Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 23 April 2015 [1]

Case C-95/14

Unione nazionale industria conciaria (UNIC)
Unione Nazionale dei Consumatori di Prodotti in Pelle, Materie Concianti, Accessori e Componenti (UNI.CO.PEL)
v
FS Retail
Luna srl
Gatsby srl

(Request for a preliminary ruling from the Tribunale di Milano (Italy))

(Labelling obligation indicating the origin of goods — National legislation requiring the country of origin to be shown on the label relating to products manufactured abroad using the Italian words 'cuoio', 'pelle' or 'pelliccia' — Failure to comply with the obligation to observe a standstill period in relation to a national measure notified under Directive 98/34/EC — Unenforceability of a technical regulation in a dispute between individuals — Free circulation of goods — Article 34 TFEU — Measures having equivalent effect — Interpretation of Directive 94/11/EC)

1. The Italian authorities introduced an obligation to affix a label indicating the country of origin to leather obtained from processes (such as tanning [2]) carried out in foreign countries where the Italian terms '*cuoio*' (leather), '*pelle*' (fine leather) or '*pelliccia*' (fur) (or their derivatives or synonyms) are then used on leather goods, in particular footwear, produced from such leather. Two organisations have instituted proceedings before the Tribunale di Milano (Milan District Court) seeking to prevent economic operators in Italy from marketing footwear which does not comply with those labelling requirements. In this request for a preliminary ruling, the Court is asked whether such a labelling rule is contrary to Articles 34 to 36 TFEU concerning the free circulation of goods and/or to Directive 94/11/EC [3] ('the Footwear Labelling Directive') and/or the Modernised Customs Code. [4] However, another important issue, not raised explicitly by the referring court, is whether the provisions of Directive 98/34/EC [5] might already render the national labelling rule unenforceable.

1 — Original language: English.

2 — The process of treating skins of animals in order to produce leather which is more durable and less susceptible to decomposition than the untreated material.

3 — Of the European Parliament and Council of 23 March 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to labelling of the materials used in the main components of footwear for sale to the consumer (OJ 1994 L 100, p. 37) , as amended by (i) the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33), (ii) Council Directive 2006/96/EC of 20 November 2006 adapting certain Directives in the field of free movement of goods, by reason of the accession of Bulgaria and Romania (OJ 2006 L 363, p. 81), and (iii) Council Directive 2013/15/EU of 13 May 2013 adapting certain directives in the field of free movement of goods, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 172).

4 — See point 3 below.

5 — Of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37) ('Directive 98/34').

EU law

Treaty on the Functioning of the European Union

2. Article 34 TFEU prohibits quantitative restrictions on imports and all measures having equivalent effect between Member States. Article 35 makes similar provision in relation to exports. Article 36 provides that Member States may place proportionate restrictions on the movement of goods if justified on certain permissible grounds. [6]

The Customs Code

3. Article 36 of the Modernised Customs Code [7] is amongst the provisions laying down rules to determine the non-preferential origin of goods for the purposes of applying the Common Customs Tariff, measures (other than tariff measures) established by Community provisions governing specific fields relating to trade in goods, or other Community measures relating to the origin of goods. [8] Under Article 36 goods wholly obtained in a single country or territory are regarded as having their origin in that country or territory. [9] Goods the production of which involved more than one country or territory are deemed to originate in the country or territory where they underwent their last substantial transformation. [10]

4. In its order for reference the Tribunale di Milano mentions Article 60 of Regulation (EU) No 952/2013. [11] Article 60(1) is expressed in the same terms as Article 36(1) of Regulation No 450/2008. Article 60(2) states: '[g]oods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture'. However, at the material time that provision was not yet in force. [12] I shall therefore treat the request for a preliminary ruling as referring to Article 36 of Regulation No 450/2008. [13]

6 — The derogations from Article 34 listed in Article 36 include grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial or commercial property.

7 — Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1; 'the Modernised Customs Code').

8 — Article 35.

9 — Article 36(1).

10 — Article 36(2).

11 — Of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1).

12 — It applies from 1 June 2016 (see Article 288(2) of Regulation No 952/2013).

13 — In their written observations submitted to this Court UNIC and UNI.CO.PEL, the European Commission and the Swedish Government refer to Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1). However, that regulation was repealed by Regulation No 450/2008 (see Article 186 thereof). As noted by Sweden, the latter's provisions became applicable at the latest on 24 June 2013 (see Article 188(2)) — that is, before the proceedings before the referring court were instituted on 27 September 2013. It is therefore Article 36 of Regulation No 450/2008 that was in force at the material time.

The Footwear Labelling Directive

5. This directive was introduced to address problems affecting intra-Community trade in footwear products. Member States had differing labelling requirements that led to increased costs to economic operators and impeded free circulation. [14] It was considered that those problems could most effectively be resolved by taking action at EU level. The legislator therefore introduced a harmonising measure setting out only those requirements that were considered indispensable for the free circulation of footwear. [15]

6. The Footwear Labelling Directive renders the directive applicable to the labelling of the materials used in the main components of footwear for sale to the consumer and defines 'footwear' as 'articles with applied soles designed to protect or cover the foot …' (Article 1(1)). [16] The label must convey information relating to the three parts of the footwear concerned as defined in Annex I, [17] namely the upper, the lining and sock and the outer sole (Article 1(2)). The composition of the footwear must be indicated on the basis either of the pictograms or the written indications for materials stipulated in Annex I. [18] That information must also meet the labelling requirements in Article 4.

