OPINION OF ADVOCATE GENERAL
STIX-HACKL
delivered on 12 September 2006 [1]

I — Introduction

1. In this case, the Italian Ufficio del Giudice di pace Monselice (Office of the Justice of the Peace of Monselice) has asked the Court for an interpretation of Articles 2, 3 and 12 of Directive 2000/13/EC. [2] Essentially, the case is concerned with the question of who is liable under Community law for the fact that the particulars on the label of a pre-packaged foodstuff — in this case the percentage of alcohol content of a herbal liqueur — are not consistent with the actual value determined. In the circumstances of the main proceedings, this might be, on the one hand, the manufacturer of the product, who is exclusively responsible for production and pre-packaging or, on the other, the — mere — distributor of the foodstuff, who is established in another Member State.

II — Legal framework

A — *Community law*

2. For reasons of clarity and rationality, Directive 2000/13 consolidated and repealed Directive 79/112/EEC, [3] which had been frequently and substantially amended. [4]

3. Recital (6) in the preamble to Directive 2000/13 reads as follows:

'The prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.'

1 — Original language: German.

2 — Directive of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29; 'Directive 2000/13').

3 — Council Directive of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1).

4 — See in this connection recital (1) in the preamble to Directive 2000/13.

4. Article 1(1) of Directive 2000/13 provides:

'This Directive concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer and certain aspects relating to the presentation and advertising thereof.'

Article 1(3) of Directive 2000/13 contains definitions of terms. In accordance with those definitions, [5] 'pre-packaged foodstuff' means 'any single item for presentation as such to the ultimate consumer and to mass caterers, consisting of a foodstuff and the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging'.

5. Article 2(1) of Directive 2000/13 reads, in extract, as follows:

'1. The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;

(ii) by attributing to the foodstuff effects or properties which it does not possess;

(iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics;

(b) ...'

6. Article 3(1) of Directive 2000/13 contains an exhaustive list of the particulars which are compulsory on the labelling of foodstuffs. Pursuant to point 7, these particulars include 'the name or business name and address of

5 — Article 1(3)(b).

the manufacturer or packager, or of a seller established within the Community', and, pursuant to point 10, 'with respect to beverages containing more than 1.2% by volume of alcohol, the actual alcoholic strength by volume'.

7. Article 12 of Directive 2000/13 provides:

'The rules concerning indication of the alcoholic strength by volume shall, in the case of products covered by tariff heading Nos 22.04 and 22.05, be those laid down in the specific Community provisions applicable to such products.

In the case of other beverages containing more than 1.2% by volume of alcohol, these rules shall be laid down in accordance with the procedure provided for in Article 20(2).'

8. The indication of the alcoholic strength by volume in accordance with Article 12 of Directive 2000/13 is governed in particular by the provisions of Directive 87/250/EEC. [6]

6 — Commission Directive of 15 April 1987 on the indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer (OJ 1987 L 113, p. 57).

9. Article 3(1) of Directive 87/250 provides, in extract:

'[t]he positive and negative tolerances allowed in respect of the indication of the alcoholic strength by volume shall be as follows, expressed in absolute values:

(a) Beverages not specified below:

0.3% vol

...'

10. Article 13(1) of Directive 2000/13 reads:

'(a) When the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4(2) shall appear on the prepackaging or on a label attached thereto.

(b) Notwithstanding point (a) and without prejudice to Community provisions on nominal quantities, where prepackaged foodstuffs are:

— intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage,

— intended for supply to mass caterers for preparation, processing, splitting or cutting up,

the particulars required under Articles 3 and 4(2) need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

(c) In the case referred to in point (b), the particulars referred to in Article 3(1) point 1, 5 and 7 and, where appropriate, that referred to in Article 10, shall also appear on the external packaging in which the foodstuffs are presented for marketing.'

