JUDGMENT OF THE COURT (Second Chamber)

23 November 2006 *

In Case C-315/05,

REFERENCE for a preliminary ruling under Article 234 EC, by the Giudice di pace di Monselice (Italy), made by decision of 12 July 2005, received at the Court on 12 August 2005, in the proceedings

Lidl Italia Srl

v

Comune di Arcole (VR),

THE COURT (Second Chamber),

composed of C.W.A. Timmermans (Rapporteur), President of the Chamber, R. Schintgen, P. Kūris, J. Makarczyk and G. Arestis, Judges,

* Language of the case: Italian.

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 29 June 2006,

after considering the observations submitted on behalf of:

— Lidl Italia Srl, by F. Capelli, and M. Valcada, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato,

— the Spanish Government, by N. Díaz Abad, acting as Agent,

— the French Government, by R. Loosli-Surrans and G. de Bergues, acting as Agents,

— the Netherlands Government, by H.G. Sevenster and M. de Mol, acting as Agents,

— the Commission of the European Communities, by A. Aresu and J.-P. Keppenne, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of 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 (OJ 2000 L 109, p. 29).

2 The reference was made in the context of an action brought by Lidl Italia Srl ('Lidl Italia') against a decision of the Director-General of the Comune di Arcole which imposed an administrative fine on that company because of its marketing of an alcoholic beverage, known as 'amaro alle erbe', in breach of national legislation requiring the statement on the labelling of certain alcoholic beverages of their alcoholic strength by volume.

Legal context

Community legislation

3 The sixth recital in the preamble to Directive 2000/13 states:

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

4 The eighth recital in the preamble to that directive states:

'Detailed labelling, in particular giving the exact nature and characteristics of the product which enables the consumer to make his choice in full knowledge of the facts, is the most appropriate since it creates fewest obstacles to free trade.'

5 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.'

6 Article 1(3) of that directive contains the following definition:

'...

(b) "Pre-packaged foodstuff" shall mean 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.'

7 Article 2(1) of Directive 2000/13 provides:

'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;

...'

8 Article 3(1) of that directive gives an exhaustive list of the particulars which are compulsory on the labelling of foodstuffs.

9 Pursuant to point 7 of that article, those particulars are to include 'the name or business name and address of the manufacturer or packager, or of a seller established within the Community'.

10 Point 10 of that provision requires, 'with respect to beverages containing more than 1.2% by volume of alcohol, the actual alcoholic strength by volume' to be stated.

11 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).'

12 The indications referred to in the second subparagraph of Article 12 of Directive 2000/13 are governed by Commission Directive 87/250/EEC 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).

13 Article 3(1) of Directive 87/250 provides:

'The 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.;

...'

14 Article 16(1) and (2) of Directive 2000/13 provide:

'1. Member States shall ensure that the sale is prohibited within their own territories of foodstuffs for which the particulars provided for in Article 3 and Article 4(2) do not appear in a language easily understood by the consumer, unless the consumer is in fact informed by means of other measures determined in accordance with the procedure laid down in Article 20(2) as regards one or more labelling particulars.

2. Within its own territory, the Member State in which the product is marketed may, in accordance with the rules of the Treaty, stipulate that those labelling particulars shall be given in one or more languages which it shall determine from among the official languages of the Community.'

15 The 12th recital in the preamble to Regulation (EC) No 178/2002 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) states:

'In order to ensure the safety of food, it is necessary to consider all aspects of the food production chain as a continuum from and including primary production and the production of animal feed up to and including sale or supply of food to the consumer because each element may have a potential impact on food safety.'

16 The 30th recital in the preamble to that regulation states:

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

17 The following definition is given in Article 3(3) of Regulation No 178/2002:

'"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'.

18 Article 17 of that regulation, entitled 'Responsibilities', provides:

'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.'

19 Article 1 of Council Directive 85/374/EEC 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) provides:

'The producer shall be liable for damage caused by a defect in his product'.

20 Article 3 of that directive provides:

'1. "Producer" means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer.

2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer.

3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the importer referred to in paragraph 2, even if the name of the producer is indicated.'

National legislation

21 Legislative Decree No 109 of 27 January 1992 transposing Directives 89/395/EEC and 89/396/EEC on the labelling, presentation and advertising of foodstuffs (ordinary supplement to GURI No 39 of 17 February 1992) was amended by Decree-Law No 181 of 23 June 2003 transposing Directive 2000/13/EC on the

approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (GURI No 167 of 21 July 2003; 'Legislative Decree No 109/92').

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

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

...

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

23 Article 18(3) of that legislative decree provides:

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

The main proceedings and the questions referred for a preliminary ruling

24 Jürgen Weber GmbH produces in Germany an alcoholic beverage, known as 'amaro alle erbe', the label of which states that its alcoholic strength by volume is 35%.

25 On 13 March 2003, the competent regional health authorities took five samples of that beverage from an outlet in Monselice belonging to the Lidl Italia network.

26 Laboratory analysis of those samples, carried out on 17 March 2003, established that the actual alcoholic strength by volume was 33.91%, lower than that stated on the product label.

