



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

3 April 2014*

(Reference for a preliminary ruling — Energy — Energy labelling of televisions — Delegated Regulation (EU) No 1062/2010 — Responsibilities of dealers — Television supplied to the dealer without the label before the regulation became applicable — Dealer's obligation to label that television from the date on which the regulation became applicable and to obtain a label subsequently)

In Case C-319/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Thüringer Oberlandesgericht (Germany), made by decision of 5 June 2013, received at the Court on 11 June 2013, in the proceedings

Udo Rätzke

v

S+K Handels GmbH,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts (Rapporteur), Vice-President of the Court, J.L. da Cruz Vilaça, G. Arestis and J.-C. Bonichot, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, by T. Henze and B. Beutler, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by A. De Stefano, avvocato dello Stato,
- the European Commission, by K. Herrmann and B. Eggers, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(a) of Commission Delegated Regulation (EU) No 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJ 2010 L 314, p. 64) ('the delegated regulation').
- 2 The request has been made in proceedings between Mr Rätzke and S+K Handels GmbH ('S+K'), a competitor of Mr Rätzke in the marketing of electrical appliances and in particular televisions, concerning an action for an injunction under the German Law against unfair competition.

Legal context

EU law

Directive 2010/30/EU

- 3 Recital 19 in the preamble to Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJ 2010 L 153, p. 1) states:

'The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of labelling and standard product information of the consumption of energy and other essential resources by energy-related products during use. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.'

- 4 Recital 25 in the preamble to that directive provides:

'When Member States implement the provisions of this Directive, they should endeavour to refrain from adopting measures that could impose unnecessarily bureaucratic and unwieldy obligations on the market participants concerned, in particular small and medium-sized enterprises [SMEs].'

- 5 Article 2 of that directive, entitled 'Definitions', provides:

'For the purpose of this Directive:

...

- (g) "dealer" means a retailer or other person who sells, hires, offers for hire-purchase or displays products to end-users;
- (h) "supplier" means the manufacturer or its authorised representative in the Union or the importer who places or puts into service the product on the Union market. In their absence, any natural or legal person who places on the market or puts into service products covered by this Directive shall be considered a supplier;
- (i) "placing on the market" means making a product available for the first time on the Union market with a view to its distribution or use within the Union, whether for reward or free of charge and irrespective of the selling technique;

...'

6 Article 5 of that directive, entitled ‘Responsibilities of suppliers’, provides:

‘Member States shall ensure that:

(a) suppliers placing on the market or putting into service products covered by a delegated act supply a label and a fiche in accordance with this Directive and the delegated act;

...

(d) in respect of labelling and product information, suppliers provide the necessary labels free of charge to dealers.

Without prejudice to the suppliers’ choice of system for delivery of labels, suppliers promptly deliver labels on request from dealers;

...’

7 Article 6 of Directive 2010/30, entitled ‘Responsibilities of dealers’, provides:

‘Member States shall ensure that:

(a) dealers display labels properly, in a visible and legible manner, and make the fiche available in the product brochure or other literature that accompanies products when sold to end-users;

(b) whenever a product covered by a delegated act is displayed, dealers attach an appropriate label, in the clearly visible position specified in the applicable delegated act, and in the relevant language version.’

8 Article 10 of that directive, entitled ‘Delegated acts’, provides in paragraphs 1 to 3:

‘1. The Commission shall lay down details relating to the label and the fiche by means of delegated acts in accordance with Articles 11 to 13, relating to each type of product in accordance with this Article.

Where a product meets the criteria listed in paragraph 2, it shall be covered by a delegated act in accordance with paragraph 4.

Provisions in delegated acts regarding information provided on the label and in the fiche on the consumption of energy and other essential resources during use shall enable end-users to make better informed purchasing decisions and shall enable market surveillance authorities to verify whether products comply with the information provided.

Where a delegated act lays down provisions with respect to both energy efficiency and consumption of essential resources of a product, the design and content of the label shall emphasise the energy efficiency of the product.

2. The criteria referred to in paragraph 1 are the following:

(a) according to most recently available figures and considering the quantities placed on the Union market, the products shall have a significant potential for saving energy and, where relevant, other essential resources;

(b) products with equivalent functionality available on the market shall have a wide disparity in the relevant performance levels;

(c) the Commission shall take into account relevant Union legislation and self-regulation, such as voluntary agreements, which are expected to achieve the policy objectives more quickly or at lesser expense than mandatory requirements.

