

JUDGMENT OF THE COURT

26 September 2000 *

In Case C-443/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Pretore di Milano (Italy) for a preliminary ruling in the proceedings pending before that court between

Unilever Italia SpA

and

Central Food SpA,

on the interpretation of 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 Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189/EEC (OJ 1994 L 100, p. 30),

* Language of the case: Italian.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, L. Sevón and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann (Rapporteur), J.-P. Puissechot, H. Ragnemalm, M. Wathelet and V. Skouris, Judges,

Advocate General: F.G. Jacobs,

Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Unilever Italia SpA, by F. Capelli and G. Votta, of the Milan Bar,
- the Italian Government, by Professor U. Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by I.M. Braguglia, Avvocato dello Stato,
- the Belgian Government, by A. Snoecx, Assistant Adviser in the Directorate General for Legal Affairs of the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent,
- the Danish Government, by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent,
- the Netherlands Government, by M.A. Fierstra, Head of the European Law Service in the Ministry of Foreign Affairs, acting as Agent,

- the Commission of the European Communities, by P. Stancanelli, of its Legal Service, and M. Shotter, a national civil servant on secondment to that service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Unilever Italia SpA, the Italian Government and the Commission at the hearing on 16 November 1999,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2000,

gives the following

Judgment

- ¹ By order of 6 November 1998, received at the Court on 7 December 1998, the Pretore di Milano (Magistrate, Milan) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of 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 Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189/EEC (OJ 1994 L 100, p. 30).

- 2 That question was raised in proceedings between Unilever Italia SpA ('Unilever') and Central Food SpA ('Central Food') concerning payment by Central Food for a consignment of olive oil supplied by Unilever.

Community law

- 3 Article 1(1), (2) and (9) of Directive 83/189 provide:

'For the purposes of this directive, the following meanings shall apply:

1. "product", any industrially manufactured product and any agricultural product;
2. "technical specification", 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 the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures;

The term "technical specification" also covers production methods and processes used in respect of agricultural products as referred to in Article 38(1) of the Treaty, products intended for human and animal consumption, and medicinal products as defined in Article 1 of Directive

65/65/EEC, as well as production methods and processes relating to other products, where these have an effect on their characteristics.

...

9. "technical regulation", technical specifications and other requirements, 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, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 10, prohibiting the manufacture, importation, marketing or use of a product.

...'

- 4 Article 8(1) to (3) of Directive 83/189 provide:

'1. Subject to Article 10, Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have 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 shall immediately notify the other Member States of the draft and all documents which have been forwarded to it; it may also refer this draft, for an opinion, to the Committee referred to in Article 5 and, where appropriate, to the committee responsible for the field in question.

...

2. The Commission and the Member States may make comments to the Member State which has forwarded a draft technical regulation; that Member State shall take such comments into account as far as possible in the subsequent preparation of the technical regulation.

3. Member States shall communicate the definitive text of a technical regulation to the Commission without delay.'

5 Article 9 of Directive 83/189 provides:

'1. Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Commission of the communication referred to in Article 8(1).

2. Member States shall postpone:

- for four months the adoption of a draft technical regulation in the form of a voluntary agreement within the meaning of Article 1(9), second indent,
- without prejudice to paragraphs 3, 4 and 5, for six months the adoption of any other draft technical regulation,

from the date of receipt by the Commission of the communication referred to in Article 8(1) if the Commission or another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged may create obstacles to the free movement of goods within the internal market.

The Member State concerned shall report to the Commission on the action it proposes to take on such detailed opinions. The Commission shall comment on this reaction.

3. Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 8(1) if, within the three months following that date, the Commission announces its intention to propose or adopt a Directive, Regulation or Decision on the matter in accordance with Article 189 of the Treaty.

4. Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 8(1) if, within the three months following that date, the Commission announces its finding that the draft technical regulation concerns a matter which is covered by a proposal for a Directive, Regulation or Decision presented to the Council in accordance with Article 189 of the Treaty.

5. If the Council adopts a common position during the standstill period referred to in paragraphs 3 and 4, that period shall, subject to Article 9(6), be extended to 18 months.

6. The obligations referred to in paragraphs 3, 4 and 5 shall lapse:

- when the Commission informs the Member States that it no longer intends to propose or adopt a binding Community act,
- when the Commission informs the Member States of the withdrawal of its draft or proposal,
- when the Commission or the Council has adopted a binding Community act.

