



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 June 2016 *

(Reference for a preliminary ruling — Regulation (EC) No 543/2008 — Agriculture — Common organisation of the markets — Marketing standards — Fresh pre-packaged poultrymeat — Obligation to indicate the total price and the price per weight unit on the pre-packaging or on a label attached thereto — Charter of Fundamental Rights of the European Union — Article 16 — Freedom to conduct a business — Proportionality — Second subparagraph of Article 40(2) TFEU — Non-discrimination)

In Case C-134/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sächsisches Oberverwaltungsgericht (Higher Administrative Court of the Land of Saxony, Germany), made by decision of 24 February 2015, received at the Court on 19 March 2015, in the proceedings

Lidl GmbH & Co. KG

v

Freistaat Sachsen,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader (Rapporteur), A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Bobek,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 13 January 2016,

after considering the observations submitted on behalf of:

— Lidl GmbH & Co. KG, by A. Pitzer and M. Grube, Rechtsanwälte,

— the Freistaat Sachsen, by I. Gruhne, acting as Agent,

— the European Commission, by B. Schima and K. Skelly, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2016,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the validity of Article 5(4)(b) of Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultry meat (OJ 2008 L 157, p. 46).
- 2 The request has been made in proceedings between Lidl GmbH & Co. KG, a retail operator, and Freistaat Sachsen (Land of Saxony, Germany) concerning the obligation laid down by that provision, on the retail sale of fresh pre-packaged poultrymeat, to indicate the total price and the price per weight unit on the pre-packaging or on a label attached thereto ('the labelling obligation').

Legal context

EU law

- 3 Article 39 TFEU defines the objectives of the common agricultural policy. According to Article 41(b) TFEU, to enable those to be attained, provision may be made for measures such as joint measures to promote consumption of certain products.
- 4 Article 2 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organization of the market in poultrymeat (OJ 1975, L 282, p. 77), provided that Community measures could be taken to promote better marketing of certain products or to improve their quality. Marketing standards could relate in particular to packaging, presentation and marking.
- 5 Council Regulation (EEC) No 1906/90 of 26 June 1990 on certain marketing standards for poultrymeat (OJ 1990 L 173, p. 1) established particular rules on labelling, including the obligation to indicate the total price and the price per weight unit on the pre-packaging or on a label attached thereto, applicable to the retail sale of fresh pre-packaged poultrymeat.
- 6 The second recital of that regulation stated:

'such standards can contribute to an improvement in the quality of poultrymeat and, consequently, facilitate the sale of such meat; whereas it is therefore in the interest of producers, traders and consumers that marketing standards should be applied in respect of poultrymeat suitable for human consumption'.
- 7 According to Article 5(3)(b) of that regulation:

'In the case of pre-packaged poultrymeat, the following particulars shall also appear on the pre-packaging or on a label attached thereto:

...

(b) in the case of fresh poultrymeat, the total price and the price per weight unit at the retail stage.'
- 8 Regulation No 2777/75 was repealed by Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1). That regulation brings together in a common framework the 21 common organisations of agricultural markets covering different products or groups of products. As is apparent from recital 7, the 'simplification' which it establishes 'should not lead to calling into question the policy decisions that have been taken over the years in the [common agricultural policy]'. Recital 10 emphasises the objective of stabilising the markets and

ensuring a fair standard of living for the agricultural community by means of different intervention measures, whilst taking account of the different needs in each of these sectors and the interdependence between different sectors.

- 9 As regards poultrymeat, Article 121(e)(iv) of Regulation No 1234/2007 authorises the European Commission to establish ‘rules concerning further indications to be shown on accompanying commercial documents, the labelling, presentation and advertising of poultrymeat intended for the final consumer and the name under which the product is sold within the meaning of point (1) of Article 3(1) of Directive 2000/13/EC [of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29)]’.
- 10 According to recitals 1 to 3 of Regulation No 543/2008, in so far as ‘[s]ome of the provisions and obligations in Regulation ... No 1906/90 were not taken over in Regulation ... No 1234/2007’ appropriate provisions have been adopted in Regulation No 543/2008 ‘to enable the common market organisation and in particular the marketing standards to continue to function properly’.
- 11 Recital 10 of Regulation No 543/2008 is worded as follows:

‘It is necessary, in order that the consumer be provided with sufficient, unequivocal and objective information concerning such products offered for sale, and to secure the free movement of such products throughout the Community, to ensure that poultrymeat marketing standards take into account as far as is practicable the provisions of Council Directive 76/211/EEC of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain pre-packaged products [(OJ 1976 L 46, p. 1)].’
- 12 Article 5(4)(b) of that regulation is drafted in identical terms to Article 5(3)(b) of Regulation No 1906/90.
- 13 Although Regulation No 1234/2007 was, in turn, repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 641), its provisions concerning the marketing rules for products in the egg and poultrymeat sectors continue to apply until the implementation date of corresponding marketing rules established pursuant to delegated acts, in accordance with Article 230(1)(c) of Regulation No 1308/2013.

