

JUDGMENT OF THE COURT (Fifth Chamber)

20 June 1996 *

In Joined Cases C-418/93, C-419/93, C-420/93, C-421/93, C-460/93, C-461/93, C-462/93, C-464/93, C-9/94, C-10/94, C-11/94, C-14/94, C-15/94, C-23/94, C-24/94 and C-332/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale, Rome, Sezione Distaccata di Castelnuovo di Porto, for a preliminary ruling in the proceedings pending before that court between

Semeraro Casa Uno Srl

and

Sindaco del Comune di Erbusco (C-418/93),

Semeraro Mobili SpA

and

Sindaco del Comune di Erbusco (C-419/93),

* Language of the case: Italian.

RB Arredamento Srl

and

Sindaco del Comune di Stezzano (C-420/93),

Città Convenienza Milano Srl

and

Sindaco del Comune di Trezzano sul Naviglio (C-421/93),

Città Convenienza Bergamo Srl

and

Sindaco del Comune di Stezzano (C-460/93),

Centro Italiano Mobili Srl

and

Sindaco del Comune di Pineto (C-461/93),

Il 3C Centro Convenienza Casa Srl

and

Sindaco del Comune di Roveredo in Piano (C-462/93),

Benelli Confezioni SNC

and

Sindaco del Comune di Capena (C-464/93),

M. Quattordici Srl

and

Commissario Straordinario del Comune di Terlizzi (C-9/94),

Società Italiana Elettronica Srl (SIEL)

and

Sindaco del Comune di Dozza (C-10/94),

Modaffari Srl

and

Sindaco del Comune di Trezzano sul Naviglio (C-11/94),

Modaffari Srl

and

Comune di Cinisello Balsamo (C-14/94),

Cologno Srl

and

Sindaco del Comune di Cologno Monzese (C-15/94),

Modaffari Srl

and

Sindaco del Comune di Osio Sopra (C-23/94),

M. Dieci Srl

and

Sindaco del Comune di Madignano (C-24/94),

and

Consorzio Centro Commerciale ‘Il Porto’

and

Sindaco del Comune di Adria (C-332/94),

on the interpretation of Articles 30, 36 and 52 of the EC Treaty, Council Directive 64/223/EEC of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in wholesale trade (OJ, English Special Edition 1963-1964, p. 123) and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of

information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75),

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, C. Gulmann (Rapporteur), P. Jann, L. Sevón and M. Wathelet, Judges,

Advocate General: G. Cosmas,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Semeraro Casa Uno Srl, Semeraro Mobili SpA, Città Convenienza Bergamo Srl and Il 3C Centro Convenienza Casa Srl, the applicants in the main proceedings in Cases C-418/93, C-419/93, C-460/93 and C-462/93, by Franco di Maria, Gianfranco Maestosi, Federico Tedeschini and Arturo Mancini, of the Rome Bar,
- Consorzio Centro Commerciale 'Il Porto', the applicant in the main proceedings in Case C-332/94, by Franco di Maria, Gianfranco Maestosi and Federico Tedeschini, of the Rome Bar,
- Comune di Terlizzi, defendant in the main proceedings in Case C-9/94, by Grazia Serini, of the Bari Bar, and Antonio Mancini, of the Rome Bar,

— the Greek Government, by Vassilios Kondolaimos, Deputy Legal Adviser with the State Legal Service, and Christina Sitara, Representative of the State Legal Service in judicial proceedings, acting as Agents,

— the Commission of the European Communities, by Richard Wainwright, Principal Legal Adviser, and Antonio Aresu, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Semeraro Casa Uno Srl, Semeraro Mobili SpA, Città Convenienza Bergamo Srl, Il 3C Centro Convenienza Casa Srl and Consorzio Centro Commerciale 'Il Porto', represented by G. Maestosi and F. Tedeschini, of the Sindaco del Comune di Adria, represented by G. Ricapito, of the Rome Bar, of the Greek Government, represented by V. Kondolaimos, and of the Commission, represented by A. Aresu, at the hearing on 23 November 1995,

after hearing the Opinion of the Advocate General at the sitting on 25 January 1996,

gives the following

Judgment

¹ By orders of 18 July, 28 October, 11 November, 2 and 16 December 1993, and 10 October 1994, received at the Court between 13 October 1993 and 13 December 1994, the Pretura Cirondariale di Roma (Rome District Magistrates' Court),

Sezione Distaccata di Castelnuovo di Porto (Castelnuovo di Porto Division), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty questions concerning the interpretation of Articles 30, 36 and 52 of that Treaty, Council Directive 64/223/EEC of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in wholesale trade (OJ, English Special Edition 1963-1964, p. 123), and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75), hereinafter 'Directive 83/189'.

