



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

16 January 2014\*

(Free movement of goods — Article 34 TFEU — Quantitative restrictions on imports — Measures having equivalent effect — Marketing of articles made of precious metals — Hallmark — Requirements laid down in the legislation of the Member State of import)

In Case C-481/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausioji administracinis teismas (Lithuania), made by decision of 27 September 2012, received at the Court on 25 October 2012, in the proceedings

**UAB 'Juvelta'**

v

**VĮ 'Lietuvos prabavimo rūmai',**

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- UAB 'Juvelta', by A. Astauskienė, advokatė,
- the Lithuanian Government, by D. Kriauciūnas and R. Krasuckaitė, acting as Agents,
- the European Commission, by A. Steiblytė and G. Wilms, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Lithuanian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 34 TFEU.
- 2 The request has been made in proceedings between UAB 'Juvelta' ('Juvelta') and the VĮ Lietuvos prabavimo rūmai (the Lithuanian Assay Office) concerning the latter's decision requiring Juvelta to have the articles of gold it marketed stamped, at an authorised and independent State assay office, with hallmarks consistent with the requirements of the Lithuanian legislation.

### Legal context

- 3 According to Article 3(21) of the Law of the Republic of Lithuania on State supervision of precious metals and gemstones (Lietuvos Respublikos tauriųjų metalų ir brangakmenių valstybinės priežiūros įstatymas), in its version applicable to the main proceedings ('the Law on State supervision'), the national hallmark of the VĮ Lietuvos prabavimo rūmai is a hallmark established by the Member States of the European Economic Area ('the EEA') and the Republic of Turkey, which shows that the articles bearing it have been assayed and stamped by an independent assay office authorised by the State concerned and are compatible with the standard of fineness, expressed in Arabic numerals in the hallmark and showing the content of precious metals in terms of parts per thousand by weight of alloy.
- 4 Under Article 17(1) of that law, articles of precious metals and gemstones which are imported into Lithuania must be stamped with the national hallmark of that State by the VĮ Lietuvos prabavimo rūmai (the Lithuanian Assay Office).
- 5 Article 17(2)(2) of that law provides that articles of precious metals and gemstones imported from another State, namely from a State of the EEA or the Republic of Turkey, where they are permitted to be put on the market, may be sold without the hallmark of the VĮ Lietuvos prabavimo rūmai or the certificate of quality, where they have been assayed and stamped with the hallmark of an independent assay office authorised by that State, and bear the mandatory responsibility mark, registered in that State and struck thereon when they were made.

### The dispute in the main proceedings and the questions referred for a preliminary ruling

- 6 Juvelta is an undertaking that engages in, inter alia, retail trade in articles of jewellery made from precious metals.
- 7 Following an inspection assignment, officials of the VĮ Lietuvos prabavimo rūmai established that a proportion (355 pieces) of the articles of gold inspected did not conform to the requirements of Article 17(2)(2) of the Law on supervision.
- 8 By inspection document No 04-13-41 of 15 March 2011, in which the results of that inspection assignment were set out, the VĮ Lietuvos prabavimo rūmai instructed Juvelta to stamp the articles of gold it sold, in an authorised independent assay office, with hallmarks in accordance with the requirements of Lithuanian legislation.
- 9 It is apparent from that inspection document that the articles at issue had been stamped with a hallmark by an independent assay office authorised by the Republic of Poland, but that, according to the VĮ Lietuvos prabavimo rūmai, that hallmark was not compatible with the requirements of Article 17(2)(2) of the Law on supervision, read in conjunction with Article 3(21) of that law, on the ground that the Arabic numeral '3', on that hallmark, did not show the content of precious metals, expressed in 1 000 parts by weight of the alloy.

- 10 In that regard, the referring court notes that it is not disputed that, in the Republic of Poland, the reference to the number '3' on such a hallmark is intended to denote articles of precious metals whose standard of fineness, expressed as the number of parts by weight of the precious metal in 1 000 parts by weight of the alloy, is 585.
- 11 Furthermore, that court states that Juvelta carried out additional marking of the articles concerned by stamping on them the numerals '585', intended to show the standard of fineness of those articles in a form intelligible to Lithuanian consumers.
- 12 After appealing against that inspection document before the director of the VĮ Lietuvos prabavimo rūmai who, by decision No 1.5-264 of 15 April 2011, dismissed that appeal and confirmed the validity of that inspection document, Juvelta applied to the Vilniaus apygardos administracinis teismas to have the latter and that decision annulled. That application was dismissed by judgment of 18 August 2011.
- 13 Juvelta brought an appeal against that decision before the referring court.
- 14 It was in those circumstances that the Lietuvos vyriausioji administracinis teismas decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
1. Must Article 34 TFEU be interpreted as prohibiting national legal rules under which, when seeking to sell on the market of a Member State of the European Union articles of gold imported from another Member State which are permitted to be put on the market of that Member State (of export), those articles must be stamped with a mark, of an independent assay office authorised by a Member State, which confirms that the article bearing it has been assayed by that office and in which information intelligible to consumers of the Member State of import concerning the article's standard of fineness is specified, in circumstances where such information concerning the standard of fineness is provided in a separate and additional mark or marking stamped on the same article of gold?
  2. For the answer to the first question is it significant that, as in the instance under consideration, the additional marking concerning the standard of fineness of articles of gold that is provided on the articles and is intelligible to consumers of the Member State of import (for example, marking with the three Arabic numerals "585") has not been effected by an independent assay office authorised by a Member State of the European Union, but the information provided in the marking corresponds in meaning to the information specified in the mark, stamped on the same article, of the independent assay office authorised by the Member State of export (for example, the State of export's marking with the Arabic numeral "3" specifically denotes, under the legal measures of that State, a standard of fineness of 585)?