7. Pursuant to Article 2(1), Member States must take all necessary measures to ensure that all footwear placed on the market meets the labelling requirements of the Footwear Labelling Directive without prejudice to other relevant provisions of EU law.

8. Article 3 states: 'Without prejudice to other relevant Community provisions, Member States shall not prohibit or impede the placing on the market of footwear which complies with the labelling requirements of this Directive, by the application of unharmonised national provisions governing the labelling of certain types of footwear or of footwear in general.'

9. The labelling requirements specified in Article 4(1) are as follows: '… information on the material, determined in accordance with Annex I, which constitutes at least 80% of the surface area of the upper, and the lining and sock, of the footwear, and at least 80% of the volume of the outer sole. If no one material accounts for at least 80%, information should be given on the two main materials used in the composition of the footwear.' Article 4(2) specifies that the information must be conveyed on the footwear by means of 'either pictograms or written indications in at least the language or languages which may be determined by the Member State of consumption in accordance with the Treaty, as defined and illustrated in Annex I'. Member States must ensure that consumers are adequately informed as to the meaning of the pictograms, but such measures must not create barriers to trade. Labelling must be affixed to at least one article of footwear in each pair; it must be visible, securely attached to the footwear in question and accessible; and it must not be possible for the labelling to mislead the consumer (Article 4(3) and (4)).

10. Article 5 provides: 'Additional textual information, affixed, should the need arise, to the labelling may accompany the information required under this Directive. However, Member States may not prohibit or impede the placing on the market of footwear conforming to the requirements of this Directive, in accordance with Article 3.'

14 — See the first recital in the preamble to the Footwear Labelling Directive.

15 — The second, third, fifth and seventh recitals in the preamble to the Footwear Labelling Directive.

16 — A non-exhaustive list of products covered by the Footwear Labelling Directive is set out in Annex II.

17 — Annex I is reproduced as an annex to this Opinion. Point 1 contains definitions and the corresponding pictograms or written indications concerning the parts of footwear (the upper, the lining and sock and the outer sole). The word 'leather' is defined in point 2(a)(i), where the corresponding pictogram for the material (a simple stylised representation of an animal hide) is also set out.

18 — The word '*cuoio*' is the Italian term selected in the directive as the written indication for leather. It would appear, however, that use of that (approved) term also triggers the application of Law No 8/2013 (see point 15 below). As to the labelling of the footwear at issue in the main proceedings, see further points 16 and 63 below.

Directive 98/34

11. The aim of Directive 98/34 is to help to avoid the creation of new barriers to trade within the internal market. It introduces a mechanism for transparency and preventive control by requiring Member States to notify technical regulations in draft form before adoption and then, generally, to observe a standstill period of at least three months (see point 14 below) before adopting the regulation concerned, in order to allow other Member States and the Commission an opportunity to raise any concerns about potential barriers to trade. [19]

12. The following definitions in Article 1 are relevant:

'1. "product", any industrially manufactured product and any agricultural product …

…

3. "technical specification", a specification contained in a document which lays down the characteristics required of a product such as levels of quality … including the requirements applicable to the product as regards … packaging, marking or labelling ...

…

11. "technical regulation", technical specifications … the observance of which is compulsory, de jure or de facto … prohibiting the manufacture, importation, marketing or use of a product ...

…'

13. Pursuant to Article 8, Member States must immediately communicate to the Commission any draft technical regulation which they wish to adopt. They must also provide the Commission with a statement of the grounds which make the enactment of such a technical regulation necessary, where these have not already been made clear in the draft. The Commission must then immediately notify the other Member States of the draft and all the documents which have been forwarded to it. Article 8(2) provides that the Commission and the Member States may make comments to the notifying Member State. That State must take any such comments into account as far as possible in the subsequent preparation of the technical regulation. Under Article 8(3) Member States must communicate the definitive text of a technical regulation to the Commission without delay.

14. Article 9(1) states that the adoption of a draft technical regulation notified under Article 8(1) must be postponed for three months ('the standstill period'). That period is extended to six months if the Commission or another Member State issues a detailed opinion to the effect that the measure envisaged may create obstacles to the free movement of goods within the internal market (Article 9(2)). The standstill period is extended to 12 months if within 3 months of notification under Article 8(1) the Commission announces its intention of proposing or adopting legislation on the matter covered by the draft technical regulation (Article 9(3)). [20]

19 — Recitals 2 to 6 in the preamble.

20 — The detailed rules and standstill periods for rules on services (which are not relevant here) are slightly different from those on goods. There are also derogations (again, not relevant here) that enable urgent or emergency measures falling within the scope of Directive 98/34, once notified, to be brought into force immediately.

