

Court of Justice EU, 22 September 2016, Breitsamer und Ulrich v Landeshauptstadt München



ADVERTISING LAW – LABELLING

Every individual portion of honey closed by an aluminium seal supplied to mass caterers, constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or as part of pre-prepared meals for an all-inclusive price

• In the light of the foregoing considerations, the answer to the questions referred is that Article 1(3)(b) of Directive 2000/13 must be interpreted as meaning that each of the individual portions of honey presented in the form of portion-cups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.

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Court of Justice EU, 22 September 2016

(L. Bay Larsen, D. Šváby, J. Malenovský, M. Safjan (Rapporteur) and M. Vilaras)

JUDGMENT OF THE COURT (Third Chamber)

22 September 2016 (*)

(Reference for a preliminary ruling — Directive 2000/13/EC — Labelling and presentation of foodstuffs — Article 1(3)(b) — Concept of ‘pre-packaged foodstuff’ — Article 2 — Consumer information and protection — Article 3(1)(8) — Place of origin or provenance of a foodstuff — Article 13(1) — Labelling of a prepackaged foodstuff — Article 13(4) — Packaging or containers the largest surface of which has an area of less than 10 cm² — Directive 2001/110/EC — Article 2(4) — Indication of the country or countries of origin of honey — Individual portions of honey packaged in cartons supplied to mass caterers — Individual portions sold separately or supplied to ultimate consumers as part of meals for an all-inclusive price — Indication of the country or countries of origin of that honey)

In Case C-113/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany), made by decision of 11 February 2015, received at the Court on 6 March 2015, in the proceedings

Breitsamer und Ulrich GmbH & Co. KG

v

Landeshauptstadt München,

intervening party:

Landesanstaltschaft Bayern,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, D. Šváby, J. Malenovský, M. Safjan (Rapporteur) and M. Vilaras, Judges,

Advocate General: E. Sharpston,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 28 January 2016, after considering the observations submitted on behalf of:

– Breitsamer und Ulrich GmbH & Co. KG, by M. Kraus, Rechtsanwalt,

– Landeshauptstadt München, by S. Groth and K. Eichhorn, acting as Agents,

– Landesanstaltschaft Bayern, by R. Käß, Oberlandesanwalt,

– the European Commission, by S. Grünheid, K. Herbout-Borczak and K. Skelly, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 April 2016, gives the following

Judgment

1. This request for a preliminary ruling concerns the interpretation of Article 1(3)(b) 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) and of Article 2(2)(e) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

2. The request has been made in proceedings between Breitsamer und Ulrich GmbH & Co. KG and the Landeshauptstadt München (Federal State Capital Munich, Germany) concerning the obligation to indicate, on each individual portion of honey packaged in bulk in cartons supplied to mass caterers, the country of origin of that honey when those portions are sold separately or offered for sale to ultimate consumers in pre-prepared meals for an all-inclusive price.

Legal context

EU law

Directive 2000/13

3. According to recitals 4 to 6, 8, 14 and 15 of Directive 2000/13:

‘(4) *The purpose of this Directive should be to enact Community rules of a general nature applicable horizontally to all foodstuffs put on the market.*

(5) *Rules of a specific nature which apply vertically only to particular foodstuffs should be laid down in provisions dealing with those products.*

(6) *The prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.*

...

(8) *Detailed labelling, in particular giving the exact nature and characteristics of the product which enables the consumer to make his choice in full knowledge of the facts, is the most appropriate since it creates fewest obstacles to free trade.*

...

(14) *The rules on labelling should also prohibit the use of information that would mislead the purchaser or attribute medicinal properties to foodstuffs. To be effective, this prohibition should also apply to the presentation and advertising of foodstuffs.*

(15) *With a view to facilitating trade between Member States, it may be provided that, at stages prior to sale to the ultimate consumer, only information on the essential elements should appear on the outer packaging and certain mandatory particulars that must appear on a prepackaged foodstuff need appear only on commercial documents referring thereto.'*

4. Article 1 of that directive stated:

'1. This Directive concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer and certain aspects relating to the presentation and advertising thereof.

2. This Directive shall apply also to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers (hereinafter referred to as "mass caterers").

3. For the purpose of this Directive,

(a) "labelling" shall mean any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff;

(b) "pre-packaged foodstuff" shall mean any single item for presentation as such to the ultimate consumer and to mass caterers, consisting of a foodstuff and the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging.'

5. Article 2(1)(a)(i) of the directive provided:

'The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production.'

6. Article 3(1)(8) of the directive provided:

'In accordance with Articles 4 to 17 and subject to the exceptions contained therein, indication of the following particulars alone shall be compulsory on the labelling of foodstuffs:

...