11. Finally, Article 14 of Directive 2000/13 provides:

'Where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without prepackaging, or where foodstuffs are packaged on the sales premises at the consumer's request or prepackaged for direct sale, the Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4(2) are to be shown.

They may decide not to require the provision of all or some of these particulars, provided that the purchaser still receives sufficient information.'

12. Reference must also be made to Regulation (EC) No 178/2002.[7] Recital (30) in the preamble to that regulation reads as follows:

'A food business operator is best placed to devise a safe system for supplying food and

7 — Regulation of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1; 'Regulation No 178/2002').

ensuring that the food it supplies is safe; thus, it should have primary legal responsibility for ensuring food safety. Although this principle exists in some Member States and areas of food law, in other areas this is either not explicit or else responsibility is assumed by the competent authorities of the Member State through the control activities they carry out. Such disparities are liable to create barriers to trade and distort competition between food business operators in different Member States.'

13. Article 3(3) of Regulation No 178/2002 contains the following definition:

'For the purposes of this Regulation ... "food business operator" means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control ...'

14. Article 17 of Regulation No 178/2002 is entitled '[r]esponsibilities' and reads:

'1. Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.

2. Member States shall enforce food law, and monitor and verify that the relevant requirements of food law are fulfilled by food and feed business operators at all stages of production, processing and distribution.

For that purpose, they shall maintain a system of official controls and other activities as appropriate to the circumstances, including public communication on food and feed safety and risk, food and feed safety surveillance and other monitoring activities covering all stages of production, processing and distribution.

Member States shall also lay down the rules on measures and penalties applicable to infringements of food and feed law. The measures and penalties provided for shall be effective, proportionate and dissuasive.'

B — *National law*

15. Decreto Legislativo (Legislative Decree) No 109/92 of 27 January 1992 transposing Directives 89/395/EEC and 89/396/EEC on the labelling, presentation and advertising of foodstuffs [8] was amended by Decreto-legge (Decree-Law) No 181 of 23 June 2003 transposing Directive 2000/13/EC on the labelling, presentation and advertising of foodstuffs [9] ('Legislative Decree No 109/92').

16. Article 12(3) of Legislative Decree No 109/92 provides:

'The positive and negative tolerances allowed in respect of the indication of alcoholic strength by volume, expressed in absolute values, shall be as follows:

...

(d) 0.3% vol. for beverages other than those set out in (a), (b) and (c).'

17. Article 18(3) of the legislative decree provides:

'An infringement of the provisions (of Article 12) shall be punishable by a fine of EUR 600 to 3 500.'

III — Facts, main proceedings and questions referred

18. On 13 March 2003, officials of the ULSS (Unità Locale Socio Sanitaria) No 17 Azienda Autonoma Conselve-Este Monselice-Montagnana ('Azienda ULSS No 17') drew up a report on the taking of five samples of a herbal liqueur known as 'Amaro alle erbe' from the shelves of the outlet of the claimant in the main proceedings, Lidl Italia Srl ('Lidl Italia'), situated at 33 Via Colombo, Monselice. According to the particulars on the label, the alcoholic beverage is manufactured in Germany by Jürgen Weber GmbH.

19. The samples taken were analysed on 17 March 2003 by the Province of Padua division of ARPAV (Agenzia Regionale per la Prevenzione e Protezione Ambientale del Veneto (Regional Agency for Environmental

8 — GURI No 39 of 17 February 1992, ordinary supplement.
9 — GURI No 167 of 21 July 2003.

Safeguards and Protection in the Veneto)). Those analyses established that the alcoholic strength by volume was lower than the 35% stated on the label by the manufacturer of the herbal liqueur distributed by Lidl Italia. The values obtained were outside the tolerance limit of 0.3% stipulated for that type of beverage.

20. In contrast, subsequent analyses carried out by Lidl Italia at a laboratory accredited by the national health service established that the alcoholic strength by volume was consistent with that stated on the label by the manufacturer of the herbal liqueur. However, the subsequent review of the analyses by the Istituto Superiore di Sanità (Higher Public Health Authority) confirmed that the alcoholic strength by volume was lower, albeit only slightly, than that stated on the product label.