National law

15. Law No 8/2013 of 14 January 2013 laying down new provisions on the use of the terms '*cuoio*', '*pelle*' and '*pelliccia*' and their derivatives or synonyms was published in the *Gazzetta Ufficiale* No 25 of 30 January 2013 and entered into force on 14 February 2013. Article 3(2) of Law No 8/2013 introduces an obligation to affix a label indicating the country of origin to products, obtained from working carried out in foreign countries, which use those Italian terms affixed to the leather produced. In the order for reference the Tribunale di Milano indicates that Law No 8/2013 was notified to the Commission on 21 December 2012 under reference number 2012/667/I.[21] It was therefore subject to at least an initial standstill period of three months under Article 9(1) of Directive 98/34.[22]

Facts, procedure and questions referred

16. FS Retail srl, Luna srl and Gatsby srl, the defendants in the main proceedings, are economic operators that market footwear in Italy. The footwear in question bears the Italian captions '*pelle*' or '*vera pelle*' (genuine fine leather) on the inner sole. Some of the footwear concerned is produced in the People's Republic of China. The provenance of that footwear is indicated by a plastic label affixed to the outer sole. It is unclear from the main proceedings whether the other footwear at issue (which is not labelled as being of Chinese origin) originates from other Member States or from third countries.

17. On 27 September 2013 the Unione nazionale industria conciaria ('UNIC'), a trade association representing the tanning industry, and Unione Nazionale dei Consumatori di Prodotti in Pelle, Materie Concianti, Accessori e Componenti ('UNI.CO.PEL'), an organisation that promotes the interests of consumers in Italy ('the applicants'), brought proceedings against the defendants before the Tribunale di Milano seeking interim relief on the ground that they had infringed Article 3(2) of Law No 8/2013. The applicants consider that by using Italian terms to describe the leather inner sole without indicating its origin misleads consumers because it suggests that the leather used and/or the entire product is Italian in origin. Furthermore, the practice of using Italian terms for such products constitutes unfair competition on the part of non-EU producers to the detriment of the Italian leather and footwear industry, as the Italian origin of the leather used is a quality that only applies to footwear made using Italian leather.

18. Each of the three defendants opposed the request for interim relief on different grounds: (i) that the footwear in question meets the requirements of the Footwear Labelling Directive and (ii) that, in so far as certain items of footwear are labelled as originating in China, they comply with Law No 8/2013 and Italian consumers are appropriately informed as regards the origin of the products in question, so that those products should be permitted to be marketed in Italy (Gatsby); (iii) that Law No 8/2013 was notified to the Commission as a technical regulation under Directive 98/34 but was adopted before expiry of the initial standstill period laid down by Article 9 of that directive, which renders it unenforceable in the main proceedings (Luna); and (iv) that Law No 8/2013 is disproportionate because producers are free to indicate on their own initiative whether their products are of Italian origin (FS Retail).

19. Against that background the Tribunale di Milano asks the Court to give a preliminary ruling on six interlinked questions which are perhaps more easily understandable in summary.

21 — However, my own research of the Technical Regulation Information System ('the TRIS database') operated by the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs indicates that the proposed Law No 8/2013 was received by the Commission on 29 November 2012.

22 — See further point 46 below.

20. Those questions concern various ways in which EU law might preclude the application of Article 3(2) of Law No 8/2013 to products made of leather:

— lawfully worked or placed on the market in other Member States or

— obtained from working carried out in non-member countries and not already lawfully placed on the market in the European Union.

21. In both those situations, the referring court points out, Article 3(2) of Law No 8/2013 makes it compulsory to affix a label indicating the country of origin if (as here) the product bears the Italian word '*pelle*'. It wonders whether such a requirement might be precluded by:

— Articles 34 to 36 TFEU, as measures having an effect equivalent to quantitative restrictions on trade between Member States without being justified on any permissible ground (Questions 1 and 2);

— Articles 3 and 5 of the Footwear Labelling Directive, under which Member States may not prohibit or impede the placing on the market of footwear which complies with the labelling requirements of that directive (Questions 3 and 4); or

— Article 60 of Regulation No 952/2013 (the successor to Article 36 of Regulation No 450/2008), defining the country of origin; (Questions 5 and 6).

22. Written observations were submitted by UNIC and UNI.CO.PEL, by Gatsby, by the German, Netherlands and Swedish Governments and by the Commission. On 15 January 2015, a hearing was convened following the Court's request that the parties address the question raised by the Commission in its written observations as to whether Law No 8/2013 was unenforceable because it had been adopted in breach of the standstill provisions in Article 9(1) of Directive 98/34. The other parties who lodged written observations had not addressed that point and the question was not raised by the referring court. At the hearing, UNIC and UNI.CO.PEL, the Czech Republic, Germany and the Commission presented oral argument.

Assessment

Preliminary remarks

23. At the hearing, before dealing with the Court's questions, UNIC and UNI.CO.PEL submitted that the Court should first examine whether the request for a preliminary ruling should be withdrawn, because the national legal framework described in the order for reference had since changed. They indicated that Law No 8/2013 had been repealed with effect from 10 November 2014 and a new legislative decree concerning leather goods had been notified to the Commission under Directive 98/34. [23]

24. Withdrawal of a request for a preliminary ruling is the prerogative of the referring court rather than a matter for this Court. In any event I do not consider that the present reference should be dealt with on that basis.

