

Case C-28/09

European Commission

v

Republic of Austria

(Failure of a Member State to fulfil obligations — Articles 28 EC and 29 EC — Free movement of goods — Measures having equivalent effect to quantitative restrictions on imports and exports — Transport — Directives 96/62/EC and 1999/30/EC — Sectoral traffic prohibition for lorries of over 7.5 tonnes carrying certain goods — Air quality — Protection of health and the environment — Principle of proportionality — Consistency)

Opinion of Advocate General Trstenjak delivered on 16 December 2010 . . . I - 13527

Judgment of the Court (Grand Chamber), 21 December 2011 I - 13567

Summary of the Judgment

Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Sectoral traffic prohibition for lorries of over 7.5 tonnes carrying certain goods (Arts 28 EC and 29 EC; Council Directives 96/62, Art. 8(3), and 1999/30)

A Member State fails to fulfil its obligations under Articles 28 EC and 29 EC if, with the aim of guaranteeing ambient air quality in the zone concerned, in accordance with Article 8(3) of Directive 96/62 on ambient air quality assessment and management in conjunction with Directive 1999/30 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air, it prohibits lorries of over 7.5 tonnes transporting certain goods from using an important section of road forming one of the principal land transport routes between certain Member States.

restrictions which is incompatible with the obligations under Articles 28 EC and 29 EC, unless it is objectively justified.

While overriding requirements of protection of the environment, which in principle encompasses also the protection of health, can justify national measures that are liable to obstruct intra-Community trade, provided that those measures are suitable for securing the attainment of that objective and do not go beyond what is necessary for attaining it, that prohibition cannot be justified on that basis, since it has not been shown that the objective pursued could not be attained by other measures less restrictive of free movement.

In that it forces the undertakings concerned to seek viable alternative solutions for the transport of the goods in question, such a prohibition hinders the free circulation of goods and must therefore be regarded as a measure having equivalent effect to quantitative

(see paras 116-117, 122, 125, 139-140, 150-151, operative part)