21. On the basis of the findings above, on 3 July 2003, the Azienda ULSS No 17 charged Lidl Italia with an infringement of Article 12(3)(d) of Legislative Decree No 109/92. Following administrative proceedings, on 23 December 2004, the Comune di Arcole (Municipality of Arcole), the defendant in the main proceedings ('the defendant'), ordered Lidl Italia to pay a fine of EUR 3 115.

22. Lidl Italia challenged that decision, contending that the infringement at issue could not be imputed to it since it did not manufacture the product at issue, but merely distributed it in its outlets.

23. The Giudice di pace di Monselice, the referring court, is of the opinion that a decision in this matter depends on the interpretation of Articles 2, 3 and 12 of Directive 2000/13. In those circumstances, it stayed proceedings and, by order of 12 July 2005, received at the Court Registry on 12 August 2005, referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs be interpreted as meaning, in respect of pre-packaged foodstuffs under Article 1 thereof, that the obligations provided for therein, and in particular those in Articles 2, 3 and 12, are imposed only on the producer of the pre-packaged food product?

(2) If the answer to the first question is affirmative, must Articles 2, 3 and 12 of Directive 2000/13/EC be interpreted as precluding the possibility that a mere distributor, located within a Member State, of a foodstuff pre-packaged (as defined in Article 1 of Directive 2000/13/EC) by a trader in another Member State, may be held liable for an infringement alleged by a public authority involving a discrepancy between the value (in this case percentage of alcohol content) stated on the label by the producer of the pre-packaged foodstuff, and may thus be

penalised, even if that distributor simply markets the foodstuff in the form in which it is delivered by the producer of the food product itself?'

IV — The questions referred

A — *Preliminary remarks*

24. First, it should be noted that, in the context of the judicial cooperation between national courts and the Court of Justice within the framework of references for a preliminary ruling, it is for the national court to establish and evaluate the facts of the case and for the Court of Justice to provide the national court with such guidance on interpretation as may be necessary to enable it to decide the dispute.

25. These proceedings are essentially concerned with obtaining an answer to the question of who is to be held responsible for the accuracy of the particulars on the label of a pre-packaged foodstuff under the Community provisions on the labelling of foodstuffs. While the first question relates to the responsibility of the manufacturer in this regard, the second question concerns the responsibility of the mere distributor of such a foodstuff. Since the answer to the second question depends on the answer to the first, both questions can be examined together.

26. Contrary to the view held by the Italian Government, the second question does not have to be declared inadmissible because it concerns the provisions of criminal law of the Member States. In this regard, it is not for the Court to consider whether the obligations under the directive must be regarded as falling within the scope of national criminal law or administrative law.

B — *Essential arguments*

27. *Lidl Italia* is of the opinion that the particulars for the protection of consumers which, under the directive, must appear on the label of a food product can be ensured only by the manufacturer of the product. In its submission, it is clear that a trader responsible only for distributing the product can never be acquainted with information which relates exclusively to the manufacturing process. Only a distributor who is involved in the prior packaging of the products can be held responsible. However, a form of strict liability on the part of the distributor is without any doubt excluded by the directive.

28. The *Italian Government* considers that, taking into account the principle of the protection of the legitimate expectations and good faith of the distributor of a product, the manufacturer of that product is expected to comply with the existing harmonised provisions of Community law. That principle is inapplicable only if a more specific provision exists, such as, for example, Regulation No 178/2002.

29. The *French Government* is of the opinion that a Member State is entitled to require the seller of a foodstuff to ensure the accuracy of the particulars on the label. This serves to inform and protect consumers, in particular where the manufacturer of the product is established in another Member State. However, the responsibility of the distributor in the importing State does not discharge the State in which the manufacturer is established from the requirement to verify that the manufacturer fulfils the obligations in respect of proper labelling. In its submission, the competent authorities in the Member States can afford each other assistance in this connection.