23 — The new measure apparently re-applies a regime that had been previously introduced in 1966. Since the Italian Government neither submitted written observations nor attended the hearing, it was not possible for the Court to explore this further with representatives of the Member State in question. Nor does the Court know whether, in enacting Law No 8/2013, the Italian Government intended to place reliance on Article 4(4) of the Footwear Labelling Directive, which provides that it must not be possible for the labelling to mislead the consumer (see point 9 above). Accordingly, I do not consider that issue further in this Opinion.

25. The referring court explains that the applicants' request for interim measures is based upon Law No 8/2013 which that court considers provided the relevant legislative framework at the material time. Questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. [24] That is because the procedure laid down in Article 267 TFEU is based on a clear separation of functions between national courts and tribunals and the Court of Justice, and the latter is empowered only to rule on the interpretation or the validity of the acts of EU law referred to in that provision. It is not for the Court to rule on the interpretation of provisions of national law or to decide whether the referring court's interpretation of them is correct. The Court must take account of the factual and legal context of requests for preliminary rulings, as described in the order for reference. The determination of the applicable national legislation is a question of interpretation of national law and thus does not fall within the jurisdiction of the Court. [25]

26. Thus, as regards the application of the relevant national rules, the Court must proceed on the basis of the situation which the referring court considers to be established. [26] It follows that the Court should answer the questions referred.

General issues relating to the questions referred

27. In essence the referring court asks whether EU law, in particular Articles 34 to 36 TFEU and/or the Footwear Labelling Directive and/or the Modernised Customs Code, preclude the application of Law No 8/2013 in the main proceedings. It does not ask about the applicability of Directive 98/34.

28. However, the Commission in its written observations argues that a breach of the standstill requirements in Directive 98/34 also renders Law No 8/2013 unenforceable in any event. At the hearing, the German Government indicated that it shares that position.

29. I agree with that view. I also consider that Law No 8/2013 is incompatible both with Articles 34 to 36 TFEU and with the Footwear Labelling Directive. [27]

30. Should the Court deal with Directive 98/34 when answering the referring court?

31. First, it is clear that the referring court could determine the main proceedings on the basis of an answer from the Court to the effect that Directive 98/34 precluded the enforcement of Law No 8/2013.

32. Second, within the context of the prohibition in Article 34 TFEU on quantitative restrictions on imports and measures having equivalent effect, Directive 98/34 is an instrument *sui generis* designed to protect free circulation of goods and to promote the smooth functioning of the internal market in goods and services. [28] It ensures that the Commission and the Member States are alerted before new technical provisions that might create barriers to trade are adopted. Thus, Directive 98/34 operates by

24 — Judgment in *OSA*, C-351/12, EU:C:2014:110, paragraph 56 and the case-law cited.

25 — Judgment in *Texdata Software*, C-418/11, EU:C:2013:588, paragraphs 28, 29 and 41 and the case-law cited.

26 — Judgment in *Kaba*, C-466/00, EU:C:2003:127, paragraph 41.

27 — See point 48 et seq. below.

28 — Judgment in *Fortuna and Others*, C-213/11, C-214/11 and C-217/11, EU:C:2012:495, paragraph 26 and the case-law cited.

means of preventive control.[29] Furthermore, while it is true that Directive 98/34 establishes a procedure for transparency and the exchange of information concerning technical standards and regulations rather than itself laying down substantive rules, a failure to respect the standstill period is a substantial procedural defect rendering the technical regulation at issue inapplicable.[30]

33. Whilst it is settled case-law that the Court cannot modify the questions referred by a national court[31] those questions must be addressed in the light of all the provisions of EU law likely to be relevant to resolving the dispute in the main proceedings.[32] In the context of a reference under Article 267 TFEU requesting interpretation of provisions of EU law, it is for the Court to provide the national court with an answer which will be of use to it and enable it to determine the case before it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts.[33] That is particularly so if there is an obvious point of law that could be relevant to the national court's determination. If so, (as is the case here) then the Court may consider it.

34. The situation is different where the Court is asked to rule on the *validity* of an EU act. There the Court cannot be compelled to look at a ground that has not been raised by the national court.[34]

35. The present reference concerns questions relating to the interpretation, not the validity, of EU law. By providing an interpretation of the relevant provisions of Directive 98/34 the Court would simply be fulfilling its duty to consider the questions referred in the light of *all* the EU rules that are relevant to resolving the dispute in the main proceedings.

36. However, at the hearing the Czech Republic raised a different objection. Behind the question whether Directive 98/34 renders Law No 8/2013 unenforceable (it submits) lies the prior question whether a national court should examine that issue of its own motion. The Czech Republic argues that national courts are not subject to such an obligation for three reasons: (i) according to the rule of judicial passivity in civil proceedings (a widely recognised national procedural rule) it is not possible to go beyond the scope of the parties' action;[35] (ii) the exception to the principle of national procedural autonomy developed in the Court's case-law concerning consumer protection[36] should not be applied by analogy to Directive 98/34; and (iii) it would impose an unrealistic and onerous burden on national courts to require them to determine, in circumstances such as those of the present case, whether domestic rules constituted technical regulations for the purposes of Article 1(11) of that Directive 98/34.