7. Paragraphs 1 to 5 shall not apply in those cases where, for urgent reasons, occasioned by serious and unforeseeable circumstances, relating to the protection of public health or safety, the protection of animals or the preservation of plants, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible. The Member State shall give, in the communication referred to in Article 8, the reasons which warrant the urgency of the measures taken. The Commission shall give its views on the communication as soon as possible. It shall take appropriate action in cases where improper use is made of this procedure. The European Parliament shall be kept informed by the Commission.'

6 Pursuant to the first indent of Article 10(1) of Directive 83/189:

'Articles 8 and 9 shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States:

— comply with binding Community acts which result in the adoption of technical specifications.'

7 In paragraphs 54 and 55 of its judgment in Case C-194/94 *CIA Security v Signalson and Securitel* [1996] ECR I-2201 (hereinafter 'CIA Security') the Court held that Directive 83/189 was to be interpreted as meaning that breach of the obligation to notify rendered the technical regulations concerned inapplicable, so that they were unenforceable against individuals and that individuals might

therefore rely on Articles 8 and 9 of Directive 83/189 before the national court, which must decline to apply a national technical regulation which has not been notified in accordance with that directive.

- 8 As the Court made clear in paragraph 35 of its judgment in Case C-226/97 *Lemmens* [1998] ECR I-3711, failure to notify technical regulations, which constitutes a procedural defect in their adoption, renders such regulations inapplicable inasmuch as they hinder the use or marketing of a product which is not in conformity therewith.

The Italian legislation and the notification procedure

- 9 According to the documents before the Court, a draft law to govern labelling indicating the geographical origin of the various kinds of olive oil was submitted to the Italian Parliament on 27 January 1998. It was given readings in the Senate in February and March of the same year and in the Chamber of Deputies in April and June.
- 10 In the meantime, having been informed of the existence of the draft, the Commission called on the Italian authorities to notify it in accordance with Article 8(1) of Directive 83/189, and they did so on 4 May 1998. The Commission then brought the draft law to the notice of the Member States and, on 10 June 1998, it published in the *Official Journal of the European Communities* a notice indicating that the three-month period of suspension provided for in Article 9(1) of Directive 83/189 ran until 5 August 1998. The notice drew attention to the fact that, in accordance with the judgment in *CIA Security*, national courts must decline to apply any national technical regulation which had not been notified in accordance with Directive 83/189, so that the technical regulations concerned can no longer be enforced against individuals (OJ 1998 C 177, p. 2).

- 11 On 23 July 1998, the Commission informed the Italian authorities of its intention to legislate in the field covered by the draft law and called on them to postpone its adoption for a period of 12 months as from the date of the notice, in accordance with the Article 9(3) of Directive 83/189.
- 12 After the definitive approval thereof by both Chambers of the Italian Parliament, Law No 313 on the labelling of origin of extra virgin olive oil, virgin olive oil and olive oil (hereinafter 'the contested Law') was signed on 3 August 1998 by the President of the Republic, the Prime Minister and the Minister for Agriculture.
- 13 The next day the Commission informed the permanent representative for Italy to the European Union that it would initiate a procedure under Article 169 of the Treaty (now Article 226 EC) if the Law were published in the *Gazzetta Ufficiale della Repubblica Italiana* and declared that that Law would be unenforceable against individuals if it was published before 4 May 1999.
- 14 On 4 August 1998, the Commission received detailed opinions from the Spanish and Portuguese Governments within the meaning of Article 9(2) of Directive 83/189, to the effect that the draft law should be amended. On 5 August, it received observations from the Netherlands Government under Article 8(2).
- 15 On 29 August 1998, the contested Law was published in *Gazzetta Ufficiale della Repubblica Italiana* No 201 and it entered into force the following day.
- 16 Article 1 of that the Law provides, in essence, that the oils concerned may not be marketed with a written indication that they have been 'produced' or 'manufactured' in Italy unless the entire cycle of harvesting, production,

processing and packaging took place in Italy. Labelling of oils produced in Italy, when derived wholly or in part from oils originating in other countries, must mention that fact, indicating the relevant percentages and the country or countries of provenance; any such oil which does not bear those indications must be disposed of within four months after the entry into force of the Law or, after that date, withdrawn from the market.

