

In Case 148/78

REFERENCE to the Court under [Article 267 TFEU] by the Pretura Penale, Milan, for a preliminary ruling in the action pending before that Court between

PUBBLICO MINISTERO [Public Prosecutor]

and

TULLIO RATTI, residing in Milan

on the interpretation of two Council Directives on the approximation of the laws, regulations and administrative provisions of the Member States, the first No 73/173/EEC of 4 June 1973, relating to the classification, packaging and labelling of dangerous preparations (solvents} (Official Journal No L 189, p. 7) and the second, No 77/728/EEC of 7 November 1977, relating to the classification, packaging and labelling of paints, varnishes, printing-inks, adhesives and similar produces (Official Journal No L 303, p. 23),

THE COURT

composed of: J. Mertens de Wilmars, President of Chamber, Acting as President, Lord Mackenzie Stuart (President of Chamber), P. Pescatore, M. Sorensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Decision

- 1 By an order of 8 May 1978, received at the Court on 21 June 1978, the Pretura Penale, Milan, referred several questions to the Court for a preliminary ruling under [Article 267 TFEU] on the interpretation of two Council directives on the approximation of the laws, regulations and administrative provisions of the Member States, the first, No 73/173/EEC of 4 June 1973 on the classification, packaging and labelling of dangerous preparations (solvents) (Official Journal No L 189, p. 7) and the second, No 77/728/EEC of 7 November 1977 on the classification, packaging and labelling of paints, varnishes, printing inks, adhesives and similar products (Official Journal No L 303, p. 23).
- 2 Those questions are raised in the context of criminal proceedings against the head of an undertaking which produces solvents and varnishes, on a charge of having infringed certain provisions of the Italian Law No 245 of 5 March 1963 (Gazzetta Ufficiale of 21 March 1963, p. 1451) which require manufacturers of products containing benzene, toluene and xylene to affix to the containers of those products labels indicating, not only the fact that those substances are present, but also their total percentage and, separately, the percentage of benzene.
- 3 As far as solvents are concerned, that legislation ought, at the material time, to have been amended in order to comply with Directive, No 73/173 of 4 June 1973, the provisions of which Member States were supposed to incorporate into their internal legal orders by 8 December 1974 at the latest, an obligation which the Italian Government has not fulfilled.

- 4 That amendment would have resulted in the repeal of the provision of the Italian Law which the accused is charged with contravening and would consequently have altered the conditions for applying the criminal sanctions contained in the law in question.
- 5 As regards the packaging and labelling of varnishes, Directive No 77/728 of 7 November 1977 had, at the material time, been adopted by the Council, but by virtue of Article 12 thereof Member States have until 9 November 1979 to bring into force the laws, regulations and administrative provisions necessary to comply therewith.
- 6 The incorporation of the provisions of that directive into the internal Italian legal order must likewise result in the repeal of the provisions of the Italian law which the accused is charged with contravening.
- 7 As regards the packaging and labelling of both the solvents and the varnishes produced by his undertaking, the accused complied, in the one case, with the provisions of Directive No 73/173 (solvents), which the Italian Government had failed to incorporate into its internal legal order, and, in the other case, with the provisions of Directive No 77/728 (varnishes), which Member States must implement by 9 November 1979.
- 8 The replies to the questions submitted the first four of which concern Directive No 73/173, while the fifth concerns Directive No 77/728, must enable the national Court to decide whether the penalties prescribed by Italian Law No 245 for an infringement of its provisions may be applied in the case in question.

A - The interpretation of Directive No 73/173

- 9 This directive was adopted pursuant to [Article 115 TFEU] and Council Directive

No 67/548/EEC of 27 June 1967 (Official Journal, English Special Edition 1967, p. 234), amended on 21 May 1973 (Official Journal of 25 June 1973 No L 167, p. 1), on dangerous substances, in order to ensure the approximation of the laws, regulations and administrative provisions of the Member States on the classification, packaging and labelling of dangerous preparations (solvents).

- 10 That directive proved necessary because dangerous substances and preparations were subject to rules in the Member States which displayed considerable differences, particularly as regards labelling, packaging and classification according to the degree of risk presented by the said products.
- 11 Those differences constituted a barrier to trade and to the free movement of goods and directly affected the establishment and functioning of the market in dangerous preparations such as solvents used regularly in industrial, farming and craft activities, as well as for domestic purposes.
- 12 In order to eliminate those differences the directive made a number of express provisions concerning the classification, packaging and labelling of the products in question (Article 2 (1), (2) and (3) and Articles 4, 5 and 6).
- 13 As regards Article 8, to which the national court referred in particular, and which provides that Member States may not prohibit, restrict or impede on the grounds of classification, packaging or labelling the placing on the market of dangerous preparations which satisfy the requirements of the directive, although it lays down a general duty, it has no independent value, being no more than the necessary complement of the substantive provisions contained in the aforesaid Articles and designed to ensure the free movement of the products in question.
- 14 The Member States were under a duty to implement Directive No 73/ 173, in accordance with Article 11 thereof, within 18 months of its notification.
- 15 All the Member States were so notified on 8 June 1973.