30. From the point of view of consumer protection, the *Spanish Government* points out that it is not possible automatically to exclude from responsibility all traders involved in one of the stages necessary for the purposes of placing the product on the market in goods or services before it is made available to the ultimate consumer. It is for the national court to examine whether the undertaking concerned satisfies the conditions for the application of a punitive provision and, in addition, whether it has traded unlawfully and negligently. The interpretation of the directive, however, does not rule out the possibility of penalising the conduct of the distributor of a product, irrespective of any penalties to be imposed on the manufacturer, particularly since the distributor is closer to the consumer.

31. The *Netherlands Government* takes the view that, in accordance with the wording and purpose of the directive, the existing obligations are in general directed at all traders who sell pre-packaged foodstuffs. For the purposes of consumer protection, this also includes persons who do not put the label on the product themselves.

32. The *Commission* proceeds on the premiss that the directive contains no express rules on responsibility. This means that either the manufacturer of the alcoholic beverage is alone subject to the obligation to ensure the accuracy of the particulars on the label or all persons trading in the foodstuffs sector are jointly responsible. From the point of view of consumer protection and Article 17(1) of Regulation No 178/2002, preference is ultimately to be given to the latter interpretation.

33. However, the prerequisite for such responsibility on the part of the trader is that he must be in a position to test whether the actual percentage of alcohol content is consistent with that stated on the label. This is a matter for consideration by the national court. It is perfectly conceivable that the distributor of a product may likewise, in certain cases, have the opportunity to undertake such supervision.

C — *Legal assessment*

34. By its questions, the referring court essentially wishes to ascertain who, under Directive 2000/13, is responsible for the particulars on the label of a pre-packaged foodstuff and who, therefore, can be held liable if those particulars are inaccurate.

35. In this regard, it must first be pointed out that Directive 2000/13 does not contain any express rules on liability for inaccurate particulars. In this connection, it should be noted that the choice of penalties for an infringement of the obligations under Directive 2000/13 is in principle a matter of national law. Regard must be had here to the case-law of the Court to the effect that, 'while the choice of penalties remains within their discretion, Member States must ensure in particular that infringements of Community law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive'. [10]

36. Determining the addressees of the relevant obligations, on the other hand, is a matter of Community law. It must be pointed out, however, that the addressees of the obligations under Directive 2000/13 — and in particular Articles 2 and 3 thereof — are not specified.

37. However, contrary to the view held by Lidl Italia, it cannot be inferred from this fact alone that the mere distributor of a product cannot under any circumstances be held liable for the inaccuracy of the relevant particulars, since such liability certainly does not appear to be excluded. If this were not the case, the same argument could also be used in favour of all other potentially liable persons who are likewise not expressly specified.

38. It is surely beyond dispute, however, that the existence of liability for inaccurate

10 — See in particular Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi* [2005] ECR I-3565, paragraph 65, with further references.

particulars contributes significantly towards the effectiveness of the aims pursued by Directive 2000/13.

39. It is therefore necessary to interpret the provisions of the directive by reference to their spirit and purpose in order to identify the addressees of the obligations under Directive 2000/13.

1. Is the manufacturer exclusively responsible?

40. First of all, we must consider the proposition that the manufacturer is exclusively responsible for the pre-packaged foodstuff.

41. Notwithstanding that Directive 2000/13 contains no rules to that effect, that proposition could be supported by rules in other areas of Community law.

42. In this regard, reference may be made to Article 8(1) of Directive 98/37/EC. [11] In this connection, the Court held only recently that it 'would be inconsistent with the scheme of that directive and in particular Article 7(3) thereof to increase the number of persons who could be held responsible for the conformity of machinery'. [12]

43. However, it is important to bear in mind that, within the framework of Directive 2000/13, which is relevant here, no such explicit rules actually exist. The abovementioned scheme of Article 7(3) of Directive 98/37 is in particular to be seen against the background of the fact that that article expressly concerns measures against whomsoever has affixed the marking or drawn up the declaration.