37. I do not think those objections can be upheld.

29 — See recitals 2 to 6 in the preamble to Directive 98/34 and point 11 above.

30 — Judgment in *Unilever*, C-443/98, EU:C:2000:496, paragraph 44. See further point 45 below.

31 — Judgments in *Dumon and Froment*, C-235/95, EU:C:1998:365, paragraphs 25 to 27; and *RI.SAN.*, Case C-108/98, EU:C:1999:400, paragraphs 16 and 17.

32 — Judgment in *Efir*, C-19/12, EU:C:2013:148, paragraph 27.

33 — Judgment in *Fuß*, C-243/09, EU:C:2010:609, paragraph 39.

34 — Judgment in *Simon, Evers & Co*, C-21/13, EU:C:2014:2154, paragraphs 26 to 28.

35 — It is settled case-law that, in the absence of harmonisation of procedural rules, EU law is to be enforced according to the procedures and rules established by national law (the general principle of national procedural autonomy). That principle is subject to two conditions. Claims based on EU law should be treated no less favourably than claims based on national law (the principle of equivalence); and national law must not render it in practice impossible or excessively difficult to exercise rights conferred by EU law (the principle of effectiveness). See for example, judgment in *CA Consumer Finance*, C-449/13, EU:C:2014:2464, paragraph 23 and the case-law cited.

36 — When examining Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) the Court has held that EU law requires national courts to examine of their own motion the unfairness of a contractual term where they have the necessary legal and factual elements available to them. That is because Directive 93/13 starts from the premiss that the consumer is in a weaker position than the seller or supplier as regards his bargaining power or level of knowledge. See judgment in *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 48 and the case-law cited.

38. First, it seems to me that the Czech Government is inviting the Court to approach this issue on the basis of a general notion that the parties to proceedings are the masters of litigation and that there is a general national procedural rule of judicial passivity in civil proceedings. But the Court has no information as to whether Italian procedural law contains such a rule. Thus, the Court is not in a position to analyse the role of such a rule (if it exists) in the main proceedings, its course and its special features, viewed as a whole.[37] The Court cannot in my view make an assessment in the abstract.

39. Second, it is clear from the order for reference that the fact that Law No 8/2013 had been notified to the Commission was raised in the main proceedings;[38] and the referring court's file shows that Luna claims in its defence in the main proceedings that Law No 8/2013 is unenforceable because it was adopted in breach of the standstill requirements in Article 9(1) of Directive 98/34.[39] It is thus clear that, if Italian procedural law does contain a rule of judicial passivity in civil proceedings, the referring court would not be violating that rule by considering Directive 98/34 here. No new exception to the principle of national procedural autonomy would therefore be created.

40. Third, I have some sympathy with the Czech Republic's submission that it would be unduly burdensome for national courts to conduct an *ex officio* examination in every case as to whether a particular national measure constitutes a technical regulation falling within the scope of Directive 98/34. That question is not always easy to determine.

41. As to that argument; I note that on the facts here there was no such burden: the potential relevance of Directive 98/34 was already squarely before the referring court.

42. More generally, I do not suggest that in each and every case national courts must necessarily examine of their own motion whether a particular measure falls within Directive 98/34.

43. Rather, it seems to me that an obligation to examine Directive 98/34 arises in any event where either (i) the facts and circumstances are such that a national court has before it information indicating that the domestic rules at issue *have* been notified to the Commission under Article 8(1) of Directive 98/34 or (ii) a party to the proceedings claims that the measure relied upon against it is a measure falling within the scope of Directive 98/34. The national court must then examine the issue and, where relevant, take account of the obligation to observe the standstill obligations in Article 9 and the consequence of unenforceability against individuals. For my part, I consider that that obligation exists even if one of the parties in the main proceedings does not expressly rely on the unenforceability of the national rule at issue on the grounds of a failure to comply with Directive 98/34.

Analysis under Directive 98/34

44. Footwear is a 'product' within the meaning of Article 1(1) of Directive 98/34. The labelling requirements contained in Law No 8/2013 are a 'technical specification' for the purposes of Article 1(3), as they refer to the packaging, marketing or labelling of a product — footwear — and thus lays down the characteristics required of that product. Law No 8/2013 itself falls clearly within the scope of Article 1(11) as a technical regulation. Italy was therefore required both to notify Law No 8/2013 under Article 8(1) and to respect the standstill periods in Article 9.

37 — Judgment in *CA Consumer Finance*, C-449/13, EU:C:2014:2464, paragraph 25.

38 — See point 18 above.

39 — Confirmed by the Commission in its written observations.

