JUDGMENT OF THE COURT (Fifth Chamber)
22 June 1993 *

In Case C-11/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice (Queen's Bench Division), London, for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Secretary of State for Health, *ex parte* Gallaher Limited, Imperial Tobacco Limited and Rothmans International Tobacco (UK) Limited,

on the interpretation of Articles 3 and 4 of Council Directive 89/622/EEC of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products (OJ 1989 L 359, p. 1),

THE COURT (Fifth Chamber),

composed of: G. C. Rodríguez Iglesias, President of the Chamber, R. Joliet, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: English.

— the applicants in the main proceedings, by Kevin Mooney, Solicitor, and Derrick Wyatt, Barrister;

— the United Kingdom, by S. Lucinda Hudson, of the Treasury Solicitor's Department, acting as Agent, assisted by Stephen Richards and Eleanor Sharpston, Barristers;

— Ireland, by Louis J. Dockery, Chief State Solicitor, acting as Agent, assisted by Richard Law Nesbitt, Barrister-at-Law;

— the Commission of the European Communities, by Marie Wolfcarius and Nicholas Khan, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the applicants in the main proceedings, the United Kingdom, represented by Lucinda Hudson, Richard Plender QC and Eleanor Sharpston, Ireland and the Commission at the hearing on 14 January 1993,

after hearing the Opinion of the Advocate General at the sitting on 2 March 1993,

gives the following

Judgment

1 By order of 12 December 1991, which was received at the Court on 13 January 1992, the High Court of Justice of England and Wales (Queen's Bench Division) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 3(3) and 4(4) of Council Directive 89/622/EEC of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products (OJ 1989 L 359, p. 1, hereinafter 'the directive').

2 That question has been raised in proceedings brought before the High Court by Gallaher Limited, Imperial Tobacco Limited and Rothmans International Tobacco (UK) Limited (hereinafter 'the applicants in the main proceedings') for a declaration that regulations 5(2)(d) and 6(3)(b) of the Tobacco Products Labelling (Safety) Regulations 1991 (Statutory Instrument 1991 No 1530, hereinafter 'the United Kingdom regulations') are void on the ground that they are contrary to Articles 3(3) and 4(4) of the directive and that they, the applicants in the main proceedings, are entitled to market cigarette packets, other than those imported into the United Kingdom from another Member State of the Community, on which the warnings and information set out in regulations 5 and 6 of the United Kingdom regulations cover not less than 4% of the relevant surface area.

3 The directive provides that certain indications and warnings must appear on cigarette packets. Article 3(3), for example, provides that the indications of tar and nicotine yields must be printed on the side of cigarette packets, in the official language or languages of the country of final marketing, in clearly legible print on a contrasting background so that at least 4% of the corresponding surface is covered.

4 Article 4(1) requires all unit packets of tobacco products to carry, on the most visible surface, the general warning 'Tobacco seriously damages health'. With regard to cigarette packets, Article 4(2) requires the other large surface of the packet to carry specific warnings to be selected from those contained in the list drawn up by each Member State exclusively on the basis of the warnings listed in the annex to the directive. Article 4(4) provides that the warnings on cigarette packets provided for in Article 4(1) and (2) must cover at least 4% of each large surface of the unit packet, excluding the indication of the authority that is their author (which is provided for by Article 4(3)).

5 Regulation 5(2)(d) of the United Kingdom regulations provides that in the case of cigarette packets the general warning and the specific warning must cover at least 6% of the surfaces on which they are printed. Regulation 6(3)(b) of the United Kingdom regulations provides that the statement of tar and nicotine yields on

cigarette packets must also cover an area amounting to at least 6% of the side of the packet.

6 Regulations 8(c) and (d) of the United Kingdom regulations provide that a person who imports cigarettes of any brand from another Member State with a view to marketing them in the United Kingdom is to be regarded as complying with the requirements of the United Kingdom regulations if the packets in question carry warnings in English which comply with the requirements of that other Member State imposed pursuant to the directive.

7 The matter was brought before the High Court of Justice, which decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the following question:

'Is it consistent with Articles 3(3) and 4(4) of Directive 89/622 for national rules to require that the information and warnings specified in Articles 3(1) and 4(1) and (2) of the directive be printed on cigarette packets so as to cover an area amounting to at least 6 per cent of the surface areas specified in the directive, in circumstances where these requirements apply to domestic production but are deemed to be satisfied in the case of cigarette packets imported from another Member State if the packets in question comply with the spatial requirements imposed by that other Member State pursuant to Articles 3(3) and 4(4) of the directive?'

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case before the national court, the applicable legislation, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 By the question it has referred the national court seeks to ascertain whether Articles 3(3) and 4(4) of the directive allow Member States to require, so far as

domestic production is concerned, the indications of tar and nicotine yields provided for in Article 3 of the directive and the general and specific warnings provided for in Article 4 of the directive to be printed on cigarette packets so as to cover at least 6% of the relevant surface areas.

10 It should be borne in mind that the directive, which was adopted pursuant to Article 100a of the EEC Treaty, is designed to eliminate barriers to trade which might arise as a result of differences in national provisions on the labelling of tobacco products and thereby impede the establishment and operation of the internal market. With that end in view, the directive contains common rules concerning the health warnings to appear on the unit packet of tobacco products and the indications of the tar and nicotine yields to appear on cigarette packets.