44. In addition, Directive 98/37 pursues a different legislative objective, which is to simplify the arrangements governing conformity certificates for machinery in order as far as possible to ensure the free movement of such machinery within the internal market. By contrast, the main objectives of Directive 2000/13, according to recital (6) in its preamble, are 'to inform and protect the consumer'. Therefore, while the objective pursued by Directive 98/37 would be adversely affected if economic operators whose intervention post-dates that of the manufacturer — in particular importers who

11 — Directive of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (OJ 1998 L 207, p. 1).

12 — Case C-40/04 *Yonemoto* [2005] ECR I-7755, paragraph 44.

import machinery from one Member State into another — could also be held responsible for the machinery's conformity, joint liability would aid consumer protection in so far as it creates incentives for all members of the chain of distribution to ensure the accuracy of the particulars on labels and to expand consumer choice.

45. However, Article 1 of Directive 85/374/EEC [13] also focuses liability for defective products essentially on the manufacturer, the second recital in the preamble to that directive pointing out that non-fault liability on the part of the producer is the sole means of adequately solving the problem, peculiar to our age of increasing technicality, of a fair apportionment of the risks inherent in modern technological production.

46. That said, the principle under Article 1 of Directive 85/374 that liability lies essentially with the manufacturer is not absolute. On grounds, significantly, of protection of the consumer, the fourth and fifth recitals in the preamble to that directive state that all producers involved in the production process should be made liable in so far as their finished product, component part or any raw material supplied by them was defective and in such a way the injured person should be able to claim full compensation for the damage from any person involved. Firstly, Article 3(2) of Directive 85/374 accordingly extends the meaning of 'producer' to include any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business. Secondly, Article 3(3) of Directive 85/374 provides for the subsidiary liability of the supplier where the producer of the product cannot be identified.

47. Lastly, it must also be noted that Directive 85/374 was based on Article 100 of the EEC Treaty (amended to Article 100 of the EC Treaty, now Article 94 EC) and therefore constitutes an internal market directive — and not a directive under Article 153 EC. [14]

48. Accordingly, in view of the spirit and purpose of Directive 2000/13, the argument that the manufacturer of a product is exclusively liable for inaccurate particulars on labelling is unconvincing. The Spanish, French and Netherlands Governments and the Commission have, correctly in my view, underlined the objective of consumer protection pursued by Directive 2000/13.

13 — Council Directive of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

14 — See in this regard Case C-52/00 *Commission* v *France* [2002] ECR I-3827, paragraph 14.

According to the settled case-law of the Court in this regard,[15] in interpreting provisions of Community law, it is necessary to consider not only their wording but also the context in which they occur and the objects of the rules of which they form part.

2. Are other or all persons involved in the production and distribution process liable?

49. The question is, therefore, to what extent the proposition of responsibility on the part of other or all persons involved in the production and distribution process is conceivable.

50. Responsibility on the part of all those involved in the production and distribution process is provided for in particular by Article 6(1) of Directive 2001/95/EC on general product safety.[16] Under that provision, Member States are to ensure that producers and distributors comply with their obligations under that directive in such a way that products placed on the market are safe. However, the objection could be raised here too that Directive 2000/13 itself simply does not contain such a rule.

51. In the field of the labelling of cosmetic products and foodstuffs, the Court[17] itself, on grounds of the protection of public health, has already referred to the possibility, in cases of uncertainty, of requiring both the manufacturer and the distributor of a product to furnish evidence of the accuracy of the factual claims on labelling.

