OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 5 March 1991 *

Mr President,
Members of the Court,

1. The questions which have been referred to the Court by the Verwaltungsgerichthof Baden-Württemberg for a preliminary ruling invite the Court to set the requirements of the free movement of goods, as recognized by the EEC Treaty, against the necessities of the harmonization of the national laws, in particular regarding labelling.

2. The facts are straightforward. Denkavit Futtermittel GmbH (hereinafter referred to as 'Denkavit'), a company incorporated under German law, has as its main activity the importation and sale on the German market of compound feedingstuffs coming from other Member States of the Community and, in particular, from the Netherlands. It wished to import animal feedingstuffs from that State without complying with the obligation, laid down by Paragraph 13(2) of the fifth German regulation amending the Futtermittelverordnung (Feedingstuffs Regulation),[1] to indicate the percentage of all the ingredients used (the 'detailed' declaration). The Kingdom of the Netherlands apparently does not require the ingredients used in animal feedingstuffs to be indicated.[2] The Land Baden-Württemberg refused to allow those products to be marketed. Denkavit claimed, before the Verwaltungsgericht (Administrative Court) Stuttgart, that Paragraph 13(2) was contrary to Directive 79/373/EEC.[3] That court granted Denkavit's application.

3. An appeal against that decision was brought before the Verwaltungsgerichthof (Higher Administrative Court), Baden-Württemberg, which held that the amendments to the German legislation were applicable to the proceedings. Ever since the Sixth Regulation amending the Futtermittelverordnung of 22 June 1988[4] Paragraph 13(2) has required that the ingredients used must be indicated in descending order of their proportion (the 'simplified' declaration). Denkavit contended before that court that the new version of Paragraph 13(2) was also contrary to the provisions of Directive 79/373 or, at the very least, to those of Article 30 of the EEC Treaty.

4. As a result, the national court has referred to this Court three questions for a preliminary ruling first, on the interpretation of the relevant provisions of Directive 79/373, secondly, on the compatibility of that directive with regard to Article 30 of the EEC Treaty; and, finally, should the case arise on the question whether the directive can be justified, where appropriate, by recourse to the provisions of Article 36.

5. I shall now examine these questions in turn.

* Original language: French.

1 — Regulation of 2 January 1987 (BGBl. I, pp. 94 and 423).

2 — Observations submitted by Denkavit, p. 5 of the French translation.

3 — Council Directive of 2 April 1979 on the marketing of compound feedingstuffs (OJ 1979 L 86, p. 30), amended, for the first time, by Council Directive 86/354/EEC of 21 July 1986 (OJ 1986 L 212, p. 27); those amendments have no bearing on the present case.

4 — BGBl. I, p. 869.

6. The first question refers to Article 5 of Directive 79/373. According to paragraph (4) of that article, 'Member States may require all or some of the following particulars only to be indicated: . . . ; (b) the ingredients'. Pursuant to paragraph (7) of the same Article, 'where particulars of the ingredients are given, all the ingredients present shall be listed, either by giving the quantities of each ingredient or in descending order of their proportion in the compound feedingstuff'. The national court is essentially asking the Court of Justice whether these provisions introduce a 'standstill' clause which does not allow the Member States to maintain an obligation to indicate the ingredients unless an obligation of that kind already existed under their domestic law when the directive entered into force. It appears that German law had undergone a period during which the indication of the ingredients was not required. [5]

7. The observations submitted to the Court by the various participants in the proceedings are somewhat at variance with each other as regards the reply to be given to the first question. The Council, [6] the Land Baden-Württemberg and the Italian Government consider that the clear and unambiguous provisions of Article 5 of the directive do not in any way restrict the possibility for a Member State to introduce into its domestic law an obligation to indicate the ingredients in descending order of their proportion, even where that obligation did not exist in its national law when the directive entered into force. On the other hand, Denkavit and the Commission maintain that it follows from the objectives, the general scheme and the grounds of the directive, and especially the fifth recital in the preamble thereto, that Article 5 must be interpreted as introducing a 'standstill' obligation.

