

## Case C-178/84 Commission v Germany (Beer Purity) [1987]

**Facts:** The Commission brought an action under Article 169 of the EEC Treaty for a declaration that, by prohibiting the marketing of beers lawfully manufactured and marketed in another Member State if they did not comply with the requirements of the German Law on beer duty, Germany had failed to fulfil its obligations under Article 30 of the EEC Treaty.

**Held:** The provision in Article 9 of the German Law could not in itself constitute a measure having an effect equivalent to a quantitative restriction on imports as it applies only to breweries in Germany. The provisions are at issue only in so far as Article 10 also covers products imported from other Member States, restricting the marketing by using the designation “*Bier*” to beverages fermented from the raw materials listed in Article 9. In the absence of common rules in this regard, obstacles to free movement resulting from disparities between national laws must be accepted if such rules, applicable to both domestic and imported products, are necessary to satisfy mandatory requirements relating *inter alia* to consumer protection. Such rules must be proportionate to this aim, and if various measures to attain the same objective are available, the Member State should choose the least restrictive to the free movement. In this regard, the argument that the measure is essential to protect German consumers because the designation “*Bier*” is inseparably linked to the beverage manufactured solely from the ingredients laid down in Article 9 must be rejected. Firstly, the legislation of a Member State must not crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to comply with them. Secondly, the word “*Bier*” is used as a generic designation by other Member States, Community law and the German legislature itself. Finally, the same aim could be ensured by the compulsory affixing of labels indicating the materials utilized. It must be ascertained whether the absolute ban on the marketing of beers containing additives authorized in the Member State of production but prohibited in the Member State of importation can be justified on the protection of human health. The prohibition must be restricted to what is actually necessary to secure this aim, and the use of the additive must be authorized where, in the view of the findings of international scientific research and of the eating habits prevailing in the importing Member State, the additive does not present risk. Traders must also be able to apply for the use of specific additives to be authorized by a measure of general application. The German Law did not comply with these requirements, as some of the additives authorized in other Member States are also authorised under the German rules for use in the manufacture of virtually all beverages, without justifying the imposition of stricter rules in the case of beer, and no procedure whereby traders can obtain authorization was laid down.