(8) particulars of the place of origin or provenance where failure to give such particulars might mislead

the consumer to a material degree as to the true origin or provenance of the foodstuff.'

7. Article 4(2) of Directive 2000/13 was worded as follows:

'Community provisions applicable to specified foodstuffs and not to foodstuffs in general may provide that other particulars in addition to those listed in Article 3 must appear on the labelling.

...

8. Article 8(2)(c) of that directive stated:

'Where a prepackaged item consists of two or more individual prepackaged items containing the same quantity of the same product, the net quantity shall be indicated by mentioning the net quantity contained in each individual package and the total number of such packages. Indication of these particulars shall not, however, be compulsory where the total number of individual packages can be clearly seen and easily counted from the outside and where at least one indication of the net quantity contained in each individual package can be clearly seen from the outside.'

9. Article 13(1) and (4) of the directive provided:

'1. (a) When the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4(2) shall appear on the prepackaging or on a label attached thereto.

(b) Notwithstanding point (a) and without prejudice to Community provisions on nominal quantities, where prepackaged foodstuffs are:

– intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage,

– intended for supply to mass caterers for preparation, processing, splitting or cutting up, the particulars required under Articles 3 and 4(2) need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

(c) In the case referred to in point (b), the particulars referred to in Article 3(1) points 1, 5 and 7 and, where appropriate, that referred to in Article 10, shall also appear on the external packaging in which the foodstuffs are presented for marketing.

...

4. In the case of the glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar and packaging or containers the largest surface of which has an area of less than 10 cm² only the particulars listed in Article 3(1) points 1, 4 and 5 need be given.

...

10. Article 14 of the directive provided:

'Where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without prepackaging, or where foodstuffs are packaged on the sales premises at the consumer's request or prepackaged for direct sale, the Member States shall adopt detailed rules

concerning the manner in which the particulars specified in Article 3 and Article 4(2) are to be shown. They may decide not to require the provision of all or some of these particulars, provided that the purchaser still receives sufficient information.’

11. In accordance with Article 53(1) of Regulation No 1169/2011, Directive 2000/13 was repealed with effect from 13 December 2014 Directive 2001/110/EC

12. According to recital 5 of Council Directive 2001/110/EC of 20 December 2001 relating to honey (OJ 2002 L 10, p. 47):

‘The general food-labelling rules laid down in Directive [2000/13] should apply subject to certain conditions. In view of the close link between the quality of honey and its origin, it is indispensable that full information on those matters be available so that the consumer is not misled regarding the quality of the product. The particular consumer interests as regards the geographical characteristics of honey and full transparency in this regard necessitate that the country of origin where the honey has been harvested should be included in the labelling.’

13. Article 1 of Directive 2001/110 states:

‘This Directive shall apply to the products defined in Annex I. These products shall meet the requirements set out in Annex II.’

14. Article 2 of that directive provides:

‘Directive [2000/13] shall apply to the products defined in Annex I, subject to the following conditions:

1. the term “honey” shall be applied only to the product defined in Annex I, point 1, and shall be used in trade to designate that product;

...

4. (a) the country or countries of origin where the honey has been harvested shall be indicated on the label. However, if the honey originates in more than one Member State or third country that indication may be replaced with one of the following, as appropriate:

- “blend of EC honeys”,
- “blend of non-EC honeys”,
- “blend of EC and non-EC honeys”.

(b) For the purpose of Directive [2000/13] and in particular Articles 13, 14, 16 and 17 thereof, the particulars to be indicated according to subparagraph (a) shall be considered as indications according to Article 3 of that Directive.’

15. Annex I to Directive 2001/110 is headed ‘Names, product descriptions and definitions’.

German law

The Honey Regulation

16. Paragraph 3(4) and (5) of the Honigverordnung (Honey Regulation) of 16 January 2004 (BGBl. 2004 I, p. 92), in the version in force at the material time in the main proceedings (‘the Honey Regulation’), states:

‘(4) In addition to the information provided for by the [Lebensmittel-Kennzeichnungsverordnung (Food Labelling Regulation) of 15 December 1999 (BGBl. 1999 I, p. 2464, ‘the Food Labelling Regulation’)], the labelling of the products listed in Annex I must contain the following information which is to be indicated in accordance with subparagraph 5:

1. The country or countries of origin where the honey was produced; for honey produced in several countries of origin one of the following indications can be used to the extent that the honey was produced there:

- (a) “blend of EC honeys”,*
- (b) “blend of non-EC honeys”,*
- (c) “blend of EC and non-EC honeys”,*

...

(5) ... Moreover, the first and second sentences and the first half sentence of the third sentence of Paragraph 3(3) and subparagraph 4 of the Food Labelling Regulation apply mutatis mutandis to the manner in which the particulars under subparagraph 4 shall be shown.’

