OPINION OF ADVOCATE GENERAL LÉGER

delivered on 29 May 1997 *

1. 'Il suffit du déplacement d'une virgule pour dénaturer le sens de ma penséee' (moving a single comma is enough to distort my meaning), said Michelet, [1] a comment which indicates to perfection the profound perplexity of the reader faced with two differently-punctuated versions of the same text. Such perplexity the Corte Suprema di Cassazione (Supreme Court of Cassation) must have experienced in its endeavour to determine the precise meaning of a provision of Community law.

2. It is in considering a reference for a preliminary ruling from that court, seeking clarification of one of the requirements of the Community rules on the labelling and presentation of foodstuffs [2] concerning the indication of details of a trader, that the finesses and nuances of good punctuation become apparent.

3. Let us first consider the facts and procedure in this case.

Facts and procedure

4. A fine was imposed on the company Dega di Depretto Gino for having marketed in Italy cans of pineapple in syrup, produced and packaged by a company established outside the Community, without indicating the details required by the Italian legislation, [3] under which the labelling on foodstuffs must indicate, in particular:

'the name, business name or registered trademark and the registered office of the manufacturer or packager or of a seller established within the European Economic Community'. [4]

5. The appeal against that administrative fine was upheld by the Pretura (Magistrate's Court), Rovereto, which, by judgment of 20 November 1990, annulled the fine on the ground that it had been imposed on the basis

* Original language: French.

1 — Cited in Berthier, P. V., and Colignon, J.-P.: *Le français pratique*, Éditions Solar, p. 192.

2 — Council Directive 79/112/EEC 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, hereinafter 'the Directive' or 'Directive 79/112'.

3 — Article 3(h) of the Presidential Decree No 322 of 18 May 1992, entitled 'implementation of Directive 79/112/EEC on foodstuffs for sale to the ultimate consumer and the advertising thereof, and Directive 77/94/EEC on foodstuffs for particular nutritional uses'.

4 — The Italian text, as reproduced by the national court at point 1 of the order, is drafted as follows: 'il nome o la ragione sociale o il marchio depositato e la sede del fabbricante o del confezionatore o di un venditore stabilito nella Comunità economica europea'.

of an incorrect interpretation of the legal provision cited above. That court, ruling on the substance, held that the expression 'established within the European Economic Community' referred only to sellers and that an indication of the name and address of the producer and packager established in a non-member country, as in this case, was sufficient.

6. The Provincia Autonoma di Trento (Autonomous Province of Trento) and the Ufficio del Medico Provinciale di Trento (Medical Office of the Province of Trento) lodged an appeal seeking to have the judgment set aside on a single ground: they challenged the interpretation given by the Pretura to the national provision at issue. They claimed that protection of the ultimate consumer is only fully guaranteed if at least one trader (producer, packager or seller) established within the Community is indicated on the label.

7. The Corte Suprema di Cassazione noted that the national provision which it was asked to interpret 'reproduces almost exactly' the wording of Article 3(1)(6) of Directive 79/112, the French version of which provides that the labelling of foodstuffs must indicate 'le nom ou la raison sociale et l'adresse du fabricant ou du conditionneur, [5] ou d'un vendeur établit à l'intérieur de la Communauté'; the Italian version reads as follows: 'il nome o la ragione sociale e l'indirizzo del fabbricante o del condizionatore o di un venditore stabilito nella Communità'.

8. It concluded that the judgment to be given entails, 'as a matter of necessity and priority', an interpretation of that Community provision, 'since the Italian provision is obviously merely a reenactment of it', and has therefore asked the Court to rule on the following question:

'Must Article 3(1)(6) of Council Directive 79/112/EEC (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) be interpreted as meaning that the expression "established within the Community" used in it refers only to the seller or refers, in the absence of a seller established within the Community, also to the manufacturer and/or packager? Must that provision therefore be taken to mean that, in the absence of a seller established in the Community, the manufacturer and/or the packager must be established in the Community?'

Legal background

9. The directive on the labelling of foodstuffs enacts 'Community rules of a general nature applicable horizontally to all foodstuffs put on the market'. [6] The harmonization of laws carried out by the directive is

5 — I would highlight the presence of this comma, to which I shall return later.

6 — Third recital in the preamble to the directive.

intended to prevent barriers to the free movement of such products, which can lead to unequal conditions of competition, in order to contribute to the smooth functioning of the common market. [7] The '*prime*' consideration, however, is 'the need to inform and protect the consumer'. [8] In order to do so, the directive provides in particular that the labelling must indicate certain information, to the exclusion of any other. That information is set out in Article 3(1), (1) to (8).