52. Compromises between exclusive responsibility on the part of the manufacturer and responsibility shared by all members of the production and distribution chain are possible, however, as is clear, for example, from the alternative list of particulars set out in Article 3(1)(7) of Directive 2000/13, under which it is compulsory for the labelling of foodstuffs to indicate the name or business

15 — See, inter alia, Case C-223/98 *Adidas* [1999] ECR I-7081, paragraph 23; Case C-301/98 *KVS International* [2000] ECR I-3583, paragraph 21; Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 50; Case C-191/99 *Kvaerner* [2001] ECR I-4447, paragraph 30; Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 203; and Case C-294/01 *Granarolo* [2003] ECR I-13429, paragraph 34, each with further references.

16 — Directive of the European Parliament and of the Council on general product safety (OJ 2002 L 11, p. 4).

17 — Case C-77/97 *Unilever* [1999] ECR I-431, paragraph 35, concerning the labelling of cosmetic products. See also Joined Cases C-421/00, C-426/00 and C-16/01 *Sterbenz and Haug* [2003] ECR I-1065, paragraph 38, concerning the labelling of foodstuffs, and Case C-239/02 *Douwe Egberts* [2004] ECR I-7007, paragraph 42.

name and address of the manufacturer or packager, *or* (my emphasis) of a seller established within the Community.

53. In this respect, it should be pointed out that the objective of the previous legislation — that is to say Directive 79/112 — was to inform and protect the ultimate consumer of foodstuffs, in particular as regards the nature, identity, properties, composition, quantity, durability, origin or provenance, and the method of manufacture or production thereof. [18] This would appear to be significant in so far as it is to be inferred from recital (1) in the preamble to Directive 2000/13 that that directive is not intended to be a completely new set of rules, meaning that a change to the objective referred to can probably be ruled out.

54. In particular, Article 3(1)(7) of Directive 2000/13 is mainly intended to enable the consumer to contact the person responsible for the manufacture or packaging of the foodstuffs with a view to expressing any positive or negative criticism about the product purchased. [19] That goal can only be achieved, however, if the ultimate consumer can easily identify the persons concerned.

55. In this connection, the Court held in *Dega* [20] that, in that respect, producers and packagers differ from sellers. The Court stated that the former are generally established, easily identifiable traders, meaning that the fact that they might be situated even outside the Community does not present a problem. In contrast, sellers are generally much smaller traders and, consequently, more difficult to identify, particularly if they are established outside the Community. That is why the Community legislature, for the purposes of the rules on labelling of foodstuffs, laid down different rules in relation to traders depending on whether they are manufacturers or packagers, on the one hand, or sellers, on the other. As regards manufacturers and packagers, the label on the packaging in accordance with Article 3(1)(7) of Directive 2000/13 may indicate details of either one or the other, whether established in the Community or outside; as regards sellers, the label may only indicate details of a trader established within the Community.

56. A further argument in support of the proposition that it is not only the manufacturer of a product who may be held liable in

18 — See Case 298/87 *Smanor* [1988] ECR 4489, paragraph 30, and Case C-83/96 *Dega* [1997] ECR I-5001, paragraph 16.

19 — *Dega* (cited in footnote 18), paragraph 17, concerning the previous rule contained in Article 3(1)(6) of Directive 79/112 in the context of the Commission answer to a written question E-2170/95 of 28 July 1995 (OJ 1995 C 340, p. 19).

20 — Cited in footnote 18, paragraphs 18 and 19.

the event of defective labelling is that advanced by the Commission with reference to Article 16 of Directive 2000/13, to the effect that, if, under that article, the information which appears on the label can be drafted in a language different from that of the manufacturer, it seems logical to assume that the distributor plays an important role in guaranteeing compliance with the rules on labelling, that is to say in ensuring that the ultimate consumer receives all the necessary information on the product offered for sale in a language which he easily understands, although, admittedly, this says nothing about whether the distributor can also be held liable for the substantive accuracy of the particulars concerned.