German law

- 14 Point 6 of Paragraph 3(2) of the Verordnung über Vermarktungsnormen für Geflügelfleisch (Regulation on marketing standards for poultrymeat) of 22 March 2013 (BGBl 2013 I, p. 624) provides:

‘It shall be prohibited ... to keep poultrymeat ready for sale, or to offer, supply, sell or otherwise market it without the accurate and complete particulars required under Article 5(4) of [Regulation No 543/2008].’
- 15 Under point 1 of Paragraph 9(3) of that regulation:

‘A person shall be deemed to commit an administrative offence within the meaning of point 3 of Paragraph 7(1) of the Handelsklassengesetz (Law on product classes) if he keeps a poultry carcass, poultrymeat or a portion thereof ready for sale, or offers, supplies, sells or otherwise markets them in contravention of Paragraph 3 of [the present regulation].’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 16 Lidl is a retail operator which operates food discount stores throughout Germany. In some of its branches in the region of Lamperswalde, it offers for sale, among other items, pre-packaged fresh poultrymeat. According to the order for reference, the price of that product is not directly shown on the packaging or on a label attached thereto, but is shown on labels affixed to the shelves.
- 17 The Sächsische Landesanstalt für Landwirtschaft (Agriculture Authority for the Land of Saxony, Germany), now the Sächsische Landesamt für Umwelt, Landwirtschaft und Geologie (Environment, Agriculture and Geology Authority for the Land of Saxony, Germany) noted that price labelling practice during various inspections. It took the view that that practice infringed Article 5(3)(b) of Regulation No 1906/90, applicable at the time of the inspections.
- 18 On 30 April 2007, Lidl brought an action before the Verwaltungsgericht Dresden (Administrative Court, Dresden, Germany) seeking a declaration that its method of price labelling was compatible with Article 5(4)(b) of Regulation No 543/2008, which is identical to the content of Article 5(3)(b) of Regulation No 1906/90. It claimed, in essence, that those provisions were ‘invalid’ because they constituted a disproportionate interference with the freedom to pursue an occupation for the purposes of Article 15(1) of the Charter of Fundamental Rights of the European Union (‘the Charter’), read in conjunction with Article 6(1) TEU.
- 19 By judgment of 10 November 2010, the Verwaltungsgericht Dresden (Administrative Court, Dresden) dismissed the action on the merits.
- 20 Lidl appealed against that judgment to the Sächsisches Oberverwaltungsgericht (Higher Administrative Court of the Land of Saxony, Germany). That court considers that Article 5(4)(b) of Regulation No 543/2008 applies to the applicant in the main proceedings and that the resolution of the dispute brought before it is dependent on the validity of that provision. In that regard, it has doubts as to its validity in the light of Article 15(1) and Article 16 of the Charter and the second subparagraph of Article 40(2) TFEU.
- 21 In the opinion of the referring court, the labelling obligation does not give rise to a disproportionate and unacceptable interference with the applicant’s freedom to pursue an economic activity and its freedom to conduct a business, in so far as the substance of those rights and freedoms is preserved. The marketing of fresh pre-packaged poultrymeat is not prohibited by Article 5(4)(b) of Regulation No 543/2008, which contains provisions on displaying the price of those products. Moreover, that obligation meets the general interest objective of consumer protection.
- 22 However, the referring court expresses doubts as to whether the labelling obligation which results from that provision is proportionate, in so far as, first, it is not laid down for other pre-packaged meat products, such as beef, pork, lamb or goat and, second, it gives rise to additional financial and organisational burdens, which are restrictive of competition.
- 23 Having regard to the principle of non-discrimination, the referring court questions the justification for the difference in treatment between fresh poultrymeat and other fresh meat for human consumption, on account of the absence of a comparable labelling obligation for the latter.
- 24 In those circumstances the Sächsisches Oberverwaltungsgericht (Higher Administrative Court of the Land of Saxony, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 5(4)(b) of [Regulation No 543/2008] compatible with the first subparagraph of Article 6(1) of the TEU read in conjunction with Article 15(1) and Article 16 of the Charter?’