8. Before addressing that problem, it should be pointed out that the directive at issue is part of a process of harmonizing national laws which is designed to bring about gradually the free movement within the Community of compound feedingstuffs. It cannot be regarded as constituting the last stone of the edifice. On the one hand, Article 5 of the directive allows the Member States to introduce additional mandatory indications or not to do so, and, on the other hand, Article 15 expressly provides that '[n]ot later than three years following notification of this directive the Commission shall, on the basis of experience acquired, forward to the Council proposals for the amendment of this directive such as to achieve free movement of compound feedingstuffs and to eliminate certain disparities concerning the use of ingredients and labelling in particular. The Council shall act on these proposals not later than five years following notification of this directive.' This indicates the incomplete nature of the harmonization that the directive was intended to carry out. A further step in that harmonization became possible only with the adoption of Directive 90/44/EEC, [7] in the second and third recitals of which it is stated that 'under present Community legislation Member States may, in certain cases, waive the Community rules, particularly as regards labelling and the choice of ingredients; . . . with a view to the completion of the internal market, all national derogations liable further to inhibit free movement of compound feedingstuffs or creating unequal

5 — Denkavit, written observations, p 7 of the French translation

6 — Written observations, paragraph 12.

7 — Council Directive of 22 January 1990 amending Directive 79/373/EEC on the marketing of compound feedingstuffs (OJ 1990 L 27, p 35).

conditions of competition should be eliminated'. Thus the new Article 5 of Directive 79/373, as amended by Directive 90/44, *obliges* the Member States to require[8] the ingredients to be shown in descending order by weight.[9] If these particulars are not shown the products may not be marketed.[10]

9. I must, therefore, mention the two essential features of Directive 79/373, having regard to its place in the process of harmonization: it is *incomplete* and it is *temporary*.

10. Let us therefore consider whether it follows from its objectives, its general scheme on the reasons which led to its adoption that Article 5 must be construed as having introduced a 'standstill' obligation, given — and this is not disputed by the participants in the proceedings — that a reading of Article 5 shows that such an obligation cannot be inferred *from the mere wording of that provision.*

11. The objectives of the directive, as they emerge, in particular, from the third and tenth recitals in the preamble thereto, are to protect human health and the health of animals and to achieve — gradually, as I have just stated — free movement of compound feedingstuffs within the Community.

12. The fifth recital in the preamble, to which both Denkavit and the Commission refer, does not, on a proper reading, have the meaning which they believe they can attribute to it. It is said in that recital that 'pending the adoption of further provisions, it is necessary, given the existing practices in certain Member States, to provide temporarily for national administrations to require a fuller declaration of the composition of feedingstuffs, with regard to both analytical constituents and ingredients; ... such declarations may be required only as provided for in this directive'. That text does not establish the necessary link between 'existing practices in certain Member States' and the possibility of requiring a declaration of the composition of the feedingstuffs. It merely finds that certain States require that declaration and that others do not, and from this infers that it is necessary, in those circumstances, to leave the Member States free to choose whether or not to lay down such an obligation. Finally, the word 'temporarily' may mean that the possibility of introducing such a requirement into national law will subsequently be abrogated; on the other hand, it may mean that it will later cease to be an option and become a requirement.

13. The general scheme of Directive 79/373 also militates against the argument put forward by Denkavit and the Commission. Thus Article 8 of the Community measure provides that '[i]n so far as their national laws so provide at the time of adoption of this directive, Member States shall be authorized to limit the marketing of compound feedingstuffs to those:

— obtained from certain ingredients, or

8 — Save in respect of compound feedingstuffs for pets other than dogs or cats for which the indication is optional (Article 5(3)(g) and 1(d)).

9 — The new Article 5c 2(a) of Directive 79/373.

10 — The new Article 5(1) of Directive 79/373.

— free from certain ingredients'.