- 2 The questions were raised in connection with action taken by the public authorities against operators of large shopping centres for infringing the Italian legislation on the closing of retail outlets on Sundays and public holidays.

- 3 Italian Law No 558 of 28 July 1971 regulates the opening hours of businesses and retail outlets. Article 1(2)(a) of that Law provides that shops must close all day on Sundays and public holidays save in the exceptional cases laid down in that Law. Detailed provisions on opening hours are to be laid down by the Regions. Article 10 of the Law provides for administrative penalties for non-compliance. The mayors of the relevant communes are responsible for monitoring compliance and they may impose penalties.

- 4 The applicants in the main proceedings (hereinafter 'the applicants') operate large shopping centres located in various communes. When these centres stayed open on certain Sundays and public holidays the mayors of the communes concerned imposed administrative penalties on the applicants.

- 5 The applicants then brought proceedings in the national court. They claimed that a significant proportion of the turnover achieved in the shopping centres related to goods from other Member States of the Community. In their view, the national provisions in question were accordingly incompatible with Community law, in particular Article 30 of the Treaty.
- 6 In those circumstances the national court stayed proceedings and referred the following questions to the Court in Joined Cases C-418/93, C-419/93, C-420/93, C-421/93, C-460/93, C-461/93, C-462/93, C-464/93, C-9/94, C-10/94, C-11/94, C-14/94, C-15/94, C-23/94 and C-24/94:
- ‘1. Does a provision of national law which (save for certain products) requires retail shops to close on Sundays and public holidays, but does *not* prohibit working in such shops on those days (and imposes the penalty of forced closure on shops in breach of that requirement), thus significantly reducing their sales, including sales of goods produced in other Member States of the Community, with a consequent reduction in the volume of imports from such States, constitute:
- (a) a measure having an effect equivalent to a restriction on imports within the meaning of Article 30 of the Treaty of Rome and secondary rules of Community law adopted in pursuance of the principles laid down therein; or
 - (b) a means of arbitrary discrimination or a disguised restriction on trade between Member States; or
 - (c) a measure which is disproportionate and inappropriate to the socio-ethical aim pursued by the provision of national law;

given that:

- large-scale distributors and organized distribution centres (the category to which the applicants belong) on average sell a greater quantity of products imported from other Member States than that sold by small and medium-sized traders;
- the turnover achieved by large-scale distributors and organized distribution centres on Sundays *cannot* be compensated for by substitute purchases by customers on other days of the week, such purchases being made within a commercial network which in general obtains its supplies from domestic producers?

2. If the answer to Question 1 is in the affirmative, does the national measure in question fall within the derogations from Article 30 provided for in Article 36 of the Treaty of Rome, or other derogations provided for by Community law?’

7 In Case C-332/94 the national court referred the following questions:

‘Whereas

- large-scale distributors and organized distribution centres, which are mostly located on the periphery of, or outside, large towns, offer for sale and sell on average a greater quantity of products imported from other Member States than is offered for sale and sold by small and medium-sized traders, who unlike the former are widely scattered throughout Italy, in both town and country;

- sales by large-scale distributors and organized distribution centres on Sundays alone, in the brief periods in which they are allowed to sell on that day, are greater than sales made by those businesses during the working week;
- sales which large-scale distributors and organized distribution centres cannot make on public holidays are not compensated for by those which they make during the working week, and therefore unsatisfied customer demand is directed towards other trade outlets (made up of small and medium-sized businesses closer to consumers and easy to reach even on public holidays) which, however, in general obtain their supplies only from domestic producers;

Question 1

Does a provision of national law which (save for certain products) requires retail shops to close on Sundays and public holidays, but does not prohibit working in such shops even on those days (and penalizes breach of that requirement by forced closure and withdrawal of licences), constitute:

- (a) a measure having an effect equivalent to a restriction on imports within the meaning of Article 30 of the Treaty of Rome and secondary rules of Community law adopted in pursuance of the principles laid down therein; or
- (b) a means of arbitrary discrimination or a disguised restriction on trade between Member States; or
- (c) a measure which is disproportionate and inappropriate in relation to the socio-ethical aim pursued by the provision of national law; or

- (d) an infringement of Article 52 of the EEC Treaty concerning freedom of establishment and of subsequent Community legislation enacted in implementation of that principle; or
- (e) an infringement of Article 2(2) of Directive 64/223/EEC concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in wholesale trade; or
- (f) an infringement of Directives 83/189 and 88/182 concerning the elimination of technical barriers to trade between the Member States, in view of the fact that the prohibition on Sunday opening of shops is a general prohibition in appearance only, which is in fact subject to exemptions for a series of products which are, except in a very few unavoidable instances, exclusively of domestic origin?

