OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 11 December 1990 *

Mr President,
Members of the Court,

1. In these proceedings, the Court is asked to interpret Article 30 of the EEC Treaty and Article 14 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. [1]

Under the latter provision, Member States are to ensure that the sale of foodstuffs within their own territories is prohibited if the particulars provided for in Article 3 and Article 4(2) of the directive do not appear in a language easily understood by purchasers, unless other measures have been taken to ensure that the purchaser is informed.

In Belgium, Article 10 of the Royal Decree of 2 October 1980, now Article 11 of the Royal Decree of 13 November 1986, on the labelling of prepackaged foodstuffs, which transposes Article 14 of the directive, provides that the particulars specified in Article 2 of the Decree and in specific regulations must appear at least in the language or languages of the linguistic region where the foodstuffs are sold.

2. I will briefly summarize the facts. Peeters, the defendant in the main action, is established in Belgium in the Flemish-speaking region, where it markets mineral waters whose labels are printed solely in French or in German.

The Piageme Association and a certain number of companies which import and market mineral waters consider that such a practice is contrary to the Belgian legislation on labelling and have commenced proceedings against Peeters in the Rechtbank van Koophandel (Commercial Court), Louvain, for an order restraining sales, under threat of a fine.

As the defendant objected that the national legislation relied upon was not in conformity with Article 30 of the Treaty and with Article 14 of Directive 79/112, the court stayed the proceedings in order to consult the Court of Justice on this point.

3. Prior to examining the substance of the question, I will briefly consider the problem of whether the Court has jurisdiction to give a reply to the question referred by the national court.

The plaintiffs in the main action maintain that the question whether the Belgian legislation is incompatible with the directive in question only arises if it is established,

* Original language: Italian.
1 — OJ 1979 L 33, p. 1.

before the national court, that the provision of information for the consumer is effectively guaranteed, even in the absence of particulars in the language of the region in which the products are offered for sale.

As the referring court has not verified whether that is the case, the reply of the Court is unnecessary in order to decide the case, which at this point is concerned more with the question whether the consumer can understand particulars supplied in a language other than his own.

4. On this point it is sufficient to look at the decided cases of the Court,[2] which has held that, by virtue of the division of functions between national courts and the Court of Justice, it is for the national court, which must accept the responsibility for the subsequent judicial decision, to assess, with full possession of the facts, the necessity for, and the relevance of, the questions which it refers.

When such questions relate to the interpretation of a Community-law provision, the Court is therefore, in principle, required to give a ruling without having to inquire into the circumstances which led the national courts to refer the questions.

The problem could only arise in different terms if it appeared that the procedure laid down in Article 177 of the Treaty had been misused in order to induce the Court to make a ruling by means of fictitious litigation or if it became obvious that the Community-law provision whose interpretation was requested did not apply.

However, nothing in these proceedings leads me to consider that one of the above situations exists here and I therefore do not consider that the Court's jurisdiction can seriously be in doubt in this case.

5. I now turn to the substance of the question. It seems clear, even on a first reading, that the national provision in question is more restrictive than Article 14 of the directive inasmuch as, by making compulsory the use of the language of the region in which the foodstuffs are sold, the national provision, unlike the corresponding Community-law provision, does not allow the possible use of another language which could easily be understood by purchasers and does not allow any derogation in the event of consumer information being guaranteed by other means.

The plaintiffs in the main action none the less argue that Article 14 of the directive obliges Member States to prohibit the sale of foodstuffs which do not meet the requirements laid down with regard to comprehensibility of particulars appearing on the label, but does not oblige them to authorize any labelling as long as the wording is easily understood by purchasers.

2 — See in particular the judgment in Case C-231/89 *Gmurzynska-Bscher* v *Oberfinanzdirektion Koln* [1990] ECR I-4003, paragraphs 19, 20, 22 and 23; judgment in Case C-297/88 *Massam Dzodzi* v *Belgian State* [1990] ECR I-3763, paragraphs 34, 35, 39 and 40

6. That argument is unfounded inasmuch as, in reality, such an interpretation does not take sufficient account of the more general context in which the provision appears.

