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COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
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Press and Information

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Judgment of the Court of Justice in Case C-475/01

*Commission of the European Communities v Hellenic Republic*

**THE RATE OF EXCISE DUTY ON OUZO DOES COMPLY WITH COMMUNITY LAW**

*Greece has not failed to fulfil its obligations under Community law by maintaining in force in respect of ouzo a rate of excise duty lower than that applied to other alcoholic drinks.*

The directive on the harmonisation of excise duties on alcohol and alcoholic beverages lays down rules for determining the rate of excise duty for all alcoholic products. For certain types of product, including ouzo, reduced rates of excise duty may be applied. The law which implemented the directive in the Greek legal system fixed the basic rate of excise duty at approximately GRD 294 000 per 100 litres of pure alcohol. A reduction of 50% of the basic rate (approximately GRD 147 000 per 100 litres of pure alcohol) was applied to ouzo.

Having received a number of complaints about the reduced rate of excise duty on ouzo whilst other drinks (gin, vodka, whisky, rum, tequila, arak) are subject to a less favourable rate, the Commission considered that this differential was incompatible with the prohibition in the EC Treaty on imposing taxation on products of other Member States in excess of that imposed on similar domestic products, and commenced the procedure for failure to fulfil obligations. It argued that directives and regulations must be interpreted and implemented in the legal systems of the Member States in a way which is compatible with the EC Treaty. The national systems of taxation should exclude any possibility of products from other Member States being taxed more heavily than similar domestic products.

In its judgment today, the Court points out first that, in fixing a lower rate of excise duty for ouzo, Greece relied on Article 23(2) of Directive 92/83 and complied with the terms of that provision.

Consequently, the Commission's action, which seeks directly to challenge the rate of excise duty that Greece was authorised to apply to ouzo on that basis, indirectly but necessarily amounts to a challenge to the lawfulness of that provision.

The Court points out that measures of the Community institutions are presumed to be lawful and produce legal effects until such time as they are withdrawn, annulled (in an action for annulment) or declared invalid (following a reference for a preliminary ruling or a plea of illegality). Only measures tainted by a very serious irregularity, which cannot be tolerated by the Community legal order, must be regarded as legally non-existent.

However, neither Directive 92/83 as a whole nor Article 23(2) of that directive can be regarded as a non-existent measure. Also, that directive has not been withdrawn by the Council and Article 23(2) has not been annulled or declared invalid by the Court.

In those circumstances Article 23(2) of Directive 92/83 produces legal effects which are presumed to be lawful.

Since Greece has merely maintained in force national legislation adopted pursuant to Article 23(2) of Directive 92/83 and which complies with that provision it has not failed to fulfil its obligations under Community law.

The Court therefore finds that the Commission's action is unfounded and must be dismissed.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: FR, EN, GR, DE*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",  
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