

## Case C-239/90

SCP Boscher, Studer et Fromentin

v

SA British Motors Wright and Others

(Reference for a preliminary ruling  
from the French Cour de Cassation (Commercial,  
Financial and Economic Chamber))

(Measures having equivalent effect — Freedom to  
provide services — Luxury and second-hand motor cars —  
Sale by public auction)

Report for the Hearing .....	2024
Opinion of Mr Advocate General Tesauro delivered on 5 March 1991 .....	2030
Judgment of the Court (Fifth Chamber), 30 April 1991 .....	2034

### Summary of the Judgment

- Freedom to provide services — Treaty provisions — Scope — Legislation governing the sale of goods belonging to a trader established in another Member State — Excluded — Covered by Treaty provisions on the free movement of goods*  
(EEC Treaty, Art. 59)
  - Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Sale by public auction of imported second-hand goods — Requirement of entry of the owner in the local trade register — Not permitted — Justification — Consumer protection — Grounds of public policy — None*  
(EEC Treaty, Arts 30 and 36)
- 
- Legislation of a Member State laying down the conditions governing the sale by a trader established in another Member State of goods belonging to him does not fall within the scope of Article 59 of the Treaty. Such legislation

concerns the marketing of goods traded between Member States and is subject to the provisions of the Treaty concerning the free movement of goods.

2. National legislation which makes the sale by public auction of second-hand goods from another Member State conditional upon the prior entry of the undertaking which owns the goods offered for sale in the trade register at the place of the sale is incompatible with Articles 30 and 36 of

the Treaty. Such a measure, which is capable of impeding the free movement of goods, cannot be justified either by mandatory requirements relating to the protection of consumers or by grounds of public policy under Article 36 since it is possible to impose conditions capable of protecting consumers which are less restrictive of the free movement of goods and the aim of preventing the sale of stolen goods can be attained by appropriate control measures.

## REPORT FOR THE HEARING in Case C-239/90 \*

### I — Facts and procedure

1. Pursuant to Article 1(1) of the French Law of 25 June 1841 on public auction sales, sale by public auction may not be used as a habitual means of carrying on business. Article 1(3) provides that the voluntary retail sale by that means of any second-hand goods or articles whatever belonging to or held by a trader who has not been registered for at least two years in the *Registre de Commerce* (Trade Register) and the *Rôle des Patentes* (Business Tax Roll) within the jurisdiction of the *Tribunal de Grande Instance* (Regional Court) in which the sale is to take place is also prohibited.

2. SCP Boscher, Studer and Fromentin, a firm of auctioneers operating in Paris, was instructed by the German company Nado ('Nado'), whose registered office is in Hamburg, to sell by public auction on 6 November 1988 a number of second-hand vehicles some of which, according to the findings of the court before which an application for interim relief was initially brought, were collectors' items and some were high-priced vehicles of recent manufacture and low mileage.

SA British Motors Wright and three other companies that sell luxury second-hand vehicles made an application to the *Tribunal de Grande Instance*, Paris, for an interim order prohibiting the sale pursuant to

\* Language of the case: French.