

Press and Information Division

**PRESS RELEASE No 12/04**

5 February 2004

Judgment of the Court of Justice in Case C-24/00

*Commission of the European Communities v French Republic*

**THE FRENCH PROCEDURE FOR PRIOR AUTHORISATION FOR THE  
MARKETING OF FOODSTUFFS FOR HUMAN CONSUMPTION  
ENRICHED WITH NUTRIENTS, MANUFACTURED AND MARKETED IN  
THE MEMBER STATES, HINDERS THE FREE MOVEMENT OF GOODS.**

*The authorisation procedure is not readily accessible, not transparent as regards the possibility of appeal to the courts and is subject to unreasonable delay. In addition, applications for authorisation may be refused by the competent French authorities only if such nutrients pose a real risk to public health.*

France does not permit foodstuffs intended for human consumption to which have been added nutrients (such as vitamins, minerals, amino acids and other substances), except those which it has declared to be lawful by prior examination, to be placed on the market in that country. Traders established in other Member States which had encountered difficulties in obtaining authorisation to sell in France their products fortified with nutrients complained to the Commission, which brought an action before the Court of Justice in January 2000.

The Court recalls that national legislation which makes the addition of a nutrient to a foodstuff lawfully manufactured and marketed in the Member States subject to prior authorisation in the interest of public health, is not, in principle, contrary to Community law on the free movement of goods, provided that certain conditions are satisfied:

- the procedure for inclusion of a nutrient on the national list of authorised substances must be readily accessible and completed within a reasonable time, and if inclusion is refused it must be possible to challenge the refusal before the courts;

- an application for the inclusion of a nutrient on the list may be refused by the competent national authorities only if it poses a real risk to public health.

**The Court finds that France failed to observe those conditions: the procedure is not readily accessible because it is not expressly provided for in a measure of general application, and the examples provided by the Commission reveal that applications by traders for authorisation were not dealt with either within a reasonable time or according to a procedure which was sufficiently transparent as regards the possibility of challenging refusal to authorise before the courts.**

In addition, the Court notes that while it is for each Member State to decide on its level of protection of public health, the national authorities must none the less, in the exercise of their discretion, confine themselves to means which are actually necessary to safeguard public health, **in accordance with the principle of proportionality, and ensure that the alleged real risk for public health appears to be sufficiently established on the basis of the latest scientific data available at the date of the adoption of the decision to refuse inclusion on the list.**

The Court holds that for confectionery and vitamin-enriched drinks, as well as for food supplements and dietary products containing L-tartrate and L-carnitine, France may not prohibit their being marketed on its territory on the sole ground that they would increase the usual intake from an already sufficiently varied diet and that there is no nutritional need for them.

France has also failed to observe the requirement for a detailed assessment in each case of the effects which the addition to confectionery and vitamin-enriched drinks of the vitamins and minerals in question could have.

On the other hand, as regards energy drinks whose caffeine content exceeds a certain limit ('Red Bull' for example) and those to which taurine and glucuronolactone have been added, French scientists have stated in an opinion that caffeine poses real risks to public health if consumed to excess and the Scientific Committee on Human Nutrition gave an adverse opinion on drinks containing those two additives. The Court considers those opinions to be relevant since the Commission did not adduce any evidence sufficient to call into question the French authorities' analysis as regards the dangers which those drinks pose to public health.

*Unofficial document, for media use only, which does not bind the Court of Justice.  
Available languages: DE, EN, FR, IT, GR.*

*The full text of the judgment can be found on the internet ([www.curia.eu.int](http://www.curia.eu.int)).  
In principle it will be available from midday CET on the day of delivery.*

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*Pictures of the reading of the judgment are available from EBS "Europe by Satellite" the TV service of the European Commission, DG Press and Communication, L - 2920 Luxembourg,  
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