Question 2

If the answer to the first question, in each of its parts, is in the affirmative, does the national measure fall within the derogations from Article 30 provided for in Article 36 of the Treaty of Rome, or within other derogations provided for by Community law?

- 8 By orders of the President of the Court of 10 November 1993, 27 January 1994 and 23 February 1994, some of the cases were joined for the purposes of the written and oral procedure and of the judgment. By order of the President of the Fifth Chamber of the Court of 19 October 1995 all the cases were joined for the purposes of the oral procedure and of the judgment.

Article 30 of the Treaty

- 9 In its judgment in Joined Cases C-69/93 and C-258/93 *Punto Casa and PPV* [1994] ECR I-2355 the Court gave a ruling on questions from the same national court which were substantively identical to those submitted in the present cases, with the exception of Question 1(d) to (f) in Case C-332/94.
- 10 In that judgment the Court applied its decision in *Keck and Mithouard* (Joined Cases C-267/91 and C-268/91 [1993] ECR I-6097).
- 11 In the latter case, which concerned national legislation imposing a general prohibition on resale at a loss, the Court found that such legislation may restrict the volume of sales and, consequently, the volume of sales of products from other Member States in so far as it deprives traders of a method of sales promotion. The Court then had to decide whether such a possibility was sufficient to characterize the legislation in question as a measure having an effect equivalent to a quantitative restriction on imports within the meaning of Article 30 of the Treaty (paragraph 13).
- 12 The Court considered that the application to products from other Member States of national provisions restricting or prohibiting certain selling arrangements was not such as to hinder directly or indirectly, actually or potentially, trade between Member States within the meaning of the *Dassonville* judgment (Case 8/74 [1974] ECR 837, paragraph 5), so long as those provisions applied to all relevant traders operating within the national territory and so long as they affected in the same

manner, in law and in fact, the marketing of domestic products and of those from other Member States (paragraph 16).

- 13 The Court pointed out that, provided those conditions were fulfilled, the application of such rules to the sale of products from another Member State meeting the requirements laid down by that State was not by nature such as to prevent their access to the market or to impede access any more than it impeded the access of domestic products. Such rules therefore fell outside the scope of Article 30 of the Treaty (paragraph 17).
- 14 In its judgment in *Punto Casa and PPV*, cited above, the Court held, first, that in the case of legislation of the kind at issue, which was concerned with the circumstances of sale to consumers, the conditions set out in the *Keck and Mithouard* judgment were fulfilled (paragraph 13). The Court further found that the legislation at issue was applicable, irrespective of the origin of the products in question, to all the traders concerned and did not affect the marketing of products from other Member States any differently from the marketing of domestic products (paragraph 14).
- 15 In those circumstances the Court held that Article 30 of the Treaty was to be interpreted as not applying to national legislation on the closing times of shops which applied to all traders operating within the national territory and which affected in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.
- 16 Following delivery of the judgment in *Punto Casa and PPV*, the Court asked the national court whether it considered that the questions raised in Cases C-418/93, C-419/93, C-420/93, C-421/93, C-460/93, C-461/93, C-462/93, C-464/93, C-9/94,

C-10/94, C-11/94, C-14/94, C-15/94, C-23/94 and C-24/94, which had been stayed until delivery of that judgment, had been answered in full.

- 17 In its reply, the national court asked that the cases pending before the Court should proceed to a ruling, stating essentially that because of the particular features of the Italian commercial market the legislation in question discriminated indirectly against imported goods.
- 18 The national court points out in particular that the Italian market is distinguished, first, by a large number of small businesses catering for a very limited number of customers and, second, by large shopping centres located on the periphery of, or outside, towns. In view of the limited amount of free time available to the consumer on working days, those large centres are not easily accessible to their customers except on Sundays and, because those centres cannot be reached sufficiently easily and frequently, customer demand is diverted towards small businesses closer to the consumer and therefore towards national products, since small businesses do not stock foreign products in the same variety and quantity.
- 19 In those circumstances, the national court considered that the effects of the legislation in question on the marketing of national products and on the marketing of products from other Member States were not in fact the same.
- 20 The national court gave the same reasons and put similar questions in Case C-332/94.
- 21 According to the applicants, the national legislation does indeed have the effects described by the national court so that the conditions laid down in the judgment in *Keck and Mithouard* are not fulfilled.

