OPINION OF ADVOCATE GENERAL GULMANN
delivered on 15 March 1994 *

Mr President,
Members of the Court,

1. In these proceedings the Rechtbank van Koophandel (Commercial Court), Bruges, has referred to the Court questions concerning the interpretation and validity of a provision requiring the use of only a specified language for the descriptions of certain goods covered by Council Directive 69/493/EEC of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass. [1]

2. The directive, which applies to products falling within Heading No 70.13 of the Common Customs Tariff lays down rules on the composition, characteristics of manufacture and labelling of such products. It is apparent from the preamble that the directive is in particular designed to harmonize the *descriptions of the goods* in order to facilitate the free movement of goods while at the same time safeguarding the interests of consumers and manufacturers.

The preamble to the directive sets out the following grounds for such harmonization:

'with regard to the use of a *special description for crystal glass products* and the consequent obligation concerning the composition of such products, there are differences between the rules of certain Member States; ... those differences hinder trade in such products and can lead to distortions in competition within the Community;

... with regard to the *descriptions* laid down for the various categories of crystal glass and to the characteristics of those categories the purpose of the Community provisions to be adopted is *to protect both the buyer against fraud and the manufacturer who complies with those provisions*' (emphasis added).

3. The descriptions are set out in Annex I to the directive. In that annex crystal glass products are divided into four categories. For each category the appropriate description is given in column (b) in each of the Member States' languages. For each category, columns (d) to (g) set out the 'characteristics

* Original language: Danish.

1 — OJ, English Special Edition 1969 (II), p. 599. Apart from the adjustments made necessary as a result of the accession of new Member States to the Community, the directive has not been amended.

of manufacture' (metal oxides, density and so on) the goods in question must have in order to be described in the specified manner.

4. It has become apparent in these proceedings that goods in category 1 are regarded as being of the highest quality and presumably of the greatest value, that goods in category 2 as regarded as being of second-best quality and presumably having the second highest value, and so on. The quality depends *inter alia* on the lead content of the goods. [2]

5. Article 3 of the directive provides that the said descriptions must not be 'used commercially for products which do not have the corresponding characteristics' of manufacture prescribed by the directive.

6. Column (c) in Annex I ('explanatory notes') provides as regards both category 1 and category 2 products: 'Description may be freely used, whatever the country of origin or the country of destination'. Column (c) provides as regards both category 3 and category 4 goods: 'Only the description in the language or languages of the country in which the goods are marketed may be used'. [3]

7. It is that last note which forms the background to the case before the national court which has given rise to this reference for a preliminary ruling.

8. The case was brought by a Belgian importer of category 3 goods against the German producer and exporter of those goods. The importer is alleging breach of the contract of sale on the grounds that the exported goods are described in a manner incompatible with the requirement regarding the appropriate description. The German manufacturer, who according to the information we have been given has never complied with that requirement, [4] contends that that requirement is unlawful as being contrary to the prohibition under Article 30 of the EEC Treaty against measures having equivalent effect to quantitative restrictions.

2 — At the hearing the defendant in the main proceedings stated that technical developments have now made it possible to produce crystal glass products without using lead and that such glass can be of high quality.

3 — The Danish version of the directive is certainly incorrect in this respect since, unlike the versions in all the other languages, it refers only to 'language' and not 'languages'. The provision cited here is the 'correct' version.

4 — The German undertaking stated at the hearing that, like other undertakings in the sector, it has hitherto affixed to the goods the descriptions specified in column (c) in German, French and English.

9. The questions from the Rechtbank van Koophandel are as follows:

'(1) Is the Council Directive of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass compatible with Article 30 of the EEC Treaty where, for the purposes of the description of glass products in categories 3 and 4 of Annex I, it allows only the language or languages of the country in which the product is marketed to be used, without leaving open the possibility of using another language easily comprehensible to the purchaser or of informing the purchaser by other means?

(2) If the directive is compatible with Article 30 of the EEC Treaty, must the words "pays ou la marchandise est commercialisée" and "Land, in den die Ware in den Verkehr gebracht wird" be construed as meaning the country of final marketing or the country of initial marketing of the goods?' [5]

5 — The questions are in Dutch but use the French and German texts of the directive.