27 Lidl Italia sought its own analysis. For that purpose, further samples of the product in question were taken and analysis thereof, carried out by a laboratory on 20 November 2003, established an actual alcoholic strength by volume which, although higher, that is to say 34.54%, was still lower than that stated on the product label.

28 On 3 July 2003, the competent regional health authorities charged Lidl Italia with an infringement of Article 12(3)(d) of Legislative Decree No 109/92 on the ground that the actual alcoholic strength by volume of the beverage in question was lower than that stated on the product label, taking into account the tolerance of 0.3%.

29 Following administrative proceedings, the Comune di Arcole (Municipality of Arcole), by decision of its Director-General of 23 December 2004, held that there was an infringement and, pursuant to Article 18(3) of Legislative Decree No 109/92, ordered Lidl Italia to pay an administrative fine of EUR 3 115.

30 Lidl Italia appealed against that administrative decision before the Giudice di pace (Justice of the Peace) di Monselice.

31 The national court observes that Lidl Italia alleged before it that the Community provisions on the labelling of pre-packaged foodstuffs are addressed not to traders who merely market the food product, but exclusively to the producer of the food product itself.

32 The distributor cannot know whether or not the label affixed to the packaging by the producer contains true information, and in any event could not do anything either in respect of the production of the product or the label under which it is sold to the ultimate consumer.

33 The national court adds that Lidl Italia also submitted that, in Community law, the principle of liability of the producer also follows from Directive 85/374.

34 In those circumstances, the Giudice di pace di Monselice, taking the view that interpretation of the Community rules is necessary to the outcome of the dispute before it, decided to stay proceedings and to refer to the Court for a preliminary ruling the following questions:

'(1) Must Directive 2000/13/EC ... 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 discovered by a public authority involving an inaccurate statement of value (in this case percentage of alcohol content) stated on the label by the producer of the 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?'

The questions

35 By its two questions, which may be considered together, the national court asks in essence whether Articles 2, 3 and 12 of Directive 2000/13 are to be interpreted as precluding a Member State's legislation, such as that at issue in the main proceedings, which makes it possible for an operator established in that Member State, which distributes a pre-packaged alcoholic beverage, within the meaning of Article 1 of that directive, produced by an operator established in another Member State, to be held liable for an infringement established by a public authority of that legislation resulting from the inaccuracy of the alcoholic strength by volume stated by the producer on the product label and, consequently, to be penalised by the imposition of an administrative fine where, as the mere distributor, it simply markets the product as delivered to it by the producer.

36 Article 2(1) of Directive 2000/13 prohibits, inter alia, the labelling and methods used from misleading the purchaser as to characteristics of foodstuffs.

37 That general prohibition is made concrete in Article 3(1) of that directive which contains an exhaustive list of the particulars which are compulsory on the labelling of pre-packaged foodstuffs.

38 With respect to beverages containing more than 1.2% by volume of alcohol, such as the beverage known as 'amaro alle erbe' in question in the main proceedings, point 10 of that provision requires the actual alcoholic strength by volume to be stated on the label.

39 The methods by which the alcoholic strength by volume is stated, referred to in the second paragraph of Article 12 of Directive 2000/13, are governed by Directive 87/250, Article 3(1) of which provides for a tolerance of plus or minus 0.3%.

40 Although, therefore, it follows from a combined reading of Articles 2, 3 and 12 of Directive 2000/13 that the labelling of certain alcoholic beverages, such as that at issue in the main proceedings, must state, within a certain tolerance, the actual alcoholic strength by volume thereof, the fact remains that that directive, contrary to other Community acts imposing obligations as regards labelling (see, inter alia, the Directive at issue in Case C-40/04 *Yonemoto* [2005] ECR I-7755), does not designate the operator which must satisfy that obligation with regard to labelling and nor does it contain any rule with a view to the designation of the operator which may be held liable for infringement of that obligation.

41 Accordingly, it is not apparent from the wording of Articles 2, 3 and 12, nor, moreover, from that of any other provision of Directive 2000/13 that, pursuant to that directive, the obligation as regards the labelling in question is, as Lidl Italia claims, exclusively imposed on the producer of such alcoholic beverages or that that directive precludes the distributor from being held liable for an infringement of that obligation.

42 Furthermore, it is established case-law that, in interpreting a provision of Community law, it is necessary to consider not only its wording but also its general scheme, the context in which it occurs and the objects of the rules of which it forms part (see, to that effect, inter alia, Case C-83/96 *Dega* [1997] ECR I-5001, paragraph 15, and Case C-294/01 *Granarolo* [2003] ECR I-13429, paragraph 34).

43 An examination of the general scheme of Articles 2, 3 and 12 of Directive 2000/13 and of the context in which it occurs and the objects of that directive gives sufficient convergent indications permitting the conclusion to be drawn that it does not preclude national legislation, such as that at issue in the main proceedings, which provides that a distributor may be held liable for infringement of the obligation as regards labelling imposed by those provisions.