(2) Is Article 5(4)(b) of Regulation No 543/2008 compatible with the second subparagraph of Article 40(2) TFEU?’

Consideration of the questions referred

The first question

- 25 By its first question, the referring court asks, in essence, whether Article 5(4)(b) of Regulation No 543/2008, which provides for the labelling obligation, is valid in the light of Article 15(1) and Article 16 of the Charter.
- 26 At the outset, it should be noted that although the referring court and the parties to the main proceedings take the view that the validity of the labelling obligation must be examined in the light of Article 15(1) and Article 16 of the Charter on (i) the freedom to choose an occupation and the right to engage in work and (ii) the freedom to conduct a business, it is, however, clear that the labelling obligation does not limit the option available to persons ‘to pursue a freely chosen ... occupation’ within the meaning of Article 15 of the Charter. In contrast, it is capable of restricting the freedom to conduct a business recognised in Article 16 of the Charter.
- 27 The freedom to conduct a business includes, inter alia, the right for any business to be able to freely use, within the limits of its liability for its own acts, the economic, technical and financial resources available to it (judgment of 27 March 2014 in *UPC Telekabel Wien*, C-314/12, EU:C:2014:192, paragraph 49).
- 28 The Court has also held that the protection afforded by Article 16 of the Charter covers the freedom to exercise an economic or commercial activity, freedom of contract and free competition, as is apparent from the explanations relating to that article, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the interpretation of the Charter (judgments of 22 January 2013 in *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 42, and 17 October 2013 in *Schaible*, C-101/12, EU:C:2013:661, paragraph 25).
- 29 The labelling obligation laid down in Article 5(4)(b) of Regulation No 543/2008 is liable to limit the exercise of that freedom to conduct a business, since such an obligation constrains its addressee in a manner which restricts the free use of the resources at his disposal because it obliges him to take measures which may represent a significant cost for him and have a considerable impact on the organisation of his activities (see, to that effect, judgment of 27 March 2014 in *UPC Telekabel Wien*, C-314/12, EU:C:2014:192, paragraph 50).
- 30 Nevertheless, in accordance with the Court’s case-law, the freedom to conduct a business is not absolute, but must be viewed in relation to its social function (see, inter alia, judgments of 6 September 2012 in *Deutsches Weintor*, C-544/10, EU:C:2012:526, paragraph 54, and 22 January 2013 in *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 45 and the case-law cited).
- 31 Consequently, limitations may be imposed on the exercise of that freedom, as long as, in accordance with Article 52(1) of the Charter, first, the limitations are provided for by law and respect the essence of that freedom and, second, in compliance with the principle of proportionality, they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

- 32 While noting that the labelling obligation, as a limitation on the exercise of the right guaranteed by Article 16 of the Charter, is required by law and considering that that obligation respects the essence of that right and genuinely meet objectives of general interest recognised by the European Union, namely consumer protection, the referring court has doubts as to the proportionality of such a measure.
- 33 In that regard, it is settled case-law that the principle of proportionality requires that measures adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgments of 12 July 2001 in *Jippes and Others*, C-189/01, EU:C:2001:420, paragraph 81, and 22 January 2013 in *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 50).
- 34 Furthermore, the Court has already held that the freedom to conduct a business may be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest (judgment of 22 January 2013 in *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 46).
- 35 In the present case, as regards, in the first place, the objectives of the EU legislation at issue, as is clear from the second recital of Regulation No 1906/90, the marketing standards in the poultrymeat sector contribute to improving the quality of that meat and facilitating its sale, in the interest of producers, traders and consumers. In addition, the fourth recital of that regulation notes the interest for consumers to have fuller information, including labelling, advertising, particulars concerning the method of chilling used and the type of farming used for poultry production.
- 36 Those objectives are included in Regulation No 543/2008, which, in recital 10, highlights the need to provide consumers with sufficient, unequivocal and objective information concerning such products offered for sale.
- 37 It follows from the foregoing that the principal objectives of the EU legislation at issue relate both to improving the income of producers and traders active in the poultrymeat sector, including fresh poultrymeat, and to consumer protection, and constitute objectives of general interest recognised by EU primary law.
- 38 As regards, in the second place, the ability of the labelling obligation to attain the objectives pursued, the legislature was able to consider that that obligation, on the one hand, ensures reliable information for the consumer as a result of the indication on the packaging, and, on the other, is likely to encourage consumers to buy poultrymeat, which improves the marketing prospects for that product and, consequently, producers' incomes.
- 39 As regards to the necessity of such legislation, the EU legislature could legitimately consider that legislation providing for the mere affixing of prices on shelves would not achieve the objectives pursued in a way as effective as Article 5(4)(b) of Regulation No 543/2008, since solely the indication of the total price and the price per weight unit enables, in the case of products whose packaging units may not have the same weight, adequate consumer information to be guaranteed. Such an obligation does not, moreover, appear disproportionate to the aims pursued, in particular as the indication of the total price and the price per weight unit, laid down by Article 5(4) of Regulation No 543/2008, is only one part of the information having to be included on the pre-packaging or on a label attached thereto under that provision.
- 40 Consequently, the interference with the applicant in the main proceedings' freedom to conduct a business is, in the present case, proportionate to the objectives pursued.