Besides the fact that that article clearly shows how a 'standstill' clause is drafted, it enables the general scheme of the directive to be understood. With regard to the ingredients which may be utilized, the protection of the health of humans and animals leads to permitting the exclusion of the marketing of certain compound feedingstuffs, a measure which is more restrictive of trade than an obligation concerning labelling, but which is compensated for by the existence of a 'standstill' clause. On the other hand, with regard to the requirements on labelling, which, by their nature, have a less restrictive effect on trade, it is not necessary to provide for such a clause.

14. Furthermore, to accept that there was in this case a 'standstill' clause would lead to an absurd result. The Federal Republic of Germany would, since the entry into force of Directive 79/373, have been prohibited from providing for such an obligation, whereas, as from the date laid down in Directive 90/44, it will be required to introduce such an obligation into its domestic law.

15. Finally, the Commission considers that it cannot be ruled out that, where the disparities between national laws are made worse by a Council directive, this may constitute a ground for declaring the directive to be invalid. The Commission also suggests that the Court should interpret the directive as meaning that it has introduced a 'standstill' obligation in order to make the Community text necessarily compatible with Article 30, if need be by having recourse to the principle according to which provisions are to be construed in a manner consistent with the Treaty.

16. According to the case-law of the Court,

'when the wording of secondary Community law is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with the Treaty, rather than the interpretation which leads to being incompatible with the Treaty'. [11]

17. It seems to me, however, that the text of Article 5 of Directive 79/373 is not 'open to more than one interpretation'. The Commission itself recognizes that the existence of a 'standstill' clause may not be inferred from the *words* of that provision *alone*. Accordingly, it does not seem to me that the Court's case-law must be applied here.

18. All of the above factors lead me to propose that the Court reply to the first question to the effect that Article 5(4) and (7) of Directive 79/373 does not prevent a Member State from introducing into its national legislation an obligation to indicate the ingredients used in the manufacture of compound feedingstuffs in descending order of their proportion.

19. I shall examine the second and third question together, in so far as the first of

11 — Judgment in Case 218/82 *Commission* v *Council* [1983] ECR 4063, paragraph 15; see also the judgment in Case 104/75 *De Peijper* [1976] ECR 613; judgment in Case 179/78 *Rivoira* [1979] ECR 1147.

these refers to Article 30 of the EEC Treaty and the second to Article 36, the connection between the two articles being so obvious.

20. Before doing so, I shall examine the case-law of the Court as regards setting the necessities of harmonization against the requirements of the free movement of goods.

21. In the first place, it is indisputable that

'the prohibition of quantitative restrictions on exports and of all measures having equivalent effect applies . . . not only to national measures but also to measures adopted by the Community institutions'. [12]

22. Does this mean that the rules concerning the free movement of goods, as they are interpreted regarding national measures, must be applied according to identical rules in respect of harmonization directives adopted by the Council? I do not think so.

23. In its judgment of 24 October 1973, [13] where the issue was the compatibility of monetary compensatory amounts with Articles 8, 9, 12 and 13 of the Treaty, the Court held that, although the monetary compensatory amounts did constitute a partitioning of the market, they had a corrective influence on the variations in fluctuating exchange rates, that diversion of trade caused solely by the monetary situation could be considered more damaging to the common interest, that those amounts were conducive to the maintenance of a normal flow of trade under the exceptional circumstances created temporarily by the monetary situation, and finally that they were not levies introduced by some Member State unilaterally and that they were intended to prevent the disruption of the intervention system set up under Community regulations. [14]

24. It appears that the Court had regard in particular to the *temporary and uniform nature* [15] of the measure, to its objectives, as well as to the *general interest* of the Community, a criterion in respect of which the Court carried out a 'balancing test' between the disadvantages of the monetary compensatory amounts and the advantages which were meant to be obtained from their establishment.