16 The period of 18 months expired on 8 December 1974 and up to the time when the events material in the case occurred the provisions of the directive had not been implemented within the Italian internal legal order.

17 In those circumstances the national court, finding that "there was a manifest contradiction between the [Union] rules and internal Italian law", wondered "which of the two sets of rules should take precedence in the case before the court" and referred to the Court the first question, asking as follows:

"Does Council Directive 73/173/EEC of 4 June 1973, in particular Article 8 thereof, constitute directly applicable legislation conferring upon individuals personal rights which the national courts must protect?"

18 This question raises the general problem of the legal nature of the provisions of a directive adopted under [Article 288 TFEU].

19 In this regard the settled case-law of the Court, last reaffirmed by the judgment of 1 February 1977 in Case 51/76 *Nederlandse Ondernemingen* [1977] 1 ECR 126, lays down that, whilst under [Article 288 TFEU] regulations are directly applicable and, consequently, by their nature capable of producing direct effects, that does not mean that other categories of acts covered by that Article can never produce similar effects.

20 It would be incompatible with the binding effect which [Article 288 TFEU] ascribes to directives to exclude on principle the possibility of the obligations imposed by them being relied on by persons concerned.

21 Particularly in cases in which the [Union] authorities have, by means of directive, placed Member States under a duty to adopt a certain course of action, the

effectiveness of such an act would be weakened if persons were prevented from relying on it in legal proceedings and national courts prevented from taking it into consideration as an element of [Union] law.

22 Consequently a Member State which has not adopted the implementing measures required by the directive in the prescribed periods may not rely, as against individuals, on its own failure to perform the obligations which the directive entails.

23 It follows that a national court requested by a person who has complied with the provisions of a directive not to apply a national provision incompatible with the directive not incorporated into the internal legal order of a defaulting Member State, must uphold that request if the obligation in question is unconditional and sufficiently precise.

24 Therefore the answer to the first question must be that after the expiration of the period fixed for the implementation of a directive a Member State may not apply its internal law - even if it is provided with penal sanctions - which has not yet been adapted in compliance with the directive, to a person who has complied with the requirements of the directive.

25 In the second question the national Court asks, essentially, whether, in incorporating the provisions of the directive on solvents into its internal legal order, the State to which it is addressed may prescribe "obligations and limitations which are more precise and detailed than, or at all events different from, those set out in the directive", requiring in particular information not required by the directive to be affixed to the containers.

26 The combined effect of Articles 3 to 8 of Directive No 73/173 is that only solvents which "comply with the provisions of this directive and the annex thereto" may be placed on the market and that Member States are not entitled to maintain, parallel with the rules laid down by the said directive for imports, different rules for the domestic market.

27 Thus it is a consequence of the system introduced by Directive No 73/173 that a Member State may not introduce into its national legislation conditions which are more restrictive than those laid down in the directive in question, or which are even more detailed or in any event different, as regards the classification, packaging and labelling of solvents and that this prohibition on the imposition of restrictions not provided for applies both to the direct marketing of the products on the home market and to imported products.

28 The second question submitted by the national Court must be answered in that way.

29 In the third question the national court asks whether the duty to indicate on the container of the solvent offered for sale that it contains benzene, toluene and xylene, specifying the total percentage of those substances and, separately that of benzene, pursuant to Article 8 of Law No 245 of 5 March 1963, may be considered incompatible with the said directive.

30 Article 8 of Italian Law No 245 of 5 March 1963 lays down a duty, "where solvents contain benzene, toluene or xylene, to affix to the containers offered for sale a label mentioning the presence of those substances in the solvents, the total percentage of those substances and, separately, the percentage of benzene ...".

31 However, Article 5 of Directive No 73/173 requires in all cases that packages indicate clearly and indelibly the presence of substances classified as toxic under Article 2, such as benzene, and also that they show, but only in certain cases; the presence of substances classified as harmful, such as toluene and xylene in a concentration higher than 5%.

32 On the other hand no indication of the percentage, separate or in the aggregate, of those substances is required.

33 Thus the answer to the national Court must be that Directive No 73/ 173 must be interpreted as meaning that it is not permissible for national provisions to prescribe that containers shall bear a statement of the presence of ingredients of the products in question in terms going beyond those laid down by the said directive.

34 The fourth question is drafted as follows:

"Do the said national provisions, which are applicable without distinction to all goods placed on the domestic market, nevertheless constitute an obstacle, a prohibition or a restriction on trade in and the free movement of such goods, even if such provisions were enacted for the purpose of ensuring greater protection for the physical safety of users of the products in question?"