Answer to the question

10. The question relating to the interpretation of Article 3(1)(6) essentially asks the Court to rule whether the condition of 'Community establishment' applies only to the seller or whether, on the contrary, it must be satisfied by at least one of the three traders mentioned (manufacturer, packager and seller).

11. A careful reader will have noted the slight difference in meaning between the Italian and the French versions of the directive: in the former, no comma separates the expression 'or of a seller established within the Community' from the other persons mentioned.

12. The position of the comma in the French version has the advantage of separating, in my view quite clearly, the last person mentioned from the two others, and thus of identifying that person as being the only one to whom the expression at issue could apply. The English version of that provision, 'the name or business name and address of the manufacturer or packager, or of a seller established within the Community', which also has the comma, seems to call for the same reading.

13. The German ('den Namen oder die Firma und die Anschrift des Herstellers, des Verpackers oder *eines in der Gemeinschaft niedergelassenen Verkäufers*') and Dutch ('de naam of de handelsnaam en het adres van de fabrikant of van de verpakker of van *een in de Gemeenschap gevestigde verkoper*') versions [9] of the text are also unambiguous. The syntax of those two languages makes it even clearer that the expression 'established within the Community' ('*in der Gemeinschaft niedergelassenen*' and '*in de Gemeenschap gevestigde*') applies only to the 'seller' ('*Verkäufers*' and '*verkoper*'), since that expression directly precedes the word 'seller' and it is thus not possible to interpret the text so as to apply the condition at issue to all three traders listed.

14. The Italian version, on the other hand, which gave rise to the national court's questions and which can be compared to later translations, [10] could be interpreted as having an entirely different meaning. Nonetheless, contrary to what was argued by the Italian Government at the hearing, the interpreta-

7 — First and second recitals.

8 — Sixth recital, emphasis added.

9 — Emphasis added.

10 — There is no sign of the comma at issue in the Spanish version: 'el nombre o la razón social y la dirección del fabricante o del embalador o de un vendedor establecido dentro de la Communidad'. The Danish and Greek versions seem to follow the 'Italian example'.

tion to be given to the provision at issue cannot depend on that language version alone. It is vain to argue that the need to take account of other language versions constitutes discrimination against Italian traders, in so far as the Court has consistently held that:

'the different language versions of a Community text *must be given a uniform interpretation* and in the case of divergence between the versions the provision in question must therefore be interpreted by reference to the purpose and general scheme of the rules of which it forms part'. [11]

15. In view of the uncertainty which persists after reading the different language versions and since none of them can be given precedence, the Court must endeavour, in accordance with its case-law, to interpret the text referred for its consideration in a manner which is consistent with the purpose and general scheme of the rules of which it forms a part.

16. However, before doing so, I suggest account should be taken of one factor which appears to me to be conclusive.

17. The importance of the distinction in meaning resulting from the insertion of the comma, at least in the French and English versions, did not escape the notice of the Economic and Social Committee which, in its opinion on what was then merely the proposal for Directive 79/112, [12] proposed that the punctuation be amended specifically in order that the condition of Community establishment should apply to each of the traders mentioned in that text.

18. Point 2.7.1 of the Committee's 'specific comments' in respect of Article 3 of the proposed directive thus reads as follows:

'The Committee considers that an accountable party within the Community must be specified on the labelling. The Committee, therefore, asks that Article 3(6) should be reworded to read:

"The name or business name of the manufacturer, packer or seller, together with his address, which must be within the Community".' [13]

11 — Case C-449/93 *Rockfon* v *Specialarbejderforbundet i Danmark* [1995] ECR I-4291, paragraph 28, emphasis added, which refers to Case 30/77 *R* v *Bouchereau* [1977] ECR 1999, paragraph 14. See also, for example, Case 100/84 *Commission* v *United Kingdom* [1985] ECR 1169, paragraph 17 and Case C-72/95 *Kraaijeveld and Others* v *Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403, paragraph 28.

12 — Opinion on the proposal for a Council Directive 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 1976 C 285, p. 3).

13 — The French version of the proposed wording ('Le nom ou la raison sociale et l'adresse du fabricant ou du conditionneur, ou d'un vendeur, établi à l'intérieur de la Communauté') includes two commas, separating the expression 'ou d'un vendeur' from the rest of the sentence.

The Italian version of that proposal is even clearer:

'Il Comitato ritiene che l'imballaggio debba comportare l'indicazione della persona responsabile nella Comunità. Esso chiede quindi che il punto 6 sia redatto nel modo seguente:

"il nome e cognome o la ragione sociale e l'indirizzo del fabbricante o del condizionatore o di un vendore *stabiliti* nella Comunità".' [14]

19. The fact that that proposal was not taken up in the final draft of the provision at issue [15] can, in my opinion, mean only that the Community legislature considered that the requirement of Community establishment should apply only to the seller.