First of all, it should be noted that the directive in question, which establishes general horizontal Community rules applicable to foodstuffs, was designed in order to improve the functioning of the Common Market and the free movement of goods whilst guaranteeing that consumers receive correct information and sufficient protection.[3] Article 15 provides that Member States may not forbid trade in foodstuffs which comply with the rules laid down in the directive by applying non-harmonized national provisions governing the labelling and presentation of foodstuffs.

Secondly, it should be pointed out that the provisions of the directive cannot, in any event, be interpreted as containing a limitation of the rights which individuals derive directly from Article 30 of the Treaty.

However, in relation to that article the Court has already had occasion to specify that the interests of consumer protection which can justify the requiring of specific names or particulars become irrelevant in cases where the particulars which appear on the product's original label contain sufficient information to be equivalent to the information requirement laid down by the regulations of the importing State and to be understood by consumers in that State.[4]

It is clear that, although the obligation to include certain particulars according to specific rules does not totally impede the import of products originating in other Member States or in free circulation there, it may none the less render their sale more difficult, especially in cases of parallel imports; such a requirement cannot therefore be considered to be compatible with Article 30 unless it can be actually justified for reasons of general interest relating to consumer protection.

Article 14 of Directive 79/112 must therefore be interpreted not only as imposing on Member States the obligation to guarantee correct consumer information but also as setting down the means and the limits within which that fundamental right can be protected whilst avoiding unjustifiable obstacles to trade.

7. In the context of the preliminary-ruling procedure, the assessment of the facts necessary in order to ascertain whether it is effectively guaranteed that the consumer is informed in the present case falls within the jurisdiction of the national court, which must, in making its own findings, take into account the fact that, given the purpose of the Community-law provision in question, the reference to comprehensibility of the

3 — See second, third, fourth and seventh recitals to the preamble.

4 — See in particular the judgment in Case 220/81 *Criminal proceedings against Timothy Frederick Robertson and others* [1982] ECR 2349, paragraphs 11, 12 and 13; judgment in Case 27/80 *Criminal proceedings against Anton Adriaan Fietje* [1980] ECR 3839.

language is aimed less at linguistic comprehensibility as such than at ensuring that the actual content of the particulars on the label can be deciphered. Maintaining that approach, it will then have to take into account not only any possible multilingualism in the country but also, in particular, the nature of the product and consumers' familiarity therewith, as well as the existence of other packaging of the same product which may carry the required particulars in a more accessible language, thus allowing a sort of translation by approximation. [5]

8. In the light of the foregoing considerations, I conclude by proposing that the Court should reply as follows to the question referred by the Rechtbank van Koophandel, Louvain:

Article 14 of Directive 79/112/EEC is to be interpreted as prohibiting national legislation from imposing an absolute obligation to use a particular language for the labelling of foodstuffs, without allowing for the possibility of using another language easily understood by purchasers or of ensuring that consumers are informed by other means.

5 — It is worth noting that, by a decision of 28 September 1987, the Correctionele Rechtbank (Criminal Court) Mechelen, decided, with regard to the sale of bottles of Coca Cola featuring a label in German, that such a practice was in accordance with Article 14 of Directive 79/112, and refused to apply Article 10 of the Royal Decree of 2 October 1980 (see *Journal des Tribunaux*, 1988, No 5448, p. 48). That decision, however has been appealed against in the Hof van Beroep (Court of Appeal), Antwerp, which has not yet made a ruling For analogous decisions from courts in the Netherlands applying the above criteria, see Van Bunnen, 'L'emploi des langues dans l'etiquetage et le droit communautaire', *Journal des Tribunaux*, 1988, No 5448, p 41