25. In its judgment in *Bauhuis*, [16] the Court examined the compatibility of Council Directive 64/432/EEC of 26 June 1964, [17] harmonizing the measures relating to health inspections of certain animals, in the light of the principle of the free movement of goods, and held that

'the organization of these inspections by the exporting State has been made obligatory so that inspections at the frontier organized unilaterally by the importing Member State become unnecessary', [18]

12 — Judgment in Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 15, where Article 34 of the EEC Treaty was invoked; see also judgment in Joined Cases 80/77 and 81/77 *Commissionnaires Reunis* v *Receveur des Douanes* [1978] ECR 927, paragraph 35.

13 — Case 10/73 *Rewe-Zentrale* [1973] ECR 1175.

14 — Paragraph 20.

15 — For another application of that criterion, see the judgment in Case 5/77 *Tedeschi* [1977] ECR 1555, paragraphs 51 to 57.

16 — Judgment in Case 46/76 [1977] ECR 5.

17 — Directive on animal health problems affecting intra-Community trade in bovine animals and swine (OJ, Special English Edition 1963-64, p. 164).

18 — Paragraph 27.

that

'these measures are not laid down unilaterally by each Member State, but have been made obligatory and uniform in the case of all the products in question',[19]

and that

'they are not prescribed by each Member State . . . but by the Council in the general interest of the Community',[20]

and concluded that

'they cannot therefore be regarded as unilateral measures which hinder trade but rather as operations intended to promote the free movement of goods, in particular by rendering ineffective obstacles to this free movement which might be created by the measures for veterinary and public health inspection adopted pursuant to Article 36'.[21]

26. Here again the Court took into consideration the uniform nature[22] of the measure, its objectives and the general interest of the Community.[23]

27. Finally, in a more recent judgment,[24] the Court had to consider whether Council Directive 77/93/EC of 21 December 1976,[25] which partially harmonized protective measures against harmful organisms of plants, was compatible with Article 30.

28. After pointing out that the Community institutions are themselves required to have due regard to the freedom of trade within the Community the Court stated:

'It must be stated that Directive 77/93 is not intended to hinder intra-Community trade. On the contrary, it seeks to achieve the *gradual* elimination of measures which were adopted unilaterally by the Member States and were, at the time, justified in principle by Article 36 of the Treaty . . . At the same time, the Directive seeks to strengthen, in the general interest of the Community, the protection of agricultural products against the substantial damage which may be caused by harmful organisms'.[26]

The Court added that

'in the exercise of the powers conferred on them in this respect by Articles 43 and 100 of the Treaty, the Community institutions have a discretion in particular with regard to the possibility of *proceeding towards harmonization only in stages and of requiring only the gradual abolition* of unilateral

19 — Paragraph 29.

20 — Paragraph 28

21 — Paragraph 30.

22 — On that point, see the judgment in Case 251/78 *Denkavit Futtermittel* [1979] ECR 3369, paragraph 11, from which it emerges that the same measure will be assessed differently according to whether it is unilateral or whether it is the result of a harmonization directive.

23 — This case-law has been applied, *mutatis mutandis*, to inspection fees established by the United Nations international agreement on the protection of vegetables of 6 December 1951; judgment in Case 89/76 *Commission* v *Netherlands* [1977] ECR 1355.

24 — Judgment in Case 37/83 *Rewe-Zentrale* [1984] ECR 1229.

25 — Directive on protection measures against the introduction into the Member States of organisms harmful to vegetables or vegetable products (OJ 1977 L 26, p. 20).

26 — Paragraph 19, emphasis added.

measures adopted by the Member States. In view of the particular nature of the problem as described in the recitals in the preamble to the directive and in view of *the very incomplete nature of the harmonization effected thereby*, it has by no means been shown that the Council, by permitting in the contested provision inspection by sampling of up to one-third of consignments, has exceeded the limits of its discretionary power'. [27]

29. Alongside the criteria which I have already mentioned, the Court had regard, in that decision, to the incomplete nature of the harmonization in question. However, it may be argued that that criterion is, in a way, a different formulation from that derived from the temporary nature of the measure, a criterion which the Court used with respect to the monetary compensatory amounts. [28]