20. A purposive interpretation of the provision at issue only confirms that view.

21. In that respect, as the Italian and Greek Governments have rightly recalled, the Court has already identified the purpose and general scheme of Directive 79/112 as follows:

'It is clear from both the statement of the reasons on which the Directive is based and the terms of Article 2 thereof, that its object 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.' [16]

22. I do not consider that it would detract from the information and protection of consumers to permit indication of the manufacturer or packager of the product established in a non-member country.

14 — It should be noted that, in the Italian version, the proposed amendment concerned the plural agreement of the past participle of the verb 'to establish' (*stabiliti* instead of *stabilito*), thus referring to all the traders mentioned and not merely to one of them.

15 — The wording in Directive 79/112 is exactly the same as that originally proposed by the Commission in its 'proposal for a Council Directive on the harmonization of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer' submitted to the Council on 30 March 1976 (OJ 1976 C 91, p. 3), including the Italian version.

16 — Case 298/87 *Smanor* [1988] ECR 4489, paragraph 30. See also Case C-285/92 *Twee Provinciën* [1993] ECR I-6045, paragraphs 14 and 15.

23. More specifically, Article 3(1)(6) of the Directive, 'is mainly intended to enable the consumer to contact a person responsible for the manufacture or packaging of the foodstuff with a view to expressing any positive or negative criticism about the product purchased ...'. [17]

24. In order to ensure that that aim is achieved, as the Commission observes, the final consumer must be able easily to identify the person responsible for the product. That is why the Community legislature chose expressly to separate the three main traders involved in bringing the foodstuff from production to distribution, without giving more weight to one than to the others. However, that decision logically involves drawing some distinction between those traders.

25. On the one hand, manufacturers and packagers have in common the fact that they are generally established, easily identifiable traders who can therefore be contacted without difficulty. Those characteristics mean that they satisfy the conditions necessary for achieving the aim pursued.

26. However, contrary to what has been argued by the Italian authorities and the Greek Government, subjecting those traders to the requirement of Community establishment contained in Article 3(1)(6) would have, at the very least, surprising consequences.

27. The two categories of trader referred to by the directive play a unique role in the chain whereby the foodstuff is made available to the final consumer. [18] Therefore, if the labelling were required to indicate their establishment within the Community, access to the Community market would effectively be restricted to foodstuffs manufactured or packaged within the territory of the Community. That can most certainly not have been the intention of the legislature.

28. If, none the less, it were desired to follow that interpretation without entailing such a consequence, the text at issue could be understood as systematically requiring reference to the establishment within the Community of one of the three traders mentioned, so that reference to a seller established within the Community would be required if the product were *not* manufactured or packaged within the Community. But in that case how is it possible to explain

17 — Commission answer to a written question of 28 July 1995 (E-2170-95, OJ 1995 C 340, p. 19).

18 — Moreover, the French version of Article 3(1)(6) uses the words '*du* fabricant' and '*du* conditionneur' ('del' in Italian; 'the' in English), but to 'un' vendeur ('un' in Italian; 'a' in English). 'Du' is a definite article (more specifically, a contracted definite article: a contraction of the preposition 'de' and the definite article 'le'), whereas 'un' is an indefinite article.

the legislature's failure to take up the wording proposed by the Economic and Social Committee in its opinion?

29. When a seller is indicated, however, the requirement of Community establishment is justified with regard to the aim pursued. Whilst the directive only refers to *the* manufacturer or to *the* packager, a number of different sellers may be involved in marketing a product. [19] Therefore, the requirement that the seller indicated on the label must be established within the Community does not amount to a requirement that only 'Community' products may be distributed within the territory of the Union, in contrast to what could be inferred if the same requirement were to apply to the producer or to the packager. Furthermore, as the Commission notes, sellers are, by their nature, less established and less easily identifiable than manufacturers or packagers and the requirement that they should be established within the Community makes it possible to limit the drawbacks of such a circumstance.

30. In the light of those considerations, the Court should not accept that Article 3(1)(6) of the Directive requires the expression 'established within the Community' to refer to the manufacturer or to the packager.

Conclusion

31. To conclude, I propose that the question referred by the Corte Suprema di Cassazione should be answered as follows:

Article 3(1)(6) of Council Directive 79/112/EEC 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 is to be interpreted as meaning that the expression 'established within the Community' used in it refers only to the seller, and not to the manufacturer or packager, details of whom may appear on the labelling, even if they are established outside the Communities.

19 — See note above.