- 17 On 22 December 1998, the Commission adopted the legislation which it had announced to the Italian authorities, in the form of Regulation (EC) No 2815/98 concerning marketing standards for olive oil (OJ 1998 L 349, p. 56), which, in particular, lays down rules governing the designation of origin of virgin and extra virgin olive oils on their labels or packaging.

The main proceedings and the question referred to the Court

- 18 On 29 September 1998, in response to an order from Central Food, Unilever supplied it with 648 litres of extra virgin olive oil for the price of ITL 5 330 708.
- 19 By letter of 30 September 1998, Central Food informed Unilever that the olive oil supplied to it was not labelled in accordance with the contested Law. Consequently, it refused to pay the amount due and called on Unilever to remove the goods from its warehouse.
- 20 On 2 October 1998, Unilever contested Central Food's position. On the ground that, under the procedure for notification and examination of draft technical regulations established by Directive 83/189, the Commission had called on the Italian Republic not to legislate in relation to the labelling of oil until 5 May 1999 and referring to the *CIA Security* judgment, Unilever contended that the

contested Law should not be applied. Asserting that the olive oil supplied was therefore wholly in conformity with the Italian legislation in force, it called on Central Food to accept the consignment and to pay for it.

- 21 Central Food refused to do so and on 21 October 1998 Unilever commenced proceedings before the Pretore di Milano for an order requiring Central Food to pay a sum corresponding to the price of the consignment.
- 22 In those circumstances, the Pretore di Milano decided to stay proceedings pending a preliminary ruling from the Court of justice on the following question:

‘May a national provision which has been promulgated and entered into force in the Member State (Law No 313 of 3 August 1998) be disapplied by a national court called upon to issue an order for payment in relation to the supply of extra virgin olive oil labelled in a manner not in accordance with the provisions of the aforementioned national provision, in circumstances where, following the notification and the subsequent examination of a draft national Law concerning the labelling of extra virgin olive oil, virgin olive oil and olive oil, the European Commission, on the basis of Article 9(3) of Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, formally requested the notifying State not to legislate during a prescribed period (until 14 September 1999) in relation to the marketing rules for olive oil, pending adoption of a Community regulation on the matter at issue?’

The question referred to the Court

The status as technical regulations of the rules on labelling contained in the contested Law

- 23 As a preliminary point, it is necessary to consider whether, as contended by the Italian Government, the question submitted is devoid of purpose since the contested Law does not fall within the scope of Directive 83/189.
- 24 First, the Italian Government observes that the contested Law contains no rules which may be classified as technical regulations within the meaning of Directive 83/189. It refers to the purpose of the contested Law, which is to protect the consumer by providing correct information as to the origin or provenance of olive oil, to the fact that the products involved are agricultural and to the fact that the rules laid down in the contested Law do not concern and do not affect the characteristics of those products.
- 25 Suffice is to note, on that point, that, according to Article 1(1) thereof, Directive 83/189 treats as 'products' both industrial and agricultural products and that, according to paragraph 2 of the same article, Directive 83/189 treats as a 'technical specification' any specification contained in a document which lays down the characteristics required of a product, including the requirements applicable to the product as regards labelling. National rules containing such specifications constitute technical specifications within the meaning of Directive 83/189 irrespective of the grounds on which they were adopted (see, to that effect, Case C-13/96 *Bic Benelux v Belgian State* [1997] ECR I-1753, paragraph 19).

- 26 Thus, the contested Law, which governs labelling indicating the origin of olive oil, contains rules which must be classified as 'technical specifications' within the meaning of Directive 83/189.
- 27 Since, the observance of those rules is *de jure* compulsory for the marketing of olive oil in Italy, they constitute technical regulations within the meaning of Article 1(9) of Directive 83/189.
- 28 Second, the Italian Government submits that the contested Law was exempted from the requirement of notification under Article 10 of Directive 83/189 since it was adopted in accordance with Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1). Article 3(1)(7) of that directive requires that the place of origin or provenance of the product be indicated on the label in cases where omission of such information would be liable to mislead consumers as to the real origin or provenance of the foodstuff.
- 29 That contention cannot be accepted. As the Commission has pointed out, that provision of Directive 79/112, drafted in general terms, leaves the Member States sufficient room for manoeuvre for it to be concluded that national rules on labelling relating to origin such as those adopted in the contested Law cannot be regarded as national provisions conforming to a binding Community act within the meaning of the first indent of Article 10(1) of Directive 83/189.
- 30 In those circumstances, it must be held that rules such as the labelling rules contained in the contested Law constitute technical regulations covered by Directive 83/189.

