

Defendant: French Republic

Form of order sought

— Declare that, by using a purely quantitative criterion to assess the commercial character of the holding by individuals of manufactured tobacco from another Member State, by applying that criterion by individual vehicle (and not by person), and globally in respect of all tobacco products by purely and simply precluding the importation by individuals of tobacco products from another Member State where the quantity exceeds 2 kilograms by individual vehicle, the French Republic has failed to fulfil its obligations under Council Directive 92/12/EEC of 25 February 1992, ⁽¹⁾ and in particular Articles 8 and 9 thereof, and under Article 34 of the Treaty on the Functioning of the European Union;

— Order the French Republic to pay the costs.

Pleas in law and main arguments

First, the Commission criticises the defendant for using a purely quantitative criterion for determining the existence of an infringement, whereas the levels referred to in Article 9(2) of the abovementioned Directive 92/12 (and in Article 32(3) of Directive 2008/118 ⁽²⁾) are merely guide levels and may not, in any circumstances, be the only factor to consider when determining whether the tobacco is actually held for commercial purposes or by the individual transporting it for their own use.

In addition, the Commission states that the thresholds of 1 and 2 kg laid down by Articles 575 G and H of the General Tax Code apply to the tobacco products held (cigarettes, smoking tobacco, cigars, etc) as a whole, whereas the minimum levels provided for under the directives are cumulative guide levels, provided for in relation to each type of tobacco product.

The applicant also states that French legislation establishes limits per vehicle, and not per person, which leads purely and simply to an accumulation of the quantities transported in the same vehicle, independently of the number of persons present in the vehicle.

Second, the applicant relies on the infringement of Article 34 TFEU to the extent that the national provisions preclude the importation of certain quantities of tobacco products into France from another Member State, even where they are held for the individual's own use. They therefore constitute 'measures of equivalent effect to quantitative restrictions on imports' which have the objective or effect of treating goods from other Member States less favourably.

The Commission rejects, third, the justifications relied on by the defendant relating, inter alia, to the lack of fiscal harmonisation at European level and to the necessity of ensuring the objective of protection of public health by reinforcing the fight against smoking.

⁽¹⁾ Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

⁽²⁾ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).

Reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands) lodged on 16 May 2011 — DHL Danzas Air & Ocean (Netherlands) BV v Inspecteur van de Belastingdienst/Douane West, kantoor Hoofddorp Saturnusstraat

(Case C-227/11)

(2011/C 226/23)

Language of the case: Dutch

Referring court

Rechtbank Haarlem

Parties to the main proceedings

Applicant: DHL Danzas Air & Ocean (Netherlands) BV

Defendant: Inspecteur van de Belastingdienst/Douane West, kantoor Hoofddorp Saturnusstraat

Questions referred

1. Must the active network analysers [of the type J6801B] be classified under heading 9030 40 or under heading 9031 80?
2. Is Commission Regulation (EC) No 129/2005 ⁽¹⁾ of 20 January 2005 ... invalid because in that regulation the Commission incorrectly classified the network analysers mentioned in points 3 and 4, namely, under CN code 9031 80 39, instead of under code 9030 40?

⁽¹⁾ Concerning the classification of certain goods in the Combined Nomenclature and amending Regulation (EC) No 955/98 (OJ 2005 L 25, p. 37).

Action brought on 19 May 2011 — French Republic v European Parliament

(Case C-237/11)

(2011/C 226/24)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and A. Adam, Agents)

Defendant: European Parliament