3. In preparing a draft delegated act, the Commission shall:

...

(d) set implementing date(s), any staged or transitional measures or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.'

9 Articles 11, 12 and 13 of Directive 2010/30 establish the framework within which acts delegated in accordance with Article 290(2) TFEU are to be adopted. Article 11 of that directive governs the duration of the exercise of the delegation by the Commission and requires the Commission to make a report in respect of the delegated powers not later than six months before the end of a five-year period beginning on 19 June 2010. It also requires the Commission to notify the European Parliament and the Council of the European Union of any delegated act as soon as it is adopted. Article 12 of the directive concerns the possibility of revoking the delegation, and Article 13 deals with the procedure to be followed by the Parliament and the Council in order to object to delegated acts.

10 Article 16 of Directive 2010/30, entitled 'Transposition', states in paragraph 1:

'Member States shall bring into force, by 20 June 2011 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 20 July 2011.

...'

11 Article 18 of that directive, entitled 'Entry into force', provides:

'This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Points (d), (g) and (h) of Article 5 shall apply from 31 July 2011.'

The delegated regulation

12 Recital 3 in the preamble to the delegated regulation states:

'Harmonised provisions for indicating the energy efficiency and consumption of televisions by labelling and standard product information should be established in order to provide incentives for manufacturers to improve the energy efficiency of televisions, encourage end-users to purchase energy-efficient models, reduce the electricity consumption of these products, and contribute to the functioning of the internal market.'

13 Recital 9 in the preamble to that regulation states:

‘In order to encourage the manufacturing of energy efficient televisions suppliers wishing to place on the market televisions that can meet the requirements for higher energy efficiency classes should be allowed to provide labels showing those classes in advance of the date for mandatory display of such classes.’

14 Article 3 of that regulation, entitled ‘Responsibilities of suppliers’ provides:

‘1. Suppliers shall ensure that:

(a) each television is supplied with a printed label in the format and containing information as set out in Annex V;

...

3. The format of the label set out in Annex V shall be applied according to the following timetable:

(a) for televisions placed on the market from 30 November 2011, labels for televisions with energy efficiency classes:

(i) A, B, C, D, E, F, G shall be in accordance with point 1 of Annex V or, where suppliers deem appropriate, with point 2 of that Annex;

(ii) A+ shall be in accordance with point 2 of Annex V;

(iii) A++ shall be in accordance with point 3 of Annex V;

(iv) A+++ shall be in accordance with point 4 of Annex V;

(b) for televisions placed on the market from 1 January 2014 with energy efficiency classes A+, A, B, C, D, E, F, labels shall be in accordance with point 2 of Annex V or, where suppliers deem appropriate, with point 3 of that Annex;

(c) for televisions placed on the market from 1 January 2017 with energy efficiency classes A++, A+, A, B, C, D, E, labels shall be in accordance with point 3 of Annex V or, where suppliers deem appropriate, with point 4 of that Annex;

(d) for televisions placed on the market from 1 January 2020 with energy efficiency classes A+++, A++, A+, A, B, C, D labels shall be in accordance with point 4 of Annex V.’

15 Article 4 of that regulation, entitled ‘Responsibilities of dealers’, states:

‘Dealers shall ensure that:

(a) each television, at the point of sale, bears the label provided by suppliers in accordance with Article 3(1) on the front of the television, in such a way as to be clearly visible;

...’

16 Article 9 of the delegated regulation, entitled ‘Entry into force’, provides:

‘This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 30 November 2011. ...

This Regulation shall be binding in its entirety and directly applicable in all Member States.'

German law

- 17 Paragraph 3(1) of the German Law against unfair competition (Gesetz gegen den unlauteren Wettbewerb), in the version applicable to the dispute in the main proceedings (BGBl. 2010 I, p. 254) ('the UWG') provides:

'Unfair commercial practices shall be unlawful if they are likely to have a perceptible adverse effect on the interests of competitors, consumers or other market participants.'

- 18 Paragraph 4 of the UWG states: 'Examples of unfair commercial practices

A person shall be regarded as acting unfairly in particular where he

...

11. infringes a statutory provision that is also intended to regulate market behaviour in the interests of market participants.'

