in trade between Member States contained in [Article 34 TFEU] or by the prohibition on all discrimination regarding the conditions under which goods are procured and marketed between nationals of Member States within the meaning of Article 37 [TFEU].
- 7 It should be noted in this connexion that Article 37 [TFEU] relates specifically to State monopolies of a commercial character.

That provision is therefore irrelevant with regard to national provisions which do not concern the exercise by a public monopoly of its specific function - namely, its exclusive right - but apply in a general manner to the production and marketing of alcoholic beverages, whether or not the latter are covered by the monopoly in question.

That being the case, the effect on intra-[Union] trade of the measure referred to by the national court must be examined solely in relation to the requirements under [Article 34 TFEU], as referred to by the first question.

- 8 In the absence of common rules relating to the production and marketing of alcohol - a proposal for a regulation submitted to the Council by the Commission on 7 December 1976 (Official Journal C 309, p. 2) not yet having received the Council's approval - it is for the Member States to regulate all matters relating to the production and marketing of alcohol and alcoholic beverages on their own territory.

Obstacles to movement within the [Union] resulting from disparities between the national laws relating to the marketing of the products in question must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

- 9 The Government of the Federal Republic of Germany, intervening in the proceedings, put forward various arguments which, in its view, justify the application of provisions relating to the minimum alcohol content of alcoholic beverages, adducing considerations relating on the one hand to the protection of public health and on the other to the protection of the consumer against unfair commercial practices.
- 10 As regards the protection of public health the German Government states that the purpose of the fixing of minimum alcohol contents by national legislation is to avoid the proliferation of alcoholic beverages on the national market, in particular alcoholic beverages with a low alcohol content, since, in its view, such products may more easily induce a tolerance towards alcohol than more highly alcoholic beverages.
- 11 Such considerations are not decisive since the consumer can obtain on the market an extremely wide range of weakly or moderately alcoholic products and furthermore a large proportion of alcoholic beverages with a high alcohol content freely sold on the German

market is generally consumed in a diluted form.

- 12 The German Government also claims that the fixing of a lower limit for the alcohol content of certain liqueurs is designed to protect the consumer against unfair practices on the part of producers and distributors of alcoholic beverages.

This argument is based on the consideration that the lowering of the alcohol content secures a competitive advantage in relation to beverages with a higher alcohol content, since alcohol constitutes by far the most expensive constituent of beverages by reason of the high rate of tax to which it is subject.

Furthermore, according to the German Government, to allow alcoholic products into free circulation wherever, as regards their alcohol content, they comply with the rules laid down in the country of production would have the effect of imposing as a common standard within the [Union] the lowest alcohol content permitted in any of the Member States, and even of rendering any requirements in this field inoperative since a lower limit of this nature is foreign to the rules of several Member States.

- 13 As the Commission rightly observed, the fixing of limits in relation to the alcohol content of beverages may lead to the standardization of products placed on the market and of their designations, in the interests of a greater transparency of commercial transactions and offers for sale to the public.

However, this line of argument cannot be taken so far as to regard the mandatory fixing of minimum alcohol contents as being an essential guarantee of the fairness of commercial transactions, since it is a simple matter to ensure that suitable information is conveyed to the purchaser by requiring the display of an indication of origin and of the alcohol content on the packaging of products.

- 14 It is clear from the foregoing that the requirements relating to the minimum alcohol content of alcoholic beverages do not serve a purpose which is in the general interest and such as to take precedence over the requirements of the free movement of goods, which constitutes one of the fundamental rules of the [Union].

In practice, the principle effect of requirements of this nature is to promote alcoholic

beverages having a high alcohol content by excluding from the national market products of other Member States which do not answer that description.

It therefore appears that the unilateral requirement imposed by the rules of a Member State of a minimum alcohol content for the purposes of the sale of alcoholic beverages constitutes an obstacle to trade which is incompatible with the provisions of [Article 34 TFEU].

There is therefore no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State; the sale of such products may not be subject to a legal prohibition on the marketing of beverages with an alcohol content lower than the limit set by the national rules.

- 15 Consequently, the first question should be answered to the effect that the concept of "measures having an effect equivalent to quantitative restrictions on imports" contained in [Article 34 TFEU] is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

Costs

- 16 The costs incurred by the Government of the Kingdom of Denmark, the Government of the Federal Republic of Germany and the Commission of the European [Union], which have submitted observations to the Court, are not recoverable.

Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action before the Hessisches Finanzgericht, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Hessisches Finanzgericht by order of 28 April 1978, hereby rules:

The concept of "measures having an effect equivalent to quantitative restrictions on imports" contained in [Article 34 TFEU] is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

Kutscher	Mertens de Wilmars	Mackenzie Stuart	Donner Pescatore
Sorensen	O'Keeffe	Bosco	Touffait

Delivered in open court in Luxembourg on 20 February 1979.

A. Van Houtte
Registrar

H. Kutscher
President