35 This question is an allusion to Article 36 [TFEU] which permits exceptions to the free movements of goods to the extent to which they are justified on grounds of public security or the protection of health and life of humans and animals.

36 When, pursuant to [Article 115 TFEU], [Union] directives provide for the harmonization of measures necessary to ensure the protection of the health of humans and animals and establish [Union] procedures to supervise compliance therewith, recourse to Article 36 [TFEU] ceases to be justified and the appropriate controls must henceforth be carried out and the protective measures taken in accordance with the scheme laid down by the harmonizing directive.

37 Directive No 73/173 provides that where a Member State established that a dangerous preparation, although satisfying the requirements of that directive, presents a health or safety risk, it may have recourse, temporarily and subject to the supervision of the Commission, to a protective measure provided for in Article 9 of the directive in accordance with the procedure laid down in that article.

38 It follows that national provisions going beyond those laid down in Directive No 73/173 are compatible with [Union] law only if they have been adopted in accordance with the procedures and formalities prescribed in Article 9 of the said directive.

B - The interpretation of Council Directive No 77/728/EEC of 7 November 1977

39 In a fifth question the national court asks whether Council Directive No 77/728 of 7 November 1977, in particular Article 9 thereof, is immediately and directly applicable with regard to the obligations imposed on Member States to refrain from action as from the date of notification of that directive in a case where a person, acting upon a legitimate expectation, has complied with the provisions of that directive before the expiry of the period within which the Member State must comply with the said directive.

40 The objective of that directive is analogous to that of Directive No 73/173 in that it lays down similar rules for preparations intended to be used as paints, varnishes, printing inks, adhesives and similar products, and containing dangerous substances .

41 Article 12 of that directive provides that Member States must implement it within 24 months of its notification, which took place on 9 November 1977.

42 That period has not yet expired and the States to which the directive was addressed have until 9 November 1979 to incorporate the provisions of Directive No 77/728 into their internal legal orders.

43 It follows that, for the reasons expounded in the grounds of the answer to the national court's first question, it is only at the end of the prescribed period and in

the event of the Member State's default that the directive -and in particular Article 9 thereof -will be able to have the effects described in the answer to the first question.

- 44 Until that date is reached the Member States remain free in that field.
- 45 If one Member State has incorporated the provisions of a directive into its internal legal order before the end of the period prescribed therein, that fact cannot produce any effect with regard to other Member States.
- 46 In conclusion, since a directive by its nature imposes obligations only on Member States, it is not possible for an individual to plead the principle of "legitimate expectation" before the expiry of the period prescribed for its implementation.
- 47 Therefore the answer to the fifth question must be that Directive No 77/728 of the Council of the European [Union] of 7 November 1977, in particular Article 9 thereof, cannot bring about with respect to any individual who has complied with the provisions of the said directive before the expiration of the adaptation period prescribed for the Member State any effect capable of being taken into consideration by national courts.

Costs

- 48 The costs incurred by the Council and by the Commission, which have submitted written observations to the Court, are not recoverable.
- 49 As the proceedings are, so far as the accused in the main action is concerned, in the nature of a step in the action pending before the national Court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura Penale, Milan, by an order of 8 May 1978 hereby rules:

1. After the expiration of the period fixed for the implementation of a directive a Member State may not apply its internal law - even if it is provided with penal sanctions -which has not yet been adapted in compliance with the directive, to a person who has complied with the requirements of the directive.
2. It is a consequence of the system introduced by Directive No 73/173 that a Member State may not introduce into its national legislation conditions which are more restrictive than those laid down in the directive in question, or which are even more detailed or in any event different, as regards the classification, packaging and labelling of solvents and that this prohibition on the imposition of restrictions not provided for applies both to the direct marketing of the products on the home market and to imported products.
3. Directive No 73/173 must be interpreted as meaning that it is not permissible for national provisions to prescribe that containers shall bear a statement of the presence of ingredients of the products in question in terms going beyond those laid down by the said directive.
4. National provisions going beyond those laid down in Directive No

73/173 are compatible with [Union] law only if they have been adopted in accordance with the procedures and formalities prescribed in Article 9 of the said directive.

5. Directive No 77/728 of the Council of the European [Union] of 7 November 1977, in particular Article 9 thereof, cannot bring about with respect to any individual who has complied with the provisions of the said directive before the expiration of the adaptation period prescribed for the Member State any effect capable of being taken into consideration by national courts.

Mertens de Wilmars

Mackenzie Stuart

Pescatore

Sorensen

O'Keefe

Bosco

Touffait

Delivered in open court in Luxembourg on 5 April 1979

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber
acting as President