

OFFICIAL SPOKESMAN
of the CommissionBrussels 4
Telephone 35.00.40Brussels, June 1966
P - 38/66INFORMATION MEMOEuropean Court of Justice rules that Article 95 affects citizens
of Member States directly(Preliminary ruling in A. Lütticke v. Saarlouis Head Customs
Office (Case 57/65))

In a judgment handed down on 16 June 1966 the Court of Justice of the European Communities endorsed the view of the EEC Commission that:

1. the first paragraph of Article 95 of the EEC Treaty has direct effect and creates in respect of individual citizens specific rights which must be upheld by the municipal courts;
2. under the third paragraph of Article 95, the first paragraph of the same article is applicable only from the beginning of the second stage onwards to legal provisions already in force when the Treaty came into effect.

The first paragraph of Article 95 reads as follows:

"Member States shall not impose, directly or indirectly, on the products of other Member States any internal charges of any kind in excess of those applied directly or indirectly to like domestic products".

This judgment is of major significance because it establishes that Article 95 does not engage the Member States alone but also creates rights for individuals. This preliminary ruling is in line with previous judgments of the Court, which has already ruled Article 12 (customs dismantlement), the second paragraph of Article 37(1) (state monopolies) and Article 53 (limitations on freedom of establishment) to be directly applicable in respect of individuals.

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The facts of the present case can be summarized as follows. On 9 October 1963 the firm A. Lütticke applied to the Nennig customs office for clearance of 15 metric tons of whole milk powder originating in Luxembourg. The authorities requested the payment of turnover equalization tax as well as duty. In a protest, which was not accepted, and subsequently before the Finanzgericht of the Saar, the firm submitted that there was no legal basis for the levying of the turnover equalization tax. It argued that in view of the fact that since 1 February 1956 domestic whole milk powder had been exempt from domestic turnover tax, under Article 95 of the EEC Treaty the levying of turnover equalization tax was not permitted. In November 1965 the Saar Finanzgericht submitted three questions to the European Court of Justice, under Article 177 of the Treaty.

The first two of these questions were decided as shown above. On the third, the Court of Justice held that Articles 12 and 13 on the one hand and Article 95 on the other cannot be applied to the same circumstances. Charges equivalent in effect to customs duties are not subject to the same rules as domestic charges. The Court found that, by reason of its purpose, a charge designed to offset the effect of a domestic charge takes on the domestic nature of that charge.

The Court of Justice regards the first paragraph of Article 95 as vital to the common market. This provision entails a ban on discrimination and establishes a clear and absolute obligation, which in itself is subject to no condition and requires no further measures by Community institutions or by the Member States for its implementation or for its validity. As a self-contained and legally complete provision, the first paragraph of Article 95 is therefore such as to create direct legal relations between the Member States and the individual.

The Court also ruled that the sole function of the third paragraph of Article 95 is to accord the Member States a period of grace until the beginning of the second stage of the transition period in order to facilitate the adjustment of their legal provisions. It puts an obligation on the Member States to effect this adjustment but allows them no discretion with regard to the time by which the adjustment measures must be adopted.

Bruxelles, juin 1966.
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NOTE D'INFORMATION

D'après un arrêt de la Cour de Justice l'art. 95 du Traité
instituant la CEE a des effets directs

(décision préjudicielle dans le litige Fa. A. Lütticke ./.
Hauptzellant Saarlouis - Affaire 57/65)

Conformément au point de vue ^{suit} présenté par la Commission, la Cour de Justice a décidé ce qui dans son arrêt du 16 juin 1966 :

1. L'art. 95 § 1, du Traité CEE produit des effets immédiats et engendre pour les justiciables des droits individuels que les juridictions nationales doivent sauvegarder.
2. Du fait de l'art. 95, § 3, le premier alinéa ne s'applique aux dispositions existant à l'entrée en vigueur du présent traité qu'à partir du début de la deuxième étape.

L'art. 95 § 1 du Traité CEE stipule : "Aucun Etat membre ne frappe directement ou indirectement les produits des autres Etats membres d'impositions intérieures, de quelque nature qu'elles soient, supérieures à celles qui frappent directement ou indirectement les produits nationaux similaires". Cet arrêt présente une grande importance dans la mesure où il est ainsi précisé que l'art. 95 ne vise pas seulement les Etats membres mais crée également des droits pour les particuliers. Cette décision préjudicielle constitue le prolongement logique de la jurisprudence de la Cour de Justice des Communautés européennes. Dans des arrêts antérieurs, la Cour de Justice avait confirmé l'applicabilité directe pour les art. 12 (élimination des droits de douane) 37, § 2 (monopoles/à caractère commercial et 53 du Traité CEE (restrictions à la liberté d'établissement).

Les faits qui étaient à la base du litige peuvent être résumés comme suit : Le 9 octobre 1963 la firme A. Lütticke a demandé au bureau des douanes de Nenning le dédouanement de 15 tonnes de lait entier en poudre, d'origine luxembourgeoise. En plus des droits de douane, le bureau des douanes réclamait le paiement du droit compensatoire de la taxe sur le chiffre d'affaires. Dans sa réclamation, qui fut rejetée, et ensuite auprès du Finanzgericht de la Sarre la requérante a fait valoir que la perception du droit compensatoire de la taxe sur le chiffre d'affaires était dépourvue de base légale. Depuis le 1er février 1956 le lait entier en poudre de la production nationale est exonéré de la taxe nationale sur