41 It follows from the foregoing that consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Article 5(4)(b) of Regulation No 543/2008 in the light of the freedom to conduct a business, as provided by Article 16 of the Charter.

The second question

42 By its second question, the referring court asks whether Article 5(4)(b) of Regulation No 543/2008 is valid in the light of the principle of non-discrimination referred to in the second subparagraph of Article 40(2) TFEU.

43 That question is raised, because of the fact, set out by the referring court, that for other categories of fresh meat for human consumption, including beef, pork, lamb and goat, there is no similar requirement in terms of price labelling.

44 In that regard, it should be noted that the principle of non-discrimination is a general principle of EU law and, in the field of agriculture, is embodied in the second subparagraph of Article 40(2) TFEU (see judgment of 14 March 2013 in *Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraph 41 and the case-law cited). It follows from the very wording of that article that that provision prohibits any discrimination between producers or consumers within the European Union.

45 It follows from the case-law of the Court that that principle applies not only to producers and consumers, but also to other categories of economic operators who are subject to a common organisation of a market, such as those who market fresh poultrymeat or other types of fresh meat (see, to that effect, judgment of 5 October 1994 in *Germany v Council*, C-280/93, EU:C:1994:367, paragraph 68).

46 The principle of non-discrimination requires comparable situations not to be treated differently and different situations not to be treated alike unless such treatment is objectively justified (see, to that effect, judgments of 6 December 2005 in *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 63, and 14 March 2013 in *Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraph 42).

47 As regards the extent of the monitoring of observance of that principle, it should be noted that the EU legislature enjoys a wide discretion in matters concerning agriculture. Consequently, judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion (judgment of 14 March 2013 in *Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraph 43).

48 In the present case, the products about which the referring court has doubts as to the non-discriminatory nature of the legislation at issue belong to different agricultural sectors.

49 In that regard, the first subparagraph of Article 40(2) TFEU provides for the use of different mechanisms which may be used to achieve the objectives defined in Article 39 TFEU. Moreover, as is apparent from Regulation No 1234/2007, each common organisation of the market embodies features specific to it. As a result, a comparison of the technical rules and procedures adopted in order to regulate the various sectors of the market cannot constitute a valid basis for the purpose of proving the complaint of discrimination between dissimilar products which are subject to different rules (see, to that effect, judgment of 28 October 1982 in *Lion and Others*, 292/81 and 293/81, EU:C:1982:375, paragraph 24).

50 It follows from the foregoing that consideration of the second question has not disclosed any factor of such a kind as to affect the validity of Article 5(4)(b) of Regulation No 543/2008 in the light of the principle of non-discrimination referred to in the second subparagraph of Article 40(2) TFEU.

Costs

51 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:

- 1. Consideration of the first question referred has not disclosed any factor of such a kind as to affect the validity of Article 5(4)(b) of Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultry meat, in the light of the freedom to conduct a business, as provided by Article 16 of the Charter of Fundamental Rights of the European Union.**
- 2. Consideration of the second question referred has not disclosed any factor of such a kind as to affect the validity of Article 5(4)(b) of Regulation No 543/2008 in the light of the principle of non-discrimination referred to in the second subparagraph of Article 40(2) TFEU.**

[Signatures]