30. Some commentators take the view, moreover, that, while the Community institutions must observe the principle of the free movement of goods, the Court's case-law none the less recognizes that they have a wider discretion than the Member States. [29] It may also be observed that, while the Court never takes into account the objectives of national legislation when considering its compatibility with the rules of the Treaty on the free movement of goods, it does have particular regard to objectives when a Community measure is called into question. [30]

31. However, while it appears to me that the system established by Article 30 may not necessarily have to obey, vis-à-vis Community harmonizing measures, the same rules as those which govern the Court's case-law regarding national measures, the fact remains that it is not possible to harmonize failures by the Member States to fulfil their obligations, and that a measure which is made mandatory in all the Member States or which is temporarily left to the discretion of those States must be justified by one of the objectives of Article 36 or by the imperative requirements specified in the Court's 'Cassis de Dijon' decision. [31] Although the Court, in its judgments in *Rewe-Zentrale* [32] and *Bauhuis*, [33] referred only to the fact that the harmonizing measure at issue in each of those cases was intended to promote the free movement of goods, that was plainly because that measure was being questioned in the light of the prohibition of charges having equivalent effect, a prohibition laid down in Articles 9 and 12 of the Treaty, which do not include provisions similar to those of Article 36 or to those which the 'Cassis de Dijon' judgment inferred from Article 30. On the other hand, in its judgment of 29 February 1984 in *Rewe-Zentrale*, the Court took care to hold that the inspection measures temporarily maintained by Directive 77/93 were justified by Article 36 of the Treaty. [34]

27 — Paragraph 20, emphasis added.

28 — For an identical opinion, see Curral, J.: Some Aspects of the Relation between Articles 30-36 and Article 100 of the EEC Treaty, with a Closer Look at Optional Harmonization, *Yearbook of European Law*, 1984, p. 169, see p. 195.

29 — Oliver, P.: *Free Movement of Goods in the EEC*, Second Edition, 1988, 4-13, p. 46.

30 — To the criteria to which I have referred, academic legal writers add observance of the principle of proportionality (Oliver, P., *op. cit.*, 4-16, p. 51; Curral, J, , *op. cit.*, p. 194) and equality of treatment between the Member States (Curral, J., *op. cit.*, p. 194); certain writers take the view that the burden of proof should be reversed to the advantage of Community measures, which would be presumed to be compatible (with Community law), while national measures which create obstacles to intra-Community trade would be presumed to be unjustified (Oliver, P., *op. cit.*, 4-17, p. 51).

31 — Judgment in Case 120/78 *Rewe-Zentrale* [1979] ECR 649.

32 — Case 10/73, above.

33 — Case 46/76, above.

34 — Case 37/83, above, paragraph 19.

32. In his Opinion in the *De Peijper* case [35] Mr Advocate General Mayras had stated on that point that

'the residuary powers, which are moreover important, left to the Member States by Article 36 in the case of public health cannot be extended by means of directives adopted pursuant to the approximation of laws (Article 100). Directives adopted in application of this article . . . can only coordinate the measures in force in the Member States; they cannot have any effect on the scope of Article 36'. [36]

33. It follows that the questions submitted by the national court in fact cover two problems. On the one hand, is the requirement that the ingredients be indicated on the label of compound feedingstuffs justified having regard to Article 36 or imperative requirements? On the other hand, is the option given to the Member States of maintaining or introducing such a requirement, and of thus allowing disparities between national laws to remain, in conformity with Article 30? These two points will be examined in turn.

34. In the first place, it is indisputable that the requirement that certain particulars be shown on a product is, in the sense that it may possibly force a manufacturer or importer to alter the presentation of the product, of such a nature as to make its marketing more difficult in certain Member States and, accordingly, has a restrictive effect on intra-Community trade. The court's case-law is very clear on that point. [37]

35. Secondly, it goes without saying that the measure at issue is applicable without distinction to national products and to imported products.