57. Support for an interpretation to the effect that it is not only the manufacturer who can be held responsible for the substantive accuracy of the particulars on labels can, however, be found in Regulation No 178/2002. The Court has already held in another case [21] that that regulation constitutes an additional set of rules in relation to Directive 2002/46/EC, [22] particularly since the regulation represents a general rule. The directive material to this case, Directive 2000/13, is almost certainly no different, given that Directive 2000/13 and Regulation No 178/2002 pursue the same objective, that is to say protection of the consumer in the field of foodstuffs.

58. Under Article 17(1) of Regulation No 178/2002, [23] food and feed business operators at all stages of production, processing and distribution within the business under their control are to ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and are to verify that such requirements are met.

59. Accordingly, in view of the ever closer and increasingly complex relationship between manufacturers, producers and distributors, responsibility ought in principle to be joint rather than individual. [24]

21 — Joined Cases C-211/03, C-299/03 and C-316/03 to C-318/03 *HLH Warenvertriebs GmbH and Orthica* [2005] ECR I-5141, paragraphs 36 and 38.

22 — Directive of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51).

23 — I have cited Article 17(1) of Regulation No 178/2002 in support of my interpretation, although, for reasons of time, that regulation is not directly applicable to the main proceedings, since it did not enter into force until 1 January 2005, pursuant to Article 65 of the regulation.

24 — See also in this connection 'Guidance on the implementation of Articles 11, 12, 16, 17, 18, 19 and 20 of Regulation (EC) No 178/2002 on general food law', Conclusions of the Standing Committee on the Food Chain and Animal Health, I.3.2., Allocation of liability; it should be noted that that document has no formal legal status and, in the event of any dispute, it is of course the interpretation of the Court which carries ultimate authority; however, this should not prevent the content of that document from being taken into general consideration for the purposes of interpretation.

60. It follows from the foregoing that Articles 2, 3 and 12 of Directive 2000/13 are not to be interpreted as meaning that the obligations arising from them are imposed only on the manufacturer of a pre-packaged foodstuff. Rather, it is possible for responsibility to be carried by all persons involved in the production and distribution process.

3. Prerequisite for responsibility on the part of other persons involved in the production and distribution process

61. Responsibility for the substantive accuracy of labels on foodstuffs rightly requires that the relevant person involved should be in a position to verify that the particulars on the label of the product are substantively accurate. [25]

62. Lidl Italia rightly states in this connection that the distributor of a product is not usually in a position to supervise the product manufacturing process. [26]

63. However, it is not entirely inconceivable that, in certain cases, the distributor may be able to undertake such supervision. Lidl Italia itself does not deny this when it notes that a distributor who is involved in the pre-packaging of products could be held responsible. The Commission states in this regard that some distributors (for example, large supermarket chains) have sufficient power to impose on manufacturers rules or quality criteria relating to the manufacture of foodstuffs which could be enforced by means of inspection programmes or regular checks. Moreover, other distributors ought to be in a position to undertake effective supervision themselves over the accuracy of the particulars on the label. [27]

64. In conclusion in this regard, it is a matter for the national court to examine whether the distributor of the alcoholic beverage in question is in fact in a position to verify that the particulars on the label are consistent with the actual alcohol content.

25 — See, for example, the comments on Article 17 of Regulation No 178/2002 in the document cited in footnote 24, under I.2., Implications: 'under his/their control'.

26 — The question whether that is also true in relation to goods bearing a so-called 'own-label' can be left open in this case, since the product at issue in the main proceedings was not offered for sale under the distributor's 'own label'.

27 — Thus, for example, certain wholesalers buy large quantities of unbottled wine and do not decant it into bottles until it is sold.

V — Conclusion

65. In the light of the foregoing considerations, I propose that the questions referred be answered as follows:

Articles 2, 3 and 12 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs are not to be interpreted as meaning that the obligations arising from them are imposed only on the producer of a pre-packaged food product. Responsibility in this regard is also carried by all persons involved in the production and distribution process, albeit on condition that those persons are actually in a position to verify the accuracy of the particulars on the label of the foodstuff. It is a matter for the national court to establish whether this is in fact the case.