## **Consideration of the questions referred**

### *Question 1*

- 15 By its first question, the referring courts asks, in essence, whether Article 34 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, in order to be sold on the market of a Member State, articles of precious metal imported from another Member State, in which they are permitted to be put on the market and which have been stamped with a hallmark in accordance with the legislation of that second Member State, must, if the information concerning the standard of fineness of those articles provided on that hallmark does not satisfy the requirements of the legislation of that first Member State, be stamped again, by an independent assay office authorised by that first Member State, with a hallmark confirming that those articles have been inspected and showing their standard of fineness in accordance with those requirements.

- 16 It should be noted that, according to settled case-law, all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, trade within the European Union must be considered to be measures having an effect equivalent to quantitative restrictions within the meaning of Article 34 TFEU (see, inter alia, Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5, and Case C-108/09 *Ker-Optika* [2010] ECR I-12213, paragraph 47).
- 17 Therefore, the legislation not having been harmonised, obstacles to the free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marked, rules that lay down requirements to be met by such goods constitute measures having equivalent effect prohibited by Article 34 TFEU. This is so even if those rules apply without distinction to all products unless their application can be justified by a public-interest objective taking precedence over the free movement of goods (see Case 220/81 *Robertson and Others* [1982] ECR 2349, paragraph 9; Case C-293/93 *Houtwipper* [1994] ECR I-4249 paragraph 11; and Case C-30/99 *Commission v Ireland* [2001] ECR I-4619, paragraph 26).
- 18 In that regard, the Court has previously held that national legislation that requires articles of precious metal imported from other Member States, in which they are lawfully traded and hallmarked in accordance with the legislation of those States, to be given an additional hallmark in the importing Member State has the effect of rendering the imports more difficult and costly (see, to that effect, *Robertson and Others*, paragraph 10; *Houtwipper*, paragraph 13; and *Commission v Ireland*, paragraph 27).
- 19 Such is the case of the legislation at issue in the main proceedings. Under that legislation, the articles of precious metal and gemstones stamped with a hallmark that does not comply with the requirements of that legislation may be sold in Lithuania only after being stamped again in that Member State.
- 20 Consequently, such legislation constitutes a measure having an effect equivalent to a quantitative restriction on imports, prohibited by Article 34 TFEU.
- 21 With regard to whether such a measure can be justified, the Court has previously held that the requirement that an importer cause to be affixed on articles of precious metal a hallmark indicating their fineness is, in principle, of a nature such as to ensure effective protection for consumers and to promote fair trading (see *Robertson and Others*, paragraph 11; *Houtwipper*, paragraph 14; and *Commission v Ireland*, paragraph 29).
- 22 However, in that context, the Court has also held that a Member State may not require a fresh hallmark to be affixed to products imported from another Member State in which they have been lawfully marketed and hallmarked in accordance with the legislation of that State, where the information provided by the hallmark, in whatever form, is equivalent to that prescribed by the Member State of importation and intelligible to consumers of that State (see *Robertson and Others*, paragraph 12; *Houtwipper*, paragraph 15; and *Commission v Ireland*, paragraphs 30 and 69).
- 23 In order to determine whether an indication of a standard of fineness not provided for by legislation of a Member State provides consumers with equivalent and intelligible information, the Court must take into account the presumed expectations of an average consumer who is reasonably well-informed and reasonably observant and circumspect (see, to that effect, *Commission v Ireland*, paragraph 32).
- 24 With regard to the proceedings before the referring court, it should be noted that it is established that the articles at issue in the main proceedings were stamped with hallmarks by an independent assay office authorised by the Republic of Poland, in accordance with that State's legislation.