44 With regard, firstly, to the general scheme and the context of those provisions of Directive 2000/13, it should be noted that other provisions of that directive refer to distributors in connection with the implementation of certain obligations as regards labelling.

45 That is the case in particular with point 7 of Article 3(1) of that directive, which includes in the particulars which it is compulsory to include on labels the name or business name and address of the manufacturer or packager, or of a seller established within the Community.

46 With regard to the provision identical to that of point 7 aforesaid, which appears in point 6 of Article 3(1) 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 (OJ 1979 L 33, p. 1), repealed and replaced by Directive 2000/13, the Court has already held that that provision is mainly intended to allow those responsible for the product, amongst whom, in addition to the producers and packagers, are also the sellers, to be easily identified by ultimate consumers so that they may, if necessary, inform them of their positive or negative comments concerning the product bought (see, to that effect, *Dega*, paragraphs 17 and 18).

47 With regard, secondly, to the purpose of Directive 2000/13, it is apparent from both the sixth recital in the preamble and from Article 2 that that directive was intended to ensure the information and protection of the ultimate consumer of foodstuffs, in particular as regards the nature, identity, properties, composition, quantity, durability, origin or provenance and method of manufacture or production of those products (see, with regard to Directive 79/112, *Dega*, paragraph 16).

48 The Court has held that, if a field is not governed by a directive by reason of the incomplete harmonisation for which it provides, Member States remain, in principle, responsible for the provision of rules in that regard, provided, however, that those rules are not liable seriously to compromise achievement of the result prescribed by the directive in question (*Granarolo*, paragraph 45).

49 National legislation, such as that at issue in the main proceedings, which, where there is infringement of an obligation with regard to labelling imposed by Directive 2000/13, provides for liability not only on the part of the producers, but also of the distributors, is not such as to compromise achievement of the result prescribed by that directive.

50 On the contrary, such legislation, inasmuch as it gives a wide definition of the circle of operators which may be held liable for infringements of the obligations with regard to labelling pursuant to Directive 2000/13, is manifestly such as to contribute to the achievement of the aim pursued by that directive of informing and protecting the ultimate consumer of foodstuffs.

51 That conclusion cannot be countered by the argument, raised by Lidl Italia both before the national court and before the Court of Justice, that Community law imposes as a principle the exclusive liability of the producer with regard to the exactitude of the particulars appearing on the labelling of pre-packaged products, which principle follows also from Directive 85/374.

52 In that regard, it must be noted from the outset that Community law does not enshrine such a general principle.

53 On the contrary, even if Regulation No 178/2002 does not apply ratione temporis to the facts of the main proceedings, it follows from Article 17(1) of that regulation, entitled 'Responsibilities', that operators in the food sector are to ensure at every stage of production, processing and distribution in the undertakings under their

control that the foodstuffs comply with the requirements of the foodstuff legislation applicable to their operations and are to check that those requirements are fulfilled.

54 With regard, next, to Directive 85/374, clearly that directive is not relevant in the context of a situation such as that at issue in the main proceedings.

55 The distributor's responsibility for infringements of the legislation with regard to labelling of foodstuffs, making that distributor liable, inter alia, to pay administrative fines, is outside the specific scope of the liability without fault system put into place by Directive 85/374.

56 Accordingly, the possible principles governing liability contained in Directive 85/374 cannot be transposed to the context of the obligations with regard to labelling laid down by Directive 2000/13.

57 In any event, Article 3(3) of Directive 85/347 does provide for the supplier to be liable, but limits that liability to cases where the producer cannot be identified (Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 34).

58 It is appropriate, finally, to note that, according to the Court's established case-law relating to Article 10 EC, whilst 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 (see, inter alia, Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565, paragraph 65, and case-law cited therein).

59 Within the limits thus set by Community law, in principle it is for national law to lay down the methods by which a distributor may be held liable for infringement of the obligation as regards labelling imposed by Articles 2, 3 and 12 of Directive 2000/13 and, in particular, to regulate the apportionment of respective liability between the different operators involved in the marketing of the foodstuff in question.

60 Having regard to the foregoing, the answer to the questions referred must be that Articles 2, 3 and 12 of Directive 2000/13 are to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which makes it possible for an operator, established in that Member State, which distributes a pre-packaged alcoholic beverage to be delivered as such within the meaning of Article 1 of that directive, produced by an operator established in another Member State, to be held liable for an infringement of that provision, established by a public authority, resulting from the producer's inaccurate statement on the product label of the alcoholic strength by volume of the product and, consequently, to be penalised by an administrative fine, even where, as the mere distributor, it simply markets the product as delivered to it by the producer.

Costs

61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that

court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

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 to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which makes it possible for an operator, established in that Member State, which distributes a pre-packaged alcoholic beverage to be delivered as such within the meaning of Article 1 of that directive, produced by an operator established in another Member State, to be held liable for an infringement of that provision, established by a public authority, resulting from the producer's inaccurate statement on the product label of the alcoholic strength by volume of the product and, consequently, to be penalised by an administrative fine, even where, as the mere distributor, it simply markets the product as delivered to it by the producer.

[Signatures]