The question on the interpretation of the note at issue

10. The German Government has stated, rightly in my view, that it is best to answer first the question on the interpretation of the note in the annex to the directive since the assessment of the validity of that note may depend on how the words 'the country in which the goods are marketed' are interpreted.

11. The question is whether those words are intended to refer to the country in which the goods are first sold, namely from the manufacturer to the dealer, or the country in which they are sold to the final consumer.

12. The German Government has stated, referring *inter alia* to the preamble to the directive and the ordinary meaning of 'marketed' in Community law, that the directive must envisage the country of first marketing, which will generally signify that the description must be given in the language of the country of production; a requirement that the language of the country in which the goods are sold to the consumer must be used would, according to the German Government, entail for the producers separate production, labelling and warehousing and thus higher costs as a result of which the directive would hinder the free movement of goods. The defendant in the main proceedings has taken the same view.

13. I agree with the French Government and the Commission that such an interpretation would be incorrect. The language requirement in that note can be understood only against the background of one of the objectives of the directive which is to prevent consumers being misled. It follows from that objective that the language to be used must be the language of the country in which the goods are sold to the consumer. It is extremely difficult to see what objective would be served if the note were to be construed as meaning that producers would only be able to use the description in their own language when they marketed the goods in other countries. The note should be interpreted as meaning that the description to be used must be the description in the language or languages of the country in which the goods are sold to the final consumer.

The question on the validity of the note

14. It may be appropriate to point out at the outset that, according to the consistent case-law of the Court of Justice, the prohibition under Article 30 of the Treaty also applies to the Community institutions. [6]

15. The basis for answering the national court's question must therefore be the case-law of the Court of Justice on that provision according to which:

— first, 'Article 30 of the Treaty prohibits obstacles to the free movement of goods resulting from rules that lay down requirements to be met by such goods (such as requirements as to designation, form, size, weight, composition, presentation, labelling, packaging), even if those rules apply without distinction to all products, unless their application can be justified by a public-interest objective taking precedence over the free movement of goods'; [7]

— secondly, such application can be regarded as justified 'as necessary in order to satisfy imperative requirements relating, *inter alia*, to consumer protection and fair trading. However, in order to be permissible, such provisions must be proportionate to the objective pursued and that objective must not be capable of being achieved by measures which are less restrictive of intra-Community trade'. [8]

6 — See for example Joined Cases 80/77 and 81/77 *Commissionnaires Réunis* [1978] ECR 927.

7 — Case C-315/92 *Clinique Laboratories* [1994] ECR I-317.

8 — See for example Case C-238/89 *Pall Corp.* [1990] ECR I-4827, paragraphs 11 and 12.

16. It is indisputable and it has not been disputed in these proceedings that a language requirement such as that at issue constitutes a barrier to trade within the meaning of Article 30. That is clear for example from the judgment in Case C-369/89 [9] concerning a Belgian requirement on the labelling of foodstuffs in the language of the linguistic region in which the products were offered for sale in which the Court stated *inter alia*: 'The obligation exclusively to use the language of the linguistic region constitutes a measure having equivalent effect to a quantitative restriction on imports, prohibited by Article 30 of the Treaty' (paragraph 16).

17. It is, however, also indisputable and has not been disputed in these proceedings that the reasons underlying the language requirement — that is the wish to protect operators against unfair competition and prevent consumers from being misled — are among the grounds that can justify obstacles to trade. [10]

18. The question in this case is, therefore, whether the language requirement satisfies the conditions set out above in order to be regarded as justified and therefore not contrary to Article 30 of the Treaty.

19. Before I examine the actual problem posed in this case, it may be appropriate to make some general observations concerning the difficult questions that arise when the requirement of the free movement of goods has to be reconciled with the requirements underlying the obligation imposed on economic operators to give consumers specific information concerning the goods marketed.

20. That informational requirement may be imposed *inter alia* in order to make it possible for consumers to make an informed choice and in particular to handle the goods purchased in a responsible manner vis-à-vis themselves and their environment.

The information must of course be given in a form that makes it possible for consumers to comprehend the content thereof. That entails, normally in any event, that the information must be given in a language the consumer may be presumed to understand and in a multilingual single market that in turn signifies that it is logical to require the use of the official language or languages of the countries in which the goods are marketed.

21. The informational requirement may follow from rules adopted by the Community institutions but can of course also be

9 — *Piageme* [1991] ECR I-2971.

