JUDGMENT OF THE COURT
7 April 1987

In Case 196/85

Commission of the European [Union], represented by its Legal Adviser, Johannes Føns Buhl, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

French Republic, represented by Gilbert Guillaume, Regis de Gouttes and Philippe Pouzoulet, acting as Agents, with an address for service in Luxembourg at the French Embassy,

defendant,

APPLICATION for a declaration that, by establishing and maintaining a system of differential taxation in respect of 'natural sweet wines' and liqueur wines, the French Republic has failed to fulfil its obligations under [Article 110 TFEU],

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot and T. F. O'Higgins, Presidents of Chambers, G. Bosco, O. Due, U. Everling and K. Bahlmann, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 18 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 27 January 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 25. June 1985 the Commission of the European [Union] brought an action under [Article 258 TFEU] for a declaration that by establishing and maintaining a system of differential taxation in respect of 'natural sweet wines' and liqueur wines, the French Republic has failed to fulfil its obligations under [Article 110 TFEU].

2 The Commission, in essence, asserts that the provisions of the Code general des impots (General Taxation Code, hereinafter referred to as 'the Code') governing the consumption duty (droit de consommation) and circulation duty (droit de circulation) levied on liqueur wines and similar wines are not compatible with [Article 110 TFEU]. Under the Code, liqueur wines and similar wines are generally subject to a consumption duty of FF 6 795 per hectolitre of pure alcohol and also to a circulation duty of FF 22 per hectolitre. However, certain such wines, namely natural sweet wines, are taxed at a rate of FF 2 545 and FF 54.80, respectively. According to the Commission, the scheme is discriminatory inasmuch as it makes entitlement to preferential taxation subject to conditions which are less favourable to products imported from other Member States than to comparable domestic (French) products.

3 Reference is made to the Report for the Hearing for the details of · the French legislation in question, an account of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Criterion of 'traditional and customary production'

4 The Commission asserts that discrimination contrary to [Article 110 TFEU] arises from the fact that French legislation confines the preferential tax scheme to those liqueur wines whose production is 'traditional and customary'. Although it ostensibly applies without distinction to domestic products and to imports from other Member States, that requirement can be fulfilled only by domestic products. Furthermore, the Commission claims that 'traditional and customary production' is not an objective criterion since it leaves the authorities a margin of discretion in its application.

5 The French Government denies the existence of any discrimination. It contends that the concept of 'traditional and customary production' has both a historical aspect, alluding to time-honoured products closely associated with a particular locality, whose long ancestry is part of their fame, and a technical meaning, referring to oenological rules and practices which codify fair and traditional practices. Moreover, the concept is also used in [Union] legislation on the common organization of the market in wine.

6 It should first be pointed out that, as the Court has consistently held (see, most recently, the judgment of 4 March 1986 in Case 106/84 *Commission v Denmark* [1986] ECR 833), at Its present stage of development [Union] law does not restrict the freedom of each Member State to lay down tax arrangements which differentiate between certain products, even products which are similar within the meaning of the first paragraph of [Article 110 TFEU], on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed. Such differentiation is compatible with [Union] law if it pursues objectives of economic policy which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, in regard to imports from other Member States or any form of protection of competing domestic products.

7 More specifically, the Court has held on several occasions that in the

present state of [Union] law [Article 110 TFEU] does not prohibit Member States, in the pursuit of legitimate economic or social aims, from granting tax advantages, in the form of exemptions from or reduction of taxes, to certain types of spirits or to certain classes of producers, provided that such preferential systems are extended without discrimination to imported products conforming to the same conditions as preferred domestic products.

8 The above criteria are satisfied in this instance.

9 With regard to the aims pursued by the contested tax scheme, the French Government explained during the oral procedure that natural sweet wines are made in regions characterized by low rainfall and relatively poor soil, in which the difficulty of growing other crops means that the local economy depends heavily on their production. The French Government maintains that the tax advantage enjoyed by those wines thus tends to offset the more severe conditions under which they are produced, in order to sustain the output of quality products which are of particular economic importance for certain regions of the [Union]. Such economic policies must be regarded as compatible with the requirements of [Union] law.