- 19 Paragraph 5a(2) and (4) of the UWG is worded as follows:

'(2) A person shall be regarded as acting unfairly where he influences the ability of consumers, within the meaning of Paragraph 3(2), to take decisions by withholding information which, having regard to all the circumstances, including the limitations of the communication medium used, is material in the specific case.

...

(4) Information which, by virtue of Community regulations or provisions implementing Community directives on commercial communications, including advertising and marketing, may not be withheld from consumers shall also be deemed to be material, within the meaning of subparagraph (2).'

- 20 The first sentence of Paragraph 8(1) of the UWG is worded as follows:

'Where a person engages in an unlawful commercial practice under Paragraphs 3 or 7, an action may be brought against that person to eliminate that practice and, where there is a risk of recurrence, for an injunction requiring him to desist.'

The facts in the main proceedings and the question referred for a preliminary ruling

- 21 On 20 January 2012, S+K offered for sale, in its shop window, a television which did not display the energy consumption label provided for in Annex V to the delegated regulation. The television had been supplied by its manufacturer, Haier Deutschland GmbH, to a wholesaler, ElectronicPartner Handel SE, which in turn supplied it to S+K on 20 May 2011. The television was still in production on 20 January 2012.
- 22 After Mr Rätzke issued a formal warning, S+K brought an action for a negative declaration, which in turn was followed by a counterclaim by Mr Rätzke by which he sought to prohibit S+K from offering for sale televisions not bearing the label provided for in Annex V to the delegated regulation.

- 23 That counterclaim is based on Paragraphs 3(1), 4(11) and 8(1) of the UWG, and it raises the issue of whether S+K was obliged to label, in accordance with Article 4(a) of the delegated regulation, the television which was delivered to it on 20 May 2011 without a label.
- 24 The Landgericht Mühlhausen (Mühlhausen Regional Court) dismissed the counterclaim on the ground that televisions delivered before 30 November 2011 without the label in question in accordance with the legal situation prevailing before that date did not have to bear such a label after 30 November 2011 either.
- 25 The referring court, hearing an appeal against the judgment of the Landgericht Mühlhausen, has doubts as to the interpretation of Article 4(a) of the delegated regulation which, in its opinion, constitutes a rule of market behaviour for the purposes of Paragraph 4 of the UWG. In that regard, it states that the term ‘provided by’, used in Article 4(a) of the delegated regulation, might suggest that, from 30 November 2011, dealers are subject to an obligation to label televisions only if the suppliers delivered those televisions with labels in accordance with their obligation from that date. However, the purpose of the labelling obligation, as set out in recital 3 in the preamble to the delegated regulation, could, in its opinion, point to a labelling obligation from 30 November 2011 in respect of every television displayed by dealers, including those delivered before that date. Mr Rätzke takes the view that it is possible to infer from the connection with Article 5(d) of Directive 2010/30 that suppliers are required to provide labels free of charge and promptly in every case, that is to say, also in respect of televisions delivered before 30 November 2011, so that dealers may satisfy their labelling obligation from that date.
- 26 In those circumstances, the Thüringer Oberlandesgericht (Thüringer Higher regional Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- ‘Is Article 4(a) of [the delegated regulation] to be interpreted as meaning:
- that dealers are subject to an obligation to label televisions (from 30 November 2011) only if those televisions were supplied by the supplier together with the relevant label (from 30 November 2011) in accordance with Article 3(1)(a) of that regulation,
 - or does the labelling obligation also apply to dealers (from 30 November 2011) in respect of televisions supplied by suppliers before 30 November 2011 without the relevant labels, so that dealers are obliged to request suppliers (in good time, subsequently) to provide labels for those televisions?’

Consideration of the question referred

- 27 By its question, the referring court asks, in essence, whether Article 4(a) of the delegated regulation must be interpreted as meaning that the obligation for dealers to ensure that each television, at the point of sale, bears a label containing information on the energy efficiency of the appliance applies only to televisions placed on the market from 30 November 2011.
- 28 In that context, as the interested parties have argued, it is necessary to carry out an overall analysis of the obligations in relation to the labelling of televisions imposed on dealers and suppliers by the delegated regulation, having regard to its broad scheme, in particular in the light of the provisions of Directive 2010/30.
- 29 Article 4(a) of the delegated regulation requires dealers to display on each television the label provided by suppliers ‘in accordance with Article 3(1)’ of that regulation.