45. The wording of Articles 8 and 9 of Directive 98/34 is clear in that those provisions create a procedure for the European Union to control draft national regulations, the date of their entry into force being subject to lack of opposition from the Commission and/or the other Member States. The Court has held that the effectiveness of that preventive control is enhanced by interpreting the directive as meaning that breach of the obligation to notify constitutes a substantial procedural defect such as to render the technical regulations in question inapplicable to individuals.[40] It also follows from settled case-law that, if a technical regulation is adopted in breach of the requirement to observe the standstill requirements in Article 9(1) of Directive 98/34, it is likewise unenforceable against individuals.[41]

46. The Commission received notification of the proposed Law No 8/2013 on 29 November 2012.[42] Following that notification, the Romanian Government issued comments under Article 8(1) of Directive 98/34. Both the German and Spanish Governments issued detailed opinions under the second indent of Article 9(2).[43] At the hearing, the Commission informed the Court that the initial three months' standstill period expired on 1 March 2013, but that the standstill period was extended to 30 May 2013 as a result of the detailed opinions. The referring court explains that Law No 8/2013 was (nevertheless) adopted on 14 February 2013. The date of adoption is clearly in breach of the standstill period laid down in Article 9(1) of Directive 98/34.

47. It follows that Law No 8/ 2013 cannot be applied in proceedings between individuals.

Articles 34 to 36 TFEU — Questions 1 and 2

48. The referring court explains that Law No 8/2013 applies to leather goods in general; and I understand the questions before the Court as encompassing all products made of leather rather than footwear only. As the Footwear Labelling Directive must be interpreted in the light of Articles 34 to 36 TFEU, it is in any event convenient to begin by considering those Treaty provisions.

49. An obligation to affix a label indicating the country of origin to leather goods obtained from working carried out in foreign countries which use the Italian terms '*cuoio*', '*pelle*' or '*pelliccia*' (or their derivatives or synonyms) is a measure having equivalent effect to quantitative restrictions on imports, making the free circulation of such goods more difficult or more costly. It has long been recognised that the purpose of indicating the origin of products is to enable consumers to distinguish between domestic goods and imports and that this enables them, inter alia, to assert any prejudices which they may have against foreign products. Within the single market the origin-marking requirement not only makes the marketing in a Member State of goods produced in other Member States in the sectors in question more difficult; it also has the effect of slowing down economic interpenetration by handicapping the sale of goods produced as the result of a division of labour between Member States.[44]

50. A labelling requirement such as Article 3(2) of Law No 8/2013 has those characteristics.

51. A requirement of that nature impedes the free circulation of leather goods, because when foreign goods subject to that requirement are marketed in Italy (i) those goods may be viewed adversely by consumers as a result of the labelling requirement and (ii) those goods may be refused access to the Italian market where that labelling requirement is not met.

40 — Judgment in *CIA Security International*, C-194/94, EU:C:1996:172, paragraphs 41, 44 and 54.

41 — Judgment in *Unilever*, C-443/98, EU:C:2000:496, paragraphs 40 to 44 and 49.

42 — See point 15 and footnote 21 above. That date was also confirmed by the German Government and the Commission in their respective submissions.

43 — See the TRIS database concerning notification No 2012/667/I.

44 — Judgment in *Commission* v *Germany*, C-325/00, EU:C:2002:633, paragraph 23 and the case-law cited.

52. The requirement could also make the circulation of leather goods worked outside Italy more costly. Thus, economic operators placing such goods on the Italian market might have to incur higher labelling costs than their counterparts (who market leather goods processed in Italy) because they might have to produce and affix special or additional labels for the Italian market. That would, in particular, be the case if Article 3(2) of Law No 8/2013 makes the origin-labelling requirement mandatory even where the label is intended for the EU market as a whole with the word 'leather' in various languages or the hide pictogram authorised by the Footwear Labelling Directive (the text is unclear on that point).

53. Law No 8/2013 is, moreover, a discriminatory measure as it applies only to leather goods made outside Italy that are not manufactured from Italian leather. Products manufactured in Italy are not subject to the additional labelling requirement, even if non-Italian leather is used and Italian terms are used to describe it.

54. Nor can Law No 8/2013 be justified under any of the limited exceptions in Article 36 TFEU.[45] Consumer protection cannot be invoked here — that exception to the principle of free circulation of goods is available only in relation to indistinctly applicable measures.[46] I add that, as the Court observed in *Commission* v *United Kingdom*,[47] if the Italian origin of leather used in footwear brings certain desirable qualities to the mind of the consumer it is in the interests of manufacturers of those products to indicate that origin themselves, either on the goods or the packaging.

55. It follows that Law No 8/2013 is clearly precluded by Article 34 TFEU and cannot be exempted under Article 36 TFEU.[48]

The Footwear Labelling Directive — Questions 3 and 4

56. By Questions 3 and 4, the referring court asks whether the Footwear Labelling Directive precludes Member States from imposing a labelling requirement indicating the country of origin where the Italian word '*pelle*' (or its synonyms) is used on the labels affixed to the leather goods in question. I understand those questions as concerning only footwear, rather than leather goods in general.[49]

57. It is settled case-law that, when a particular sphere has been the subject of exhaustive harmonisation at EU level, national measures in that sphere must be assessed in the light of the relevant harmonising legislation rather than the Treaty.[50]

58. In my view, the Footwear Labelling Directive does not exhaustively regulate all aspects of the labelling of footwear. Thus, Article 5 expressly indicates that additional textual information may accompany the information required under the directive and the seventh recital in the preamble states that the Footwear Labelling Directive 'establishes only those requirements which are indispensable for the free movement of the products to which it applies'. However, the directive does exhaustively regulate the labelling of the materials used in the main components of footwear. When indicating that the footwear in question is made of leather, either the relevant word ('*cuoio*' in Italian) or the hide pictogram at Annex I, point 2(a)(i), must be used.