11 These common rules are not always identical in nature.

12 Some of them give Member States no discretion to impose requirements stricter than those provided for in the directive, or even to impose more detailed or at any rate different requirements, with regard to the labelling of tobacco products.

13 According to Article 8(1) of the directive, Member States may not, for reasons of labelling, prohibit or restrict the sale of products which comply with the directive. Under Article 8(2), Member States still have the right to lay down, so far as compatible with the Treaty, requirements concerning the import, sale and consumption of tobacco products which they deem necessary in order to protect public health, but only in so far as such requirements do not imply any changes to labelling as laid down in the directive.

14 Other provisions of the directive allow the Member States a degree of discretion to adapt the labelling of tobacco products to the requirements of public health protection. One such provision is Article 4(2), which allows the Member States to select the specific warnings which must appear on cigarette packets by choosing them from those listed in the annex to the directive. Another is Article 4(3), which allows Member States to stipulate that the general warning 'Tobacco seriously damages health', as well as the specific warnings, must be combined with the indication of the authority that is their author.

15 The existence of provisions containing minimum requirements is accounted for by the Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council, of 7 July 1986 on a programme of action of the European Communities against cancer (OJ 1986 C 184, p. 19), to which the fifth recital in the preamble to the directive refers. Under that programme, the measures to be adopted by the Community with a view to limiting and reducing the consumption of tobacco were to be based on the practical experience gained in the various Member States and were to contribute to increasing the effectiveness of national programmes and actions.

16 Member States which have made use of the powers conferred by the provisions containing minimum requirements cannot, according to Article 8 of the directive, prohibit or restrict the sale within their territory of products imported from other Member States which comply with the directive.

17 In order to reply to the question referred by the national court, it is therefore necessary to determine whether Articles 3(3) and 4(4) of the directive still allow the Member States a degree of latitude to require, with regard to domestic production, that the indications and warnings in question cover in each case more than 4% of the relevant surface area.

18 The applicants in the main proceedings consider that the rules in the directive requiring the indications and warnings to cover at least 4% of the relevant surface area must be incorporated as such by the Member States into their national law because the provisions in question confer on them no discretion. They argue that it is for manufacturers of tobacco products to decide whether the indications and warnings should cover a larger surface area. First of all, the applicants submit that this interpretation is confirmed by the Court's case-law relating to certain directives on labelling, according to which the common rules on labelling laid down by those directives must be interpreted as excluding any additional or different national requirement, in the absence of provisions to the contrary. With particular regard to Council Directive 73/173/EEC of 4 June 1973 on the approximation of Member States' laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous preparations (solvents) (OJ 1973 L 189, p. 7), the applicants in the main proceedings argue that, notwithstanding Article 6(1) of that directive, which provides that 'each symbol must cover at least one tenth of the surface area of the label', the Court made it clear that the labelling rules laid down in that directive applied uniformly in the same fashion to both domestic goods and imported goods (judgment in Case 148/78 *Pubblico Ministero* v *Ratti* [1979] ECR 1629). They go on to argue that any different interpretation would result in the imposition on national products of stricter conditions than those imposed as regards the marketing of products imported from other Member States, which would lead to discrimination and would be likely to jeopardize the free movement of tobacco products and affect conditions of competition.

19 Those arguments cannot be accepted.

20 Articles 3(3) and 4(4) of the directive contain provisions directed to the Member States, to whom the directive is addressed, and not to the manufacturers of tobacco products, who have no interest in using a greater surface area for the indications and warnings in question. The expression 'at least' contained in both articles must be interpreted as meaning that, if they consider it necessary, Member States are at liberty to decide that the indications and warnings are to cover a greater surface area in view of the level of public awareness of the health risks associated with tobacco consumption.

21 The case-law on labelling cited by the applicants in the main proceedings concerns directives whose scope differs from that of Directive 89/622. So far as the decision in *Ratti* is concerned, the Court there ruled not on the interpretation of Article 6(1) of Directive 73/173, which also contains the expression 'at least', but on other provisions of that directive and on the nature of its provisions in general.

22 Admittedly, as the applicants in the main proceedings have pointed out, this interpretation of the provisions may imply less favourable treatment for national products in comparison with imported products and leaves in existence some inequalities in conditions of competition. However, those consequences are attributable to the degree of harmonization sought by the provisions in question, which lay down minimum requirements.

23 The answer to the question referred by the national court must therefore be that Articles 3(3) and 4(4) of Council Directive 89/622/EEC are to be interpreted as allowing the Member States to require, so far as domestic production is concerned, that the indications concerning tar and nicotine yields provided for in Article 3 of that directive and the general and specific warnings provided for in Article 4 of the directive be printed on cigarette packets so as to cover at least 6% of each of the relevant surface areas.

Costs

24 The costs incurred by the United Kingdom, Ireland and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber)

in answer to the question referred to it by the High Court of Justice of England and Wales (Queen's Bench Division) by order of 12 December 1991, hereby rules:

Articles 3(3) and 4(4) of Council Directive 89/622/EEC of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products are to be interpreted as allowing the Member States to require, so far as domestic production is concerned, that the indications of tar and nicotine yields provided for in Article 3 of that directive and the general and specific warnings provided for in Article 4 of the directive be printed on cigarette packets so as to cover at least 6% of each of the relevant surface areas.

Rodríguez Iglesias Joliet

Moitinho de Almeida Grévisse Edward

Delivered in open court in Luxembourg on 22 June 1993.

J.-G. Giraud G. C. Rodríguez Iglesias

Registrar President of the Fifth Chamber