OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 15 January 1985 *

Mr President,
Members of the Court,

I may state my conclusions on this case immediately following the hearing.

A number of questions have been asked by the Amtsgericht Köln and the Court must answer them. The first question may be paraphrased as follows:

'Is an express grant required in order to affix an "e" sign?'

In my opinion the hearing has shown that there is no need for a grant by a competent authority. An 'e' sign may be affixed by the packer or by the importer. The authorities intervene only in relation to the carrying out of checks by sampling. The Commission has rightly pointed out that in those circumstances the intervention of the State in some form is required.

The State must be ready to recognize the procedure adopted, not to grant an 'e' sign but to approve the checking procedure. One possibility is for the authorities themselves to state that a certain procedure meets with their approval. Alternatively, they may examine the procedure adopted by the packer and approve it if they consider it adequate to achieve the objectives of Directive 76/211/EEC.

I therefore take the view that, despite the very interesting submissions made to the Court, there are no particular difficulties in replying to the questions referred to the Court.

The replies proposed in the course of the written procedure are not so very dissimilar. Essentially they differ only in relation to Section 4 of Annex I to the directive. That section is included in the answer proposed by the Commission but not in the defendant's proposed answer.

I am of the opinion that Article 3 (1) of the directive must be regarded as referring to the whole of Annex I and not just parts thereof.

I therefore propose that the first question referred to the Court by the Amtsgericht should be answered in the manner proposed by the Commission, namely:

'Council Directive 76/211/EEC is to be interpreted as meaning that a packer has the right to use the "e" sign where the quantity of product contained in a prepackage, known as 'the actual contents', is measured by weight or by volume on the responsibility of the packer. There is no need for the EEC sign to be granted by the national authorities.'

* Translated from the German.

For reasons of clarity it would be appropriate to add the following:

'If the packer opts for checking by means of sampling, those checks must be carried out in accordance with procedures recognized by the competent departments in the Member States.'

Finally the question of the direct effect of the directive must be considered.

I propose that the answer put forward by the Commission on this point should be adopted. It corresponds more closely to the most recent decisions of the Court than the other suggested answers.

The Commission's proposed answer is as follows:

'A packer who carries out checks in such a manner that the actual volume of a prepackaged product corresponds to the stated volume but who is refused recognition of his checking procedure by the competent departments, may invoke the relevant provisions of the directive and Annex I thereto before the national courts against those departments.'

It may be asked whether it is in fact necessary to reply to that question at all but as the Amtsgericht has referred the question to us, I take the view that it should be answered.