45 — See point 2 and footnote 6 above.

46 — Judgment in *Rewe-Zentral*, 120/78, EU:C:1979:42, paragraph 8.

47 — Judgment in *Commission* v *United Kingdom*, 207/83, EU:C:1985:161.

48 — Nothing in the material before the Court would appear to trigger Article 35 TFEU (prohibition on quantitative restrictions on exports) and I have not, accordingly, devoted any separate analysis to that provision.

49 — See Article 1(1) of the Footwear Labelling Directive.

50 — Judgment in *AGM-COS.MET*, C-470/03, EU:C:2007:213, paragraph 50 and the case-law cited.

59. A combined reading of Articles 1 and 4 of, and Annex I to, the Footwear Labelling Directive indicates that the directive does not here set minimum requirements, but rather exhaustive rules. Member States are not therefore entitled to adopt more stringent requirements. Moreover, Article 3 expressly forbids Member States to prohibit or impede the circulation of footwear that meets the labelling requirements of the directive.

60. Thus, where footwear meets the labelling requirements of the Footwear Labelling Directive, Italian law may not make its circulation within the internal market conditional upon the country of origin of the leather also being indicated.

61. The referring court asks in particular whether Member States are precluded from imposing a labelling requirement such as that at issue in the main proceedings on products manufactured outside Italy composed of leather originating from other Member States or from third countries that *has* lawfully been placed on the internal market (Question 3), or that has *not* previously lawfully been placed on the internal market (Question 4).

62. It seems to me that Article 3 of the Footwear Labelling Directive clearly precludes a national measure such as Law No 8/2013 from imposing additional labelling requirements on footwear composed of leather that has been worked in other Member States or lawfully placed on the market in those States. (Such an obligation is also incompatible with Article 34 TFEU for the reasons set out in points 48 to 55 above.) It is likewise incompatible with the Footwear Labelling Directive to apply such a measure to footwear manufactured in third countries made from leather that has been worked in those countries where the footwear has subsequently lawfully been imported into the internal market.

63. The order for reference does not indicate whether the requirements of the Footwear Labelling Directive are met by the footwear products at issue in the main proceedings. Specifically, the Court has not been told whether the words '*pelle*' or '*vera pelle*' on the inner sole of the footwear in question are additional to the information required by Article 4 and Annex I or whether the footwear is labelled only with those words and does not bear either the pictogram for leather set out in Annex I, point 2(a)(i), or the written indication in Italian ('*cuoio*') leather.

64. I add for the sake of good order that, if the products in question do not meet the requirements of the Footwear Labelling Directive then it would be necessary to examine the position more generally in the light of Article 34 TFEU. [51]

The Modernised Customs Code — Questions 5 and 6

65. In my view it is unnecessary to examine whether Law No 8/2013 is compatible with the rules for establishing the origin of products under the Modernised Community Customs Code (Questions 5 and 6). Article 36 of Regulation No 450/2008 is concerned with the determination of the non-preferential origin of goods in certain circumstances set out in Article 35. [52] Those rules do not seem capable either of permitting or precluding the application of Article 3(2) of Law No 8/2013. Furthermore, it is not disputed that the leather used in manufacturing the leather goods in question is not Italian in origin. It seems to me that both Questions 5 and 6 are therefore not relevant: and there is accordingly no need to reply to them.

51 — See points 48 to 55 above.

52 — See point 3 above.

Conclusion

66. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the request for a preliminary ruling from the Tribunale di Milano (Italy) to the following effect:

A national rule imposing an obligation to affix a label indicating the country of origin to leather products obtained from working carried out in foreign countries, where those products are described using terms such as 'leather', 'fine leather' or 'fur' (or their derivatives or synonyms) in the language or languages of the Member State concerned, is a technical regulation within the meaning of Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services. Its adoption in breach of the period of postponement prescribed in Article 9(1) of that directive constitutes a substantial procedural defect such as to render it inapplicable.

Such a rule is in any event a discriminatory measure that has equivalent effect to a quantitative restriction on imports, prohibited by Article 34 TFEU and not falling within any of the exceptions listed in Article 36 thereof. It is therefore inapplicable in civil proceedings between individuals.

Finally, in so far as such a rule applies to footwear that meets the labelling requirements of Directive 94/11/EC of the European Parliament and Council of 23 March 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to labelling of the materials used in the main components of footwear for sale to the consumer, it is incompatible with, in particular, Articles 3 and 5 of that directive.