- 25 Likewise, the referring court states that it is not disputed that the hallmark stamped on those articles shows their standard of fineness by means of the mark consisting of the numeral '3' and that, in Poland, that mark is intended to denote articles of precious metals whose standard of fineness, expressed as the number of parts by weight of the precious metal in 1 000 parts by weight of the alloy, is 585.
- 26 It follows that the information provided by that mark is, as far as the articles of precious metal stamped with a hallmark in Poland are concerned, equivalent to that provided by the numerals '585' on a hallmark stamped by an independent assay office authorised in Lithuania, in accordance with that State's legislation.
- 27 That said, consideration must also be given to whether the marking of the numeral '3' on the hallmarks stamped on the articles at issue in the main proceedings provides information intelligible to an average Lithuanian consumer who is reasonably well-informed and reasonably observant and circumspect.
- 28 In that regard, it must be held that it is probable that that mark is not intelligible to such a consumer, since such a person is not, in principle, deemed to know the Polish system of indicating standards of fineness for articles of precious metal.
- 29 However, although the restrictive effects of the legislation at issue can thus be justified by the objective of ensuring effective protection for Lithuanian consumers, and providing them with information relating to standards of fineness for articles of precious metal imported into Lithuania which are intelligible to them, such justification can be accepted only if that legislation is proportionate to the objective pursued, that is to say if, while appropriate in order to fulfil that objective, it does not go beyond what is necessary to attain it.
- 30 Therefore, it is necessary to consider whether that objective can be attained by measures less restrictive of trade in articles of precious metal within the European Union than the stamping of a new hallmark in the Member State of import, provided for by that legislation.
- 31 In that context, it should be recalled that, as was stated by the referring court, in order to denote the standard of fineness of the articles at issue in the main proceedings in a form intelligible to Lithuanian consumers, Juvelta carried out additional marking of those articles by stamping on them the numerals '585', that number corresponding to the standard of fineness of those articles, expressed in 1 000 parts by weight of the alloy.
- 32 It must be held that such a marking is capable of attaining the objective pursued by the legislation at issue in the main proceedings and that it constitutes a measure less restrictive of the movement of articles of precious metal within the European Union than the new hallmark required by that legislation, provided that the information provided by that marking is compatible with that on that hallmark stamped on the articles concerned by an independent assay office authorised by the Member State exporting those articles.
- 33 Furthermore, it should be noted that, apart from an additional marking such as that at issue in the main proceedings, other measures, for example the existence, in the place where articles of precious metal from other Member States are sold, of correlation tables authorised by an independent assay office of the Member State of import, informing consumers about hallmarks of standards of fineness of other Member States and their equivalence in that Member State or the obligation to stamp on those articles a label indicating all the information required by the legislation of that Member State could constitute measures sufficient to ensure effective protection for consumers.
- 34 In those circumstances, the answer to the first question is that Article 34 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, for it to be permissible for them to be sold on the market of a Member State, articles of precious metal imported



from another Member State, in which they are authorised to be put on the market and which have been stamped with a hallmark in accordance with the legislation of that second Member State, must, where the information concerning the standard of fineness of those articles provided in that hallmark does not comply with the requirements of the legislation of that first Member State, be stamped again, by an independent assay office authorised by that first Member State, with a hallmark confirming that those articles have been inspected and showing their standard of fineness in accordance with those requirements.

### *Question 2*

- 35 By its second question, the referring court asks, in essence, whether the fact that additional marking of imported articles of precious metal, intended to provide information relating to the standard of fineness of those articles in a form intelligible to consumers of the Member State of import has not been effected by an independent assay office authorised by a Member State has any effect on the answer to the first question.
- 36 In that regard, it should be noted that, in so far as the articles at issue in the main proceedings were subject to additional marking only as a supplement to a hallmark affixed by an independent assay office authorised by the Member State of exportation, in this case the Republic of Poland, that hallmark functions as a guarantee (see, to that effect, *Houtwipper*, paragraph 19).
- 37 The situation at issue in the main proceedings must be distinguished from that in which articles of precious metal are hallmarked by the producers themselves in the Member State of exportation. That latter situation is likely to result in fraud against which, there being no European Union rules, it is for the Member States, who have a wide discretion, to take the measures they consider appropriate for that purpose (see, to that effect, *Houtwipper*, paragraphs 20 to 22).
- 38 That said, the information provided by the additional marking such as that at issue in the main proceedings must, in any event, be compatible with that on that hallmark stamped on the articles concerned by an independent assay office authorised by the Member State of exportation.
- 39 As is apparent from the order for reference and from paragraphs 25 and 26 of the present judgment, that is the case in the main proceedings.
- 40 In those circumstances, the answer to the second question is that the fact that additional marking of imported articles of precious metal, intended to provide information relating to the standard of fineness of those articles in a form intelligible to consumers of the Member State of import has not been effected by an independent assay office authorised by a Member State has no effect on the answer to the first question, since a hallmark of the standard of fineness had already been stamped on those articles by an independent assay office authorised by the Member State of export and the information provided by that marking is compatible with that on that hallmark.

### **Costs**

- 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 34 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, for it to be permissible for them to be sold on the market of a Member State, articles of precious metal imported from another Member State, in which they are authorised to be put on the market and which have been stamped with a hallmark in accordance with the legislation of that second Member State, must, where the information concerning the standard of fineness of those articles provided in that hallmark does not comply with the requirements of the legislation of that first Member State, be stamped again, by an independent assay office authorised by that first Member State, with a hallmark confirming that those articles have been inspected and showing their standard of fineness in accordance with those requirements.**
2. **The fact that additional marking of imported articles of precious metal, intended to provide information relating to the standard of fineness of those articles in a form intelligible to consumers of the Member State of import has not been effected by an independent assay office authorised by a Member State has no effect on the answer to the first question, since a hallmark of the standard of fineness had already been stamped on those articles by an independent assay office authorised by the Member State of export and the information provided by that marking is compatible with that on that hallmark.**

[Signatures]