36. In the third place, it is necessary to consider whether that obligation to indicate the ingredients which go to make up compound feedingstuffs may be justified by one of the objectives referred to in Article 36 or by one of the imperative requirements.

37. The Court has already stated, in a judgment delivered on 3 October 1985, [38] that Directive 79/373 formed

'part of the framework of the common agricultural policy and at the same time that of the harmonization of legislation capable of directly affecting the functioning of the common market',

and that its purpose was

'to contribute specifically in the area in question to achieving the free movement of goods'. [39]

38. In a judgment given some months earlier, [40] also concerning Directive 79/373, the Court held that that directive did not

'purport to lay down rules with regard to health inspections on compound feedingstuffs' [41]

35 — Case 104/75, above.

36 — See p 653.

37 — Judgment in Case 27/80 *Fietje* [1980] ECR 3839, paragraphs 8 to 10; judgment in Case 94/82 *De Kikvorsch* [1983] ECR 947, paragraph 10

38 — Case 28/84 *Commission* v *Germany* [1985] ECR 3097

39 — Paragraph 11.

40 — Judgment in Case 73/84 *Denkavit Futtermittel* [1985] ECR 1013.

41 — Paragraph 12

and that that task continued to be the responsibility of the Member States. The Court referred to Article 3 of the measure in question, according to which

'Member States shall prescribe that compound feedingstuffs may be marketed only if they are wholesome, unadulterated and of merchantable quality. They shall also prescribe that compound feedingstuffs may not represent a danger to animal or human health and may not be presented or marketed in a manner liable to mislead',

and concluded that

'that provision merely imposes on Member States a general obligation to adopt all appropriate measures . . . *to enforce compliance with certain rules relating to quality, to ensure that health inspections are carried out on feedingstuffs and to guarantee fair trading* regardless of the origin of the applicable rules'. [42]

39. Thus, the Court has already held that the objectives of Directive 79/373 were concerned simultaneously with the requirement of fair trading and with the protection of the health and life of humans and animals which is referred to in Article 36 of the EEC Treaty.

40. It appears, however, that the particular measure constituted by the obligation to indicate the ingredients essentially responds to the need to ensure fair trading and consumer protection. It may be considered that the obligation to indicate the ingredients enables consumers to know which substances (in particular cereals, meats and vegetables) go to make up the product and to take account of them for the purposes of feeding their animals. It is to no avail that Denkavit here refers to the Court's judgment in *Parfumerie-Fabrik 4711* v *Provide*. [43] In that case, the directive in question *did not permit* the ingredients of cosmetic products to be shown. The Court stated, in that respect, merely that '[b]ecause of the implied obligation to modify the packaging in which the products are legally marketed in certain Member States, such a requirement is likely to hinder trade within the Community'. [44] As I have just pointed out, it is indisputable that a requirement that certain particulars be indicated on a product has a restrictive effect on trade within the Community. However, in its judgment in *Provide* the Court never intended to hold that no obligation concerning labelling could ever be justified by imperative requirements or by the objectives referred to in Article 36 of the Treaty.

41. Denkavit indicates, moreover, the factual reasons which appear to form the basis of its hostility to the measure at issue. As a specialist in feedingstuffs for young animals, which are more susceptible to disease than others, Denkavit had incurred substantial expense, following costly scientific research in perfecting those feedingstuffs. Thus, according to Denkavit, the obligation to indicate the ingredients runs counter to the protection of business secrets. It states, however, in the exposition of its interpretation of Directive 90/44 that the new Article 5c(3) allows the indication of the ingredients to be replaced by an indication of 'categories grouping several ingre-

42 — Paragraph 12, emphasis added.

43 — Judgment in Case C-150/88 [1989] ECR 3891.

44 — Paragraph 18.

dients', which, in its view, protects industrial and commercial property.[45] It fails to point out, however, that in Article 5(7) Directive 79/373 already authorizes the Member States to 'group ingredients together by category or maintain existing categories and permit particulars of ingredients to be replaced by those relating to categories'. The argument put forward is therefore irrelevant.