- 30 Furthermore, Article 4 of the delegated regulation, unlike Article 3, does not have an independent timetable for its implementation *ratione temporis*. Under Article 6(b) of Directive 2010/30, the labelling obligation imposed on dealers concerns only products covered by a delegated act, and Article 10(3)(d) of that directive stipulates that that delegated act is to determine the scope *ratione temporis* of the responsibility for labelling. Indeed, it states that the Commission, in preparing a draft delegated act, is to 'set implementing date(s), any staged or transitional measures or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs'.
- 31 Consequently, in view of the fact that Article 4 of the delegated regulation does not have an independent timetable, but refers to Article 3(1) of that regulation governing suppliers' responsibilities, the scope *ratione temporis* of Article 4 of the delegated regulation corresponds to that of Article 3 of that regulation. Thus the dealer's obligation to display labels is ancillary to the supplier's obligation to provide the relevant labels.
- 32 In that context, it must be stated that Article 3(3) of the delegated regulation, in conformity with the scope *ratione temporis* of that regulation, which, under Article 9, applies from 30 November 2011, contains no requirement in respect of televisions placed on the market before that date. That provision specifically governs the requirements applicable to 'televisions placed on the market from 30 November 2011', and then progressively from 1 January 2014, 1 January 2017 and 1 January 2020.
- 33 It follows from the foregoing that, as the interested parties have argued, in order to reply to the question referred for a preliminary ruling, it is necessary to interpret the words 'placed on the market' used in Article 3(3)(a) of the delegated regulation.
- 34 According to Article 2(i) of the directive, "placing on the market" means making a product available for the first time on the Union market with a view to its distribution or use within the Union, whether for reward or free of charge and irrespective of the selling technique'. Therefore, making a product available for the first time on the market is decisive, irrespective of the method of distribution.
- 35 Thus the labelling obligation binds dealers only in respect of televisions made available on the Union market from 30 November 2011, that is to say, dispatched into the sales chain by the manufacturer from that date.
- 36 Such an approach, based on account being taken of the broad scheme of Article 4(a) of the delegated regulation, is not undermined by a teleological interpretation of that provision.
- 37 It is true, as the referring court has stated, that imposing an obligation to label televisions delivered before 30 November 2011 is likely to encourage end-users to purchase energy-efficient models in accordance with the objective pursued by the delegated regulation, as set out in recitals 3 and 9 of its preamble.
- 38 However, that incentive effect is limited in that those televisions were made available over a relatively brief period.
- 39 Moreover, the limited effect of a labelling obligation relating also to televisions delivered before 30 November 2011 would be disproportionate to the administrative burden which the measure would create for suppliers and dealers. In particular, SMEs would find themselves obliged to ask the manufacturer for energy labels for all televisions already delivered before 30 November 2011. Yet according to recital 25 in the preamble to Directive 2010/30, it is appropriate to refrain from adopting measures that could impose unnecessarily bureaucratic and unwieldy obligations on the market participants concerned, in particular SMEs.

- 40 Concerning Article 5(d) of Directive 2010/30, contrary to what Mr Rätzke claimed before the referring court, that provision cannot sustain any other outcome. It governs neither the circumstances in which the provision of labels is necessary nor the timeframe for that obligation, an issue in relation to which that directive, and more particularly Article 10(3)(d), refers to the provisions of a delegated act. The delegated act in question has clearly defined the scope *ratione temporis* of the labelling obligation by making the delegated regulation relate only to televisions placed on the market for the first time from 30 November 2011.
- 41 Therefore the answer to the question raised is that Article 4(a) of the delegated regulation must be interpreted as meaning that the obligation for dealers to ensure that each television, at the point of sale, bears the label provided by the suppliers in accordance with Article 3(1) of that regulation applies only to televisions which have been placed on the market, that is to say, dispatched for the first time by the manufacturer with a view to their distribution in the sales chain, from 30 November 2011.

Costs

- 42 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:

Article 4(a) of Commission Delegated Regulation (EU) No 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions must be interpreted as meaning that the obligation for dealers to ensure that each television, at the point of sale, bears the label provided by the suppliers in accordance with Article 3(1) of that regulation applies only to televisions which have been placed on the market, that is to say, dispatched for the first time by the manufacturer with a view to their distribution in the sales chain, from 30 November 2011.

[Signatures]