The effects of failure to comply with Article 9 of Directive 83/189

- 31 The question from the national court seeks, in essence, to ascertain whether a national court is required, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed by Article 9 of Directive 83/189.
- 32 Unilever contends that the Court has confirmed, in its judgment in *CIA Security*, that a national technical regulation adopted in breach of the obligations imposed by Articles 8 and 9 of Directive 83/189 cannot in any circumstances be relied on against individuals.
- 33 The Commission submits, first, that in *CIA Security*, which concerned a dispute between individuals, the Court held that technical regulations adopted in breach of Directive 83/189 were inapplicable and that it follows from that judgment that such inapplicability may be invoked in a dispute between individuals. It adds that there is no reason why that consequence of non-compliance with Directive 83/189 should not also apply in proceedings for summary judgment such as the main proceedings in this case.
- 34 Second, the Commission contends, such inapplicability is mandatory both in the case of breach of the obligation of notification laid down in Article 8 of Directive 83/189 and in that of failure to observe the postponement periods prescribed in Article 9 of that directive. The adoption of a national technical regulation after notification of the draft but during the standstill period, without taking account of the observations or other reactions of the Commission and the other Member States, entails the risk of creating new hindrances to intra-Community trade wholly identical to that resulting from the adoption of a technical regulation in breach of the obligation of notification.

- 35 The Italian Government, supported by the Danish Government, observes that, whilst the Court has indeed attributed direct effect to certain provisions of directives in that individuals, in the absence of proper transposition, may rely on such provisions as against the defaulting Member State, it has also held that to extend such a precedent to relationships between individuals would be tantamount to granting the Community power to impose, with immediate effect, obligations on individuals, even though it has no such competence except where it is empowered to adopt regulations. Thus, it is clear from settled case-law of the Court that a directive cannot of itself impose obligations on individuals and cannot therefore be relied on as such against them. No derogation from that principle can be based on the judgment in *CIA Security*. The operative part of that judgment discloses no intention to reverse the principle according to which a directive cannot have direct effect in horizontal relations between individuals.
- 36 The Italian, Danish and Netherlands Governments also submit, in particular, that in *CIA Security* the Court merely held that failure to observe the obligation of notification laid down in Article 8 of Directive 83/189 gives rise to the inapplicability of the technical regulation concerned. Article 9 of Directive 83/189 differs substantially from Article 8. It is the effectiveness of the preventive control provided for in Article 8 of Directive 83/189 which gave rise to that interpretation. By contrast, inapplicability in the event of breach of the obligation to postpone adoption pursuant to Article 9 would not contribute to the effectiveness of control by the Commission. In such circumstances, the fact that a Member State has not observed a procedural rule such as that laid down in Article 9 cannot have any effect other than that of allowing the Commission to bring infringement proceedings against the defaulting State.
- 37 In view of those submissions, it is appropriate, first, to consider whether the legal consequence of failure to fulfil the obligations imposed by Directive 83/189 is the same in relation both to the obligation to observe periods of postponement under

Article 9 of Directive 83/189 and to the obligation of notification under Article 8 of Directive 83/189.

38 *CIA Security* related to a technical regulation which had not been notified in accordance with Article 8 of Directive 83/189. This explains why the operative part of that judgment confines itself to finding that technical regulations which have not been notified in accordance with that article are inapplicable.

39 However, in the statement of the grounds on which that finding was based, the Court also examined the obligations deriving from Article 9 of Directive 83/189. The Court's reasoning shows that, having regard to the objective of Directive 83/189 and to the wording of Article 9 thereof, those obligations must be treated in the same way as those deriving from Article 8 of the same directive.

40 Thus, in paragraph 40 of *CIA Security*, it was emphasised that Directive 83/189 is designed, by means of preventive control, to protect freedom of movement for goods, which is one of the foundations of the Community, and that, in order for such control to be effective, all draft technical regulations covered by the directive must be notified and, except in the case of those regulations whose urgency justifies an exception, their adoption or entry into force must be suspended during the periods laid down in Article 9.