Annex I to Directive 94/11/EC

1. **Definition and corresponding pictograms or written indications concerning the parts of the footwear to be identified**

	Pictograms	*Written indications*
(a) **Upper** This is the outer face of the structural element which is attached to the outersole.		F Tige D Obermaterial IT Tomaia NL Bovendeel EN Upper DK Overdel GR ΕΠΑΝΩ ΜΕΡΟΣ ES Empeine P Parte superior ►A1 CZ Vrch EST Pealne LV Virsa LT Viršus HU Felsőrész M Wiċċ PL Wierzch SI Zgornji del SK Vrch ◄ ►M1 BG лицева част RO Față ◄ ►M2 HR Gornjište ◄
(b) **Lining and sock** These are the lining of the upper and the insole, constituting the inside of the footwear article.		F Doublure et semelle de propreté D Futter und Decksohle IT Fodera e Sottopiede NL Voering en inlegzool EN Lining and sock DK Foring og bindsål GR ΦΟΔΡΕΣ ES Forro y plantilla P Forro e Palmilha ►A1 CZ Podšívka a stélka EST Vooder ja sisetald LV Odere un ieliekamā saistzole LT Pamušalas ir įklotė HU Bélés és fedőtalpbélés M Inforra u suletta PL Podszewka z wyściółką SI Podloga in vložek (steljka) SK Podšívka a stielka ◄ ►M1 BG подплата и стелка RO Căptușeală și acoperiș de brant ◄ ►M2 HR Podstava i uložna tabanica ◄

	Pictograms	*Written indications*
(c) **Outer sole** This is the bottom part of the footwear article, which is subjected to abrasive wear and attached to the upper.		F Semelle extérieure D Laufsohle IT Suola esterna NL Buitenzool EN Outer sole DK Ydersål GR ΣΟΛΑ ES Suela P Sola ►A1 CZ Podešev EST Välistald LV Ārējā zole LT Padas HU Járótalp M Pett ta' barra PL Spód SI Podplat SK Podošva ◄ ►M1 BG външно ходило RO Talpă exterioară ◄ ►M2 HR Potplat (donjište) ◄

2. **Definition and corresponding pictograms of the materials**

The pictograms concerning the materials should appear on the label beside the pictograms relating to the 3 parts of the footwear as specified in Article 4 and in part 1 of this Annex.

	Pictogram	*Written indications*
(a) (i) **Leather** A general term for hide or skin with its original fibrous structure more or less intact, tanned to be rot-proof. The hair or wool may or may not have been removed. Leather is also made from a hide or skin which has been split into layers or segmented either before or after tanning. However, if the tanned hide or skin is disintegrated mechanically and/or chemically into fibrous particles, small pieces or powders and then, with or without the combination of a binding agent, is made into sheets or other forms, such sheets or forms are not leather. If the leather has a surface coating, however applied, or a glued-on finish, such surface layers must not be thicker than 0,15 mm. Thus, all leathers are covered without prejudice to other legal obligations, e.g. the Washington Convention. Should the term 'full grain leather' be used in the optional additional textual information referred to in Article 5, it will apply to a leather bearing the original grain surface as exposed by removal of the epidermis and with none of the surface removed by buffing, snuffing or splitting.		F Cuir D Leder IT Cuoio NL Leder EN Leather DK Læder GR ΔΕΡΜΑ ES Cuero P Couros e peles curtidas ►A1 CZ Useň EST Nahk LV Āda LT Oda HU Bőr M Ġilda PL Skóra SI Usnje SK Useň ◄ ►M1 BG кожа RO Piei cu față naturală ◄ ►M2 HR Koža ◄

	Pictogram	*Written indications*
(a) (ii) **Coated Leather** leather where the surface coating applied to the leather does not exceed one third of the total thickness of the product but is in excess of 0,15 mm.		F Cuir enduit D Beschichtetes Leder IT Cuoio rivestito NL Gecoat leder EN Coated leather DK Overtrukket læder GR ΕΠΕΝΔΕΔΥ-ΜΕΝΟ ΔΕΡΜΑ ES Cuero untado P Couro revestido ►A1 CZ Povrstvená useň EST Kaetud nahk LV Pārklāta āda LT Padengta oda HU Bevonatos bőr M Ġilda miksija PL Skóra pokryta SI Krito usnje SK Povrstvená useň ◄ ►M1 BG кожа с покритие RO Piei cu față corectată ◄ ►M2 HR Koža korigiranog lica ◄
(b) **Natural textile materials and synthetic or non-woven textile materials** 'Textiles' shall mean all products covered by Directive 71/307/EEC and amendments thereof.		F Textile D Textil IT Tessili NL Textiel EN Textile DK Tekstil-materialer GR ΥΦΑΣΜΑ ES Textil P Têxteis ►A1 CZ Textilie EST Tekstiil LV Tekstilmateriāls LT Tekstilė HU Textil M Tessut PL Materiał włókienniczy SI Tekstil SK Textil ◄ ►M1 BG текстил RO Textile ◄ ►M2 HR Tekstil ◄

	Pictogram	*Written indications*
(c) **All other materials**		F Autres matériaux D Sonstiges Material IT Altre materie NL Overige materialen EN Other materials DK Andre materialer GR ΑΛΛΑ ΥΛΙΚΑ ES Otros materiales P Outros materiais ►A1 CZ Ostatní materiály EST Teised materjalid LV Citi materiāli LT Kitos medžiagos HU Egyéb anyag M Materjal ieħor PL Inny materiał SI Drugi materiali SK Iný materiál ◄ ►M1 BG всички други материали RO Alte materiale ◄ ►M2 HR Drugi materijali ◄