42. Finally, the Community institutions, when they carry out the harmonization of national laws necessary in order that the establishment of the internal market, and in particular the free movement of goods, may be ensured, must be allowed a wide discretion[46] in the choice of measures for ensuring the protection of the objectives referred to in Article 36 or of imperative requirements, subject, obviously, to the observance of the principle of proportionality. I would note, furthermore, that Article 100a(3) of the Treaty, introduced by the Single European Act, requires the Commission, in its proposals regarding, in particular, consumer protection, to take as a base a 'high level of protection'. Thus the Community institutions may legitimately take the view that the indication of the ingredients of cosmetic products must be prohibited, since it does not actually enable users to assess the effects of the product, while, on the other hand, such an indication is useful in the case of compound feedingstuffs, since the stock farmer is in a position to judge the interest of a product for his business.

43. The measure at issue, to conclude on this point, thus appears to be one of those which are justified having regard to the imperative requirements of fair trading and consumer protection.

44. I shall now consider the compatibility of Directive 79/373 with Article 30 with respect to the allegations that that directive has 'aggravated' the disparities between national laws. That difficulty is, no doubt, in the case in point, easier to resolve.

45. In the first place, the measures harmonized are, as I have just stated, justified on the basis of imperative requirements. Those measures, in the absence of harmonization, would have also been justified had they been adopted by national legislature. Accordingly, even though the directive allows certain disparities between national laws to remain and permits certain Member States whose domestic law did not provide for that obligation to introduce it, it still remains that, to adopt the actual terms used in the Court's case-law,

'obstacles to movement within the Community resulting'

from these disparities

'must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to . . . the fairness of commercial transactions and the defence of the consumer'.[47]

45 — It will be recalled that Denkavit also refers to Article 36 of the Treaty.

46 — Cases 10/73, 46/76 and 37/83, above.

47 — Case 120/78, above, paragraph 8.

46. In the second place, it may seriously be disputed that the effect of the directive in question has been to 'aggravate' the disparities between laws. Article 5(4) gives an *exhaustive list* of particulars that the Member States may require, in addition to those made compulsory by Article 5(1). Harmonization has thus essentially related to the *number* and the *nature of the particulars*, while the very principle of requiring the particulars to be shown is still left, temporarily, to the discretion of the Member States. In practice, an economic operator is henceforth aware of the entire range of the particulars which may be required by any given Member State, and, by choosing to include all of them on his products, may therefore be assured that those products will be able to move freely throughout the Community. It is no longer necessary for him to carry out tiresome research into the requirements laid down by the various laws of the Member States and he is no longer at the mercy of any amendments to those laws. The exhaustive nature of the particulars which are authorized enables him to take the necessary steps regarding the packaging of his products with complete security. In this sense Directive 79/373 clearly promotes the free movement of goods.

47. Finally, the fact that incomplete harmonization is obviously less satisfactory for the establishment of an internal market than a measure of complete harmonization, such as that brought about by Directive 90/44, is none the less justified, according to the Court's judgment in *Rewe-Zentrale*,[48] by the possibility given to the Community institutions

'of proceeding towards harmonization only in stages and of requiring only the gradual abolition'[49]

of the disparities between laws.

48. Consideration of the second and third preliminary question does not, therefore, reveal any factors of such a kind as to affect the validity of Article 5 of Directive 79/373. It is to that effect that I propose that the Court reply to the national court.

49. I therefore conclude that the Court should rule as follows:

(1) The provisions of Article 5(4) and (7) of Council Directive 79/373/EEC of 2 April 1979 on the marketing of compound feedingstuffs must be interpreted as meaning that they permit a Member State to introduce into its domestic law the obligation to indicate all or some of the particulars mentioned in Article 5(4), even if, when the directive was adopted, no such obligation existed under that law.

(2) Consideration of those provisions has disclosed no factor of such a kind as to affect their validity.

48 — Case 37/83, above.

49 — Paragraph 20.