

# Case C-192/01

Commission of the European Communities

v

Kingdom of Denmark

(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Prohibition on marketing of foodstuffs to which vitamins and minerals have been added — Justification — Public health — Nutritional need)

Opinion of Advocate General Mischo delivered on 12 December 2002 . . . I- 9695  
Judgment of the Court, 23 September 2003 . . . . . I- 9724

## Summary of the Judgment

*Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National legislation subjecting the marketing of foodstuffs enriched with nutrients to proof of the population's nutritional need — Not permissible — Justification — Protection of public health — No justification — Breach of the principle of proportionality*  
(Arts 28 EC and 30 EC)

A Member State fails to fulfil its obligations under Article 28 EC if it applies an administrative practice which entails that foodstuffs enriched with vitamins and minerals and lawfully produced or marketed in other Member States can be marketed in that State only if it is shown that such enrichment with nutrients meets a need of that State's population.

While Community law does not, in principle, preclude a Member State from prohibiting, save for prior authorisation, the marketing of foodstuffs incorporating nutrients, such as vitamins or minerals other than those whose use is lawful under Community legislation, since it is for the Member States, in default of harmonisation and to the extent that uncertainties continue to exist in the current state of scientific research, to decide on their intended level of protection of human health and life, that discretion must, however, be exercised in accordance with the principle of proportionality. It is, moreover, for the national authorities to show in

each case, in the light of national nutritional habits and in the light of the results of international scientific research, that their rules are necessary for the protection of public health and, in particular, that the marketing of the products in question poses a real risk thereto.

In that regard, the systematic prohibition on the marketing of enriched products which do not meet a nutritional need of the population does not enable Community law to be observed in regard to the identification and assessment of a real risk to public health, which requires a detailed assessment, case-by-case, of the effects which the addition of the minerals and vitamins in question could entail.

(see paras 42, 44-46, 56-57, operative part)