10 Furthermore, with regard to the extension of the preferential scheme to imported products, it must be concluded that the criterion of 'traditional and customary production' applies without distinction to domestic and imported products. There is nothing in the evidence before the Court to suggest that the application of the scheme in fact gives preference to French wines at the expense of wines with the same characteristics from other Member States. In particular, it has not been demonstrated that because of physical factors or patterns of production the tax advantage in question operates solely, or even preponderantly, to the benefit of the French product. It should be added that national provisions which cover both domestic and imported products without distinction cannot be regarded as contrary to [Union] law merely because they might lend themseles to discriminatory application, unless it is proved that they are actually applied in that way.

11 Consequently, the objection based on the fact that the benefit of the preferential tax scheme is confined to liqueur wines whose production

is 'traditional and customary' must be rejected.

Requirement of controls in the Member State of exportation

12 The Commission further maintains that there is discrimination contrary to [Article 110 TFEU] inasmuch as wines imported from other Member States qualify for the preferential tax scheme only if they are subject to controls in the Member State of exportation which afford guarantees equivalent to those required of natural sweet wines produced in France. According to the Commission, that requirement has the effect of disqualifying products from other Member States which make no provision for analogous controls, and is thus contrary to the principle that national legislation may not impose administrative procedures which cannot be complied with by producers in other Member States.

13 The French Government contests the general thesis of the Commission. It contends that the Member State of importation is entitled to require evidence to enable it to ascertain whether imported products potentially qualifying for a preferential tax scheme do in fact fulfil the necessary conditions.

14 As the Court has consistently held (see judgment of 7 May 1981 in Case 153/80 *Hansen v Hauptzollamt Flensburg* [1981] ECR 1165), a Member State may not deny a tax advantage to products from another Member State on the basis of conditions laid down by its legislation which the imported products cannot fulfil by reason of their geographical situation or of the legislation of the State of production. That principle cannot, however, prevent a Member State from making the availability of a tax advantage, whether for imported products or domestic ones, subject to proof that the conditions for granting it have been fulfilled, with the proviso that the evidentiary requirements may not be stricter in respect of imported products than they are for similar national products or disproportionate to the goal pursued, namely to eliminate the risk of fraud.

15 It follows that the Member State of importation is free to require evidence enabling it to ascertain that the imported products do indeed meet the standards laid down by its national legislation. Such evidence

may be furnished, for example, by certificates issued by the authorities or other appropriate bodies of the Member State from which the products originate. Since a certificate such as that can only be issued on the basis of control procedures, the requirement of controls affording guarantees equivalent to those provided under French legislation may also be imposed on liqueur wines imported from other Member States as a condition of their qualifying for the preferential tax scheme.

16 Nevertheless, if they are to be compatible with the principle of proportionality, such provisions must leave the exporting Member State free to choose control methods and to designate the authority responsible for the controls, and they must not make recognition of equivalence dependent on the prior negotiation of an agreement between the national authorities concerned.

17 The evidence before the Court does not suggest that the French prov1s1ons in question are in breach of those overriding obligations. The Commission initially stated that the French authorities had decided to treat the wines known as 'Samos vin doux naturel grand cru' (fine natural sweet wine of Samos) in the same way as natural sweet wines grown in France on the basis of an agreement concluded with the Greek authorities. However, the French Government denied the existence of such an agreement and explained that the sole purpose of contacting the Greek authorities in that connection had been to obtain the information needed by the French authorities in order to establish whether the conditions for allowing the tax advantage were actually fulfilled in that instance. Since the Commission has not adduced any evidence in support of its contentions to the contrary, it must be concluded that the allegations of an agreement have not been substantiated.

18 Consequently, the submission based on the fact that liqueur wines imported from other Member States qualify for the preferential tax scheme only on condition that there is a system of controls affording equivalent guarantees must also be rejected.

Costs

19 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its arguments it should be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the Commission of the European [Union] to pay the costs.

Mackenzie Stuart Galmot O'Higgins

Bosco Due Everling Bahlmann

Delivered in open court in Luxembourg on 7 April 1987.

A. J. Mackenzie Stuart
President

P. Heim
Registrar