- 22 The Comune di Terlizzi, the defendant in Case C-9/94, the Greek Government and the Commission take the view, on the other hand, that the judgment in *Punto Casa and PPV* gives a full and proper answer to the question concerning Article 30 raised by the national court.
- 23 In the present cases, the observations made by the national court on the effects of the national rules at issue are identical in substance to those it made in the cases giving rise to the judgment in *Punto Casa and PPV*.
- 24 There is no evidence that the aim of the rules at issue is to regulate trade in goods between Member States or that, viewed as a whole, they could lead to unequal treatment between national products and imported products as regards access to the market. In this connection, it must be reiterated that national rules whose effect is to limit the marketing of a product generally, and consequently its importation, cannot on that ground alone be regarded as limiting access to the market for those imported products to a greater extent than for similar national products. As the Court stated in paragraph 13 of *Keck and Mithouard*, the fact that national legislation may restrict the volume of sales generally, and hence the volume of sales of products from other Member States, is not sufficient to characterize such legislation as a measure having an effect equivalent to a quantitative restriction.
- 25 Moreover, the Court has repeatedly recognized that national legislation such as that at issue pursues an aim which is justified under Community law, and that national rules restricting the opening of shops on Sundays reflect certain choices relating to particular national or regional socio-cultural characteristics. It is for the Member States to make those choices in compliance with the requirements of Community law (see Case C-169/91 *B&Q* [1992] ECR I-6635, paragraph 11).

- 26 The Court went on to rule in that case that Article 30 of the Treaty is to be interpreted as meaning that the prohibition it lays down does not apply to national legislation prohibiting retailers from opening their premises on Sundays.
- 27 No new factor has emerged in these proceedings which might justify an assessment different from that made by the Court in the judgments in *Punto Casa and PPV* and *B&Q*.
- 28 The reply to be given to the national court must therefore be that, on a proper construction, Article 30 of the Treaty does not apply to national rules on the closing times of shops applicable to all traders exercising an activity on national territory and affecting in the same way in law and in fact the marketing of national products and products from other Member States.

Article 52 of the Treaty and Directive 64/223

- 29 In Case C-332/94 the national court also asks whether Article 52 of the Treaty and Directive 64/223, concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in wholesale trade, preclude national rules on the closing times of shops such as those at issue in the main proceedings.
- 30 As far as Directive 64/223 is concerned, the aim of that directive is the attainment, in the field of wholesale trade activities, of freedom of establishment, as guaranteed, with direct effect after the expiry of the transition period, by Article 52 of the

Treaty (see the judgment in Case 198/86 *Conradi and Others* [1987] ECR 4469, paragraph 8).

- 31 There is therefore no need to examine Directive 64/223 separately from Article 52 in this instance.
- 32 As far as Article 52 is concerned, suffice it to state that, as has been found above, the legislation in question is applicable to all traders exercising their activity on national territory; that its purpose is not to regulate the conditions concerning the establishment of the undertakings concerned; and that any restrictive effects which it might have on freedom of establishment are too uncertain and indirect for the obligation laid down to be regarded as being capable of hindering that freedom.
- 33 Accordingly, neither Article 52 of the Treaty nor Directive 64/223 preclude national rules on the closing times of shops such as those at issue in the main proceedings.

Directive 83/189

- 34 In Case C-332/94 the national court seeks to ascertain, lastly, whether Directive 83/189, laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 88/182, applies to national rules on the closing times of shops such as those at issue in the main proceedings.

- 35 Whether or not the directive was applicable at the material time, it does not apply *ratione materiae* to national rules on the closing times of shops such as those at issue here.
- 36 Under Article 8 of the directive, the obligation to give prior notification applies to any draft technical regulation.
- 37 Article 1(5) defines 'technical regulation' as 'technical specifications, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, except those laid down by local authorities'. Under Article 1(1), 'technical specification' means 'a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marketing or labelling ...'.
- 38 The obligation to notify laid down by the directive does not therefore apply to national rules which do not lay down the characteristics required of a product but are confined to regulating the closing times of shops.
- 39 Accordingly, Directive 83/189 is not applicable to national rules on the closing times of shops such as those at issue in the main proceedings.

Costs

- 40 The costs incurred by the Greek Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Pretura Circondariale di Roma, Sezione Distaccata di Castelnuovo di Porto, by orders of 18 July, 28 October, 11 November, 2 and 16 December 1993 and 10 October 1994, hereby rules:

1. On a proper construction, Article 30 of the EC Treaty does not apply to national rules on the closing times of shops applicable to all traders exercising an activity on national territory and affecting in the same way in law and in fact the marketing of national products and products from other Member States.
2. Article 52 of the EC Treaty and Directive 64/223/EEC of the Council of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in the wholesale trade do not preclude national rules on the closing times of shops such as those at issue in the main proceedings.

- 3. Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Council Directive 88/182/EEC of 22 March 1988, is not applicable to national rules on the closing times of shops such as those at issue in the main proceedings.**

Edward

Gulmann

Jann

Sevón

Wathelet

Delivered in open court in Luxembourg on 20 June 1996.

R. Grass

D. A. O. Edward

Registrar

President of the Fifth Chamber