17. Paragraph 4(3) of the Honey Regulation prohibits the offer for sale of any product which does not display the indication required under Paragraph 3(4) of that regulation.

The Food Labelling Regulation

18. Paragraph 1(1) of the Food Labelling Regulation states:

‘This regulation applies to the labelling of packaged foodstuffs in prepackaging within the meaning of Paragraph 42(1) of the [Gesetz über das Inverkehrbringen und die Bereitstellung von Messgeräten auf dem Markt, ihre Verwendung und Eichung sowie über Fertigpackungen (Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging) of 25 July 2013 (BGBl. 2013 I, p. 2722)] which is intended to be supplied to consumers [Paragraph 3(4) of the Lebensmittel- und Futtermittelgesetzbuch (Food and Feed Safety Code)]. Restaurants, canteen caterers as well as commercial caterers are equivalent to a consumer in so far as food is intended to be consumed on their premises.’

19. Paragraph 3(3) and (4) of that regulation provides:

‘(3) The particulars laid down in subparagraph 1 must be marked in German on the prepackaging or on a label attached thereto in a conspicuous place in such a way as to be easily visible, clearly legible, indelible and easy to understand. The particulars laid down in subparagraph 1 may be given in another easily understandable language provided that the information to the consumer is not restricted. The particulars may not be covered or separated by other particulars or images; the particulars laid down in subparagraph 1(1), (4) and (5) and the particulars of quantity laid down in Paragraph 43(1) of the Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging must be indicated in the same field of vision. (4) By way of derogation from subparagraph 3, 1. the particulars laid down in subparagraph 1 concerning

(a) preprepared individual and ready-to-eat meals which are intended to be supplied to canteen caterers to be consumed on the premises,

(b) prepackaged food intended to be offered for sale under the name of a seller or of a company established in an EU Member State or another contracting State of

the European Economic Area Agreement, at the time of delivery to that seller,

(c) prepackaged food which is intended to be supplied to consumers within the meaning of the second sentence of Paragraph 1(1) for preparation, processing, splitting or supply, ...

...

can appear on the commercial documents relating to the food if it can be guaranteed that such documents, containing all the labelling information, either accompany the food to which they relate or were sent before or at the same time as delivery. In the cases outlined in subparagraph 4, points 1(b) and (c), the particulars laid down in subparagraph 1(1), (2) and (4) must also appear on the outer packaging of the food. In the case outlined in subparagraph 2(3), the particulars laid down in subparagraph 1(1) and (4) must not appear in the same window.'

Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging

20. Under Paragraph 42(1) of the Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging, 'prepackaging' is defined as packaging in any form in which the product is packaged in the absence of the buyer and sealed in the absence of the buyer so that the quantity of the packaged product cannot be changed without opening or noticeably tampering with its packaging.

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

21. Breitsamer und Ulrich, an undertaking operating in the European Union in the production and bottling of honey, places, inter alia, the product 'Breitsamer Imkergold' ('the honey in question') on the market. The product consists of 120 individual portions of 20 grams of the same honey in a portion-cup closed with an aluminium seal ('the individual portions of the honey in question'). Those 120 portions are placed in a carton sealed by that undertaking and sold in that form to mass caterers.

22. The mandatory particulars relating to that foodstuff and provided for in Directives 2000/13 and 2001/110, in particular, the country of origin of the honey, are indicated on that carton packaging. There is no indication of the country of origin on the individual portions of the honey in question.

23. On 30 October 2012, the Federal State Capital Munich fined the managing director of Breitsamer und Ulrich for infringing the statutory labelling requirements laid down in the Honey Regulation on the ground that, in the first half of 2011, that undertaking had put honey on the market in individual portions which did not indicate the country of origin of that honey.

24. On 5 November 2012, Breitsamer und Ulrich brought an action before the Verwaltungsgericht München (Administrative Court of Munich, Germany) for a declaration that it had not infringed the Honey Regulation by not indicating the country of origin of

the honey in question on each individual portion of that honey. In a judgment of 25 September 2013, the Verwaltungsgericht München (Administrative Court of Munich) dismissed that action.

25. Breitsamer und Ulrich appealed against that judgment to the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany) on the ground that the individual portions of the honey in question do not constitute 'prepackaged food' within the meaning of the Food Labelling Regulation, in the version in force at the material time in the case in the main proceedings. According to the applicant, they are not single items since those portions are supplied in carton packaging to mass catering establishments which do not sell the portions individually.

26. Breitsamer und Ulrich also refer to a document entitled 'Questions and answers on the application of Regulation (EU) No 1169/2011 on the provision of food information to consumers of 31 January 2013, drafted by a working group from the European Commission's Health and Consumer Directorate-General formed by experts from the