41 Next, in paragraph 41 of that judgment, the Court held that notification and the period of postponement afford the Commission and the other Member States an opportunity to examine whether the draft regulations in question create obstacles to trade contrary to the EC Treaty or obstacles which were to be avoided through the adoption of common or harmonised measures and also to propose amendments to the national measures envisaged. That procedure also enables the Commission to propose or adopt Community rules regulating the matter dealt with by the envisaged measure.

- 42 In paragraph 50 of *CIA Security* the Court indicated that the aim of the directive was not simply to inform the Commission but is also, more generally, to eliminate or restrict obstacles to trade, to inform other States of technical regulations envisaged by a State, to give the Commission and the other Member States time to react and to propose amendments for lessening restrictions to the free movement of goods arising from the envisaged measure and to afford the Commission time to propose a harmonising directive.
- 43 The Court went on to hold that the wording of Articles 8 and 9 of Directive 83/189 was clear in that they provide a procedure for Community control of draft national regulations, the date of their entry into force being subject to the Commission's agreement or lack of opposition.
- 44 Although, in paragraph 48 of *CIA Security*, after reiterating that the aim of Directive 83/189 was to protect freedom of movement for goods by means of preventive control and that the obligation to notify was essential for achieving such Community control, the Court found that the effectiveness of such control would be that much greater if the directive were interpreted as meaning that breach of the obligation to notify constituted a substantial procedural defect such as to render the technical regulations in question inapplicable to individuals, it follows from the considerations set out in paragraphs 40 to 43 of this judgment that breach of the obligations of postponement of adoption set out in Article 9 of Directive 83/189 also constitutes a substantial procedural defect such as to render technical regulations inapplicable.
- 45 It is therefore necessary to consider, secondly, whether the inapplicability of technical regulations adopted in breach of Article 9 of Directive 83/189 can be invoked in civil proceedings between private individuals concerning contractual rights and obligations.

- 46 First, in civil proceedings of that nature, application of technical regulations adopted in breach of Article 9 of Directive 83/189 may have the effect of hindering the use or marketing of a product which does not conform to those regulations.
- 47 That is the case in the main proceedings, since application of the Italian rules is liable to hinder Unilever in marketing the extra virgin olive oil which it offers for sale.
- 48 Next, it must be borne in mind that, in *CIA Security*, the finding of inapplicability as a legal consequence of breach of the obligation of notification was made in response to a request for a preliminary ruling arising from proceedings between competing undertakings based on national provisions prohibiting unfair trading.
- 49 Thus, it follows from the case-law of the Court that the inapplicability of a technical regulation which has not been notified in accordance with Article 8 of Directive 83/189 can be invoked in proceedings between individuals for the reasons set out in paragraphs 40 to 43 of this judgment. The same applies to non-compliance with the obligations laid down by Article 9 of the same directive, and there is no reason, in that connection, to treat disputes between individuals relating to unfair competition, as in the *CIA Security* case, differently from disputes between individuals concerning contractual rights and obligations, as in the main proceedings.
- 50 Whilst it is true, as observed by the Italian and Danish Governments, that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual (see Case C-91/92 *Faccini*

Dori [1994] ECR I-3325, paragraph 20), that case-law does not apply where non-compliance with Article 8 or Article 9 of Directive 83/189, which constitutes a substantial procedural defect, renders a technical regulation adopted in breach of either of those articles inapplicable.

- 51 In such circumstances, and unlike the case of non-transposition of directives with which the case-law cited by those two Governments is concerned, Directive 83/189 does not in any way define the substantive scope of the legal rule on the basis of which the national court must decide the case before it. It creates neither rights nor obligations for individuals.
- 52 In view of all the foregoing considerations, the answer to the question submitted must be that a national court is required, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed in Article 9 of Directive 83/189.

Costs

- 53 The costs incurred by the Italian, Belgian, Danish and Netherlands Governments and by the Commission, 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Pretore di Milano by order of 6 November 1998, hereby rules:

A national court is required, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed in Article 9 of Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189.

Rodríguez Iglesias

Sevón

Schintgen

Kapteyn

Gulmann

Puissochet

Ragnemalm

Wathelet

Skouris

Delivered in open court in Luxembourg on 26 September 2000.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President