



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 107/16**  
Luxembourg, 22 September 2016

Judgment in Case C-525/14  
Commission v Czech Republic

## **By refusing to recognise hallmarks for precious metals affixed by WaarborgHolland, a Netherlands assay office, the Czech Republic has infringed EU law**

*Although in some cases the Czech Republic is entitled not to recognise hallmarks affixed outside the EU by that assay office, a general and systematic refusal to recognise any of that office's hallmarks is a disproportionate measure*

The Commission brought an action before the Court of Justice against the Czech Republic for failure to fulfil obligations, on the ground that the Czech Republic refuses to recognise the hallmarks for precious metals affixed by WaarborgHolland, an independent assay office in the Netherlands. The Commission complains that the Czech Republic requires precious metals hallmarked by WaarborgHolland and imported into the Czech Republic to be marked with an additional Czech hallmark.

The Czech Republic, supported by France, claims that the refusal of recognition is justified by the fact that some of the WaarborgHolland hallmarks are affixed to precious metals by its branches outside the EU. According to the Czech Republic, hallmarks affixed in a third country need not be recognised by the Member States. Further, the Czech Republic says that since the WaarborgHolland hallmarks are identical, it is not possible to distinguish those affixed outside the EU from those affixed in the territory of the EU and it is therefore obliged to refuse recognition of all hallmarks from that assay office.

In today's judgment the Court of Justice observes that the Czech Republic's practice of requiring a fresh hallmarking of precious metals which have been hallmarked and marketed<sup>1</sup> in a Member State, or hallmarked in a third country in accordance with Netherlands legislation and put into free circulation in the EU, constitutes a restriction of the free movement of goods.

On the question whether the restriction may be justified on consumer protection grounds, the Court finds that a Member State may in principle, in the present state of EU law and outside the cases governed by an international agreement, consider that hallmarks affixed in the territory of third countries do not offer a level of protection of consumers equivalent to that guaranteed by hallmarks affixed by independent bodies in the territory of the Member States.

However, Member States cannot rely on that justification if the results of the control carried out in the Member State of export meet the requirements of the Member State of import. That is so with the precious metals hallmarked by WaarborgHolland in a third country, put into free circulation in the EU and, before being exported to the Czech Republic, marketed in a Member State which, like the Czech Republic, does not allow its own assay office or offices, or other bodies authorised to affix hallmarks in its territory, to affix their hallmarks in a third country. In that case, the control exercised by that Member State when the precious metals are marketed in its territory satisfies the requirements of the Czech Republic, since the two Member States are pursuing equivalent levels of consumer protection.

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<sup>1</sup>In connection with the import of a product from a third country, a distinction must be drawn between two principal stages, namely putting into free circulation and its marketing in a Member State. The first stage is the compliance with import formalities and customs duties and charges on import, while the second stage corresponds to the actual placing of the product on the market.

The Court finds, moreover, that the Member State of import also may not prevent the marketing in its territory of precious metals imported from other Member States, where they have been both hallmarked by an independent body and marketed in a Member State.

Consequently, as regards the above cases, the Court finds that **the Czech Republic's refusal to recognise the WaarborgHolland hallmarks cannot be justified, and the failure of that Member State to fulfil its obligations is made out.**

On the other hand, the results of the control exercised by the Member State of export do not satisfy the consumer protection requirements of the Czech Republic where precious metals which have been hallmarked by WaarborgHolland in the territory of a third country and put into free circulation in the EU are exported to the Czech Republic **without first having been marketed in a Member State**. The same applies with respect to such goods which, after being put into free circulation, have been marketed in a Member State **which does not require hallmarking by an independent body or in a Member State which, like the Netherlands, requires such hallmarking but allows it to be done in the territory of third countries.**

The Court points out, however, that the Czech practice complained of concerns precious metals bearing WaarborgHolland hallmarks **generally**, not only precious metals hallmarked in the territory of third countries, and **does not distinguish according to the circumstances in which the precious metals are exported to the Czech Republic**. The Court observes that **such a practice is not proportionate to the objective of consumer protection**. Thus it would be possible to require from the importer into the Czech Republic documentation to show the place where the hallmark in question was affixed and, as the case may be, the place where the precious metals concerned were put into free circulation and marketed in the EU, which would be a measure less prejudicial to the free movement of goods.

In those circumstances, the Court concludes that, **even in the cases in which the practice complained of may be justified, its disproportionate nature likewise means that the failure of the Czech Republic to fulfil its obligations is made out.**

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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