10 — See for example Case 120/78 *REWE* ('Cassis de Dijon') [1979] ECR 649.

adopted by the national legislatures autonomously.

22. It can hardly be doubted that in the latter case it is normal that in connection with such an informational requirement it is either expressly provided or in any event implicitly presupposed that the information should be given in the language of the country concerned.

23. When Community rules contain requirements concerning certain information on or relating to goods, a decision is in principle taken on the language in which such information should be given. In their observations in this case the Council and Commission have pointed out that many different formulations are used for the provisions setting out language requirements and they state that in each case it is specifically determined which formulation is right in the area concerned in order to reconcile the requirements relating to the free movement of goods and the requirements relating to the protection of consumers.

24. There are instances where the Community measure itself lists in all the Community languages specified descriptions or information which must be given on the goods. For example in Commission Directive 91/321/EEC of 14 May 1991 on infant formulae and follow-on formulae [11] Article 7 lists in all the official languages of the Community the names under which the specified products are to be sold ('infant formula' and 'follow-on formula').

25. Some legal acts specify that the information may or must be given in the official language or languages of the country in which the goods are marketed; for example:

— Directive 88/378/EEC on the approximation of the laws of the Member States concerning the safety of toys, [12] and

11 — OJ 1991 L 175, p. 35.

12 — OJ 1988 L 187, p. 1. Article 11(5) of the directive provides: 'Annex IV sets out the warnings and indications of precautions to be taken during use that have to be given for certain toys. Member States may require that these warnings and precautions, or some of them, together with the information specified in paragraph 4, be given in their own national language or languages when the toys are placed on the market'.

— Directive 92/27/EEC on the labelling of medicinal products for human use and on package leaflets. [13]

There are also instances in which the information must be given in a language easily understandable for a purchaser unless such information is conveyed to the purchaser in other ways; see for example the Council directive on the approximation of laws relating to the presentation of foodstuffs for sale to the ultimate consumer. [14]

26. Directive 79/112 was in point in the abovementioned judgment in *Piageme* in which the Court held that: 'Article 30 of the EEC Treaty and Article 14 of Directive 79/112 preclude a national law from requiring the exclusive use of a specific language for the labelling of foodstuffs, without allowing for the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other measures' (paragraph 17).

27. One indirect and one direct reaction to that judgment should be mentioned.

In 1992 the European Parliament adopted a Resolution on consumer protection and public health requirements in the internal market in which it stated *inter alia* that 'consumers will enjoy proper protection only if all information is always available in their own language'. [15]

28. In 1993 Mr Bangemann, a Member of the Commission, stated in answer to a question from Members of the European Parliament: 'The Commission is therefore currently considering the conclusions to be drawn from the judgment' in *Piageme*. He

13 — OJ 1992 L 113, p. 8. Article 8 provides:
'The package leaflet must be written in clear and understandable terms for the patient and be clearly legible in the official language or languages of the Member State where the medicinal product is placed on the market. This provision does not prevent the package leaflet being printed in several languages, provided that the same information is given in all the languages used.'

14 — Council Directive 79/112/EEC of 18 December 1978, OJ 1979 L 33, p. 1. Article 14 provides:
'... The Member States shall, however, ensure that the sale of foodstuffs within their own territories is prohibited if the particulars provided in Article 3 and Article 4(2) do not appear in a language easily understood by purchasers, unless other measures have been taken to ensure that the purchaser is informed. This provision shall not prevent such particulars from being indicated in various languages.'

15 — OJ 1992 C 94, p. 217, recital V. Point I 10 (c) (gg) of the Resolution concerning food labelling calls on the Commission 'to make it compulsory for all information which must be provided obligatorily or which is of use to the consumer to be given in the consumer's language in accordance with EC legislation in force, and where applicable, national legislation, taking into account the linguistic features of the area in which the product is sold'.

declared: 'The national language(s) of the country where the product is marketed may be regarded as the most objective common denominator as regards the comprehension of the information to be provided to the consumer. The principle of the above ruling therefore cannot be extended to sectors other than foodstuffs. Furthermore, consideration should be given to whether the requirements that the official language should be used [ought to apply] not only as regards foodstuffs but to all information which it is in [the] general interest to communicate to the consumer' [16]

29. It should finally be observed that the argument has been put forward that consumers might be confronted with undesirable legal uncertainty if the legal position were that it is in principle for traders to determine whether the requisite information is given in a language easily comprehensible to the purchaser or whether the information can be given to the purchaser by other means. [17]

30. The Community rules at issue in this case are very specific as regards the goods covered. But, like the abovementioned rules regarding foodstuffs, they are clearly designed to ensure the free movement of goods while respecting the interest of consumers.

However, the rule at issue here differs in one important respect from the rules normally laid down on language requirements. It does not simply require the use of the description in the language of the place of sale but also precludes the use of descriptions in other languages.

31. In their observations the plaintiff at the main proceedings and the German Government claim that the note at issue leads to obstacles to trade which are not necessary in order to protect consumers and traders. The Council, Commission and French Government on the other hand contend that that requirement is necessary in order to prevent consumers from being misled and to protect traders against unfair competition because of the special danger of misuse of descriptions in order to mislead consumers as to the quality of the goods sold. The danger is, they assert, a real one because of the significant differences in price between goods in the various categories and because the goods are ones with which consumers are not commonly acquainted.

32. For better comprehension of the problems which confronted the Community legislature, it is necessary to set out the descriptions laid down in the directive. For the sake of clarity only the descriptions in the four languages concerned when the directive was

16 — OJ 1993 C 95, p. 7.

17 — See the final report on *Current principles and provisions concerning language demand for consumer related legislation within the European Community* drawn up by the Bureau Européen des Unions de Consommateurs in August 1993.

adopted will be given in the main text. The descriptions in these languages are as follows:

	Category 1:	*Category 2:*
French	Cristal supérieur 30%	Cristal au plomb 24%
Italian	Cristallo superiore 30%	Cristallo al plombo 24%
German	Hochbleikristall 30%	Bleikristall 24%
Dutch	Volloodkristal 30%	Loodkristal 24%
	Category 3:	*Category 4:*
French	Cristallin	Verre sonore
Italian	Vetro sonoro superiore	Vetro sonoro
German	Kristallglas	Kristallglas
Dutch	Sonoorglas [18]	Sonoorglas [19]

33. It will be seen that all the descriptions in categories 1 and 2 contain the word 'crystal' which is linked either to the word 'superior' or the word 'lead' in various forms.

34. There are significantly greater differences between the descriptions for categories 3 and 4 goods. Most of the descriptions are linked to the words 'glass' (verre/vetro) and 'sound' (sonore/sonoor), although the description 'cristallin' is used in French and 'kristallinglas' is used in Belgium for category 3 goods. Moreover the description for both categories in German is 'Kristallglas'.

35. As mentioned above the rule under the directive is that producers can sell category 1 and 2 goods anywhere in the Community provided that the specified description is used (whether only one or all the descriptions are used and whether or not the description in the language of the country of marketing is used). Category 1 goods produced in Germany may thus — if the producer so wishes — be marketed throughout the Community as 'Hochbleikristall 30%'.

Because of the danger of misleading and unfair marketing of categories 3 and 4 goods the rules under the directive are quite different for those goods. First, the description in the language of the country in which the goods are marketed must be used and, second, no other description may be used.

18 — In Belgium the description is 'Kristallinglas'.

19 — The corresponding descriptions in the other languages are:

	Category 1	*Category 2*
English	Full lead crystal 30%	Lead crystal 24%
Danish	Krystal 30%	Krystal 24%
Spanish	Cristal superior 30%	Cristal al plomo 24%
Portuguese	Cristal de chumbo superior 30%	Cristal de chumbo 24%
Greek (transliterated into Latin characters)	Cristalla ipsilis periaktikotitos cae molivdo	Molivduh(r)a cristalla

	Category 3	*Category 4*
English	Crystal glass, crystallin	Crystal glass, crystallin
Danish	Krystallin	Krystallin
Spanish	Vidrio sonoro superior	Vidrio sonoro
Portuguese	Vidro sonoro superior	Vidro sonoro
Greek	(transliterated into Latin characters) Ialocristalla	Ialocristalla

36. The first limb of the requirement is less burdensome for traders to comply with than the second. But it is plain, as mentioned above, that in principle even such a requirement represents an obstacle to trade within the meaning of Article 30. It seems clear to me that that requirement is to a large extent at least justified. There are major differences between some of the descriptions, for example cristallin and kristallglas on the one hand and vetro sonoro and sonoorglas on the other. It must be possible to require that French category 3 goods — cristallin-— are to be marketed in the Netherlands under the description applying in that country — sonoorglas. On the other hand it may appear unnecessarily restrictive to require that a French producer of category 4 goods-— verre sonore — must necessarily, when marketing goods in Italy, Spain and Portugal, use the descriptions applying in those countries, namely vetro sonoro, vidrio sonoro and vidro sonoro. [20]

37. The second limb of the requirement, that *solely* the description in the language of the country of marketing may be used, undoubtedly poses real practical problems for traders.

38. The Community legislature considered that that part of the requirement is also necessary in order to prevent consumers being misled. That view is probably based on two premisses: first, that the consumer is not sufficiently informed by the use of the correct description in his own language, and second that there is a risk of the consumer being misled if at the same time descriptions in other languages are affixed to the goods.

39. It must be plain that in a number of the relevant contexts those premisses are not correct. In all cases where the description used merely includes the word 'sound' (sonore/sonoor), there is no danger of the consumer being misled even if descriptions are given in several languages. There is a real difference between those descriptions and all descriptions for category 1 and 2 goods.

40. There are greater doubts as to the danger of consumers being misled when the word 'krystallin' is used. The question is whether for example an Italian or Spanish consumer might be misled when buying French-produced category 3 goods to which is affixed, in addition to the correct Italian or

20 — In such a case it must be regarded as sufficient to require that a language be used whose spelling differs only slightly from that of the consumer.

Spanish description, also the French description 'cristallin'. For the consumer to be misled it is necessary first that he is not given sufficient guidance by the use of the correct Italian or Spanish description and second that use of the word 'cristallin' gives rise to the risk of the consumer being led to believe that the goods are crystal in category 1 or 2.

41. It is not easy to form a reasoned view on the matter. In those circumstances it must be appropriate to accept the assessment which underlies the rules adopted by the Community legislature.

42. It is reasonable to assume that there is danger of consumers being misled when the German description 'Kristallglas' is used in countries other than Germany. The German description includes the word 'Kristall', which in other countries is reserved to goods in categories 1 and 2. In those circumstances it can hardly be wrong for the Community legislature to assume that the use at the same time of the description of the country in which the goods are marketed does not constitute an adequate safeguard against consumers being misled. [21]

21 — It is also possible that the same considerations might to a certain, albeit more limited degree, be voiced regarding the English description 'crystal glass, crystallin'.

43. It may thus be held that there will be cases where the application of the note will entail obstacles to trade which, taken in isolation, are not justified in order to protect against unfair competition and for the misleading of consumers, but there are also situations where the contrary will be the case.

44. The question therefore arises whether it is possible for the Community legislature to adopt alternative rules which ensure that the concerns underlying the rule in the directive can be safeguarded while at the same time not obstructing the free movement of goods in cases where there is no justification for it. [22]

45. Even if the rule chosen in the directive presumably entails advantages from the point of view of legislative technique, it seems to me that it must be possible for the Community legislature to find a rule which

22 — It is perhaps appropriate to state in this connection that in a number of the circumstances covered by the requirement in the directive there can hardly be any doubt that corresponding requirements, if laid down by national rules, would be contrary to Article 30. If, for example, Danish authorities were to require with regard to imports of French category 3 goods that the description on the French goods should be changed from 'cristallin' to 'krystallin' or if the Portuguese authorities were to require that Spanish category 3 goods should be described as 'vidro sonoro' and not 'vidrio sonoro', that would almost certainly constitute an infringement of Article 30.

takes better account of the requirements inherent in the establishment of the internal market for the free movement of goods while at the same time protecting traders against unfair competition and preventing consumers from being misled.

46. On the basis of the foregoing I shall suggest that the Court hold that the disputed note in column (c) is invalid as regards categories 3 and 4 goods.

47. That does not necessarily signify that each of the descriptions in the Member States' languages may be used when marketing goods in all the Member States.

Until the Council has adopted other provisions it will be possible for the Member States, on the basis of the general rules applying in the States, to adopt the necessary precautions as regards marketing of category 3 and 4 goods if the description used is liable to mislead consumers.

Conclusion

48. On the basis of the foregoing I propose that the Court give the following answer to the national court's questions:

The note that 'Only the description in the language or languages of the country in which the goods are marketed may be used' in column (c) in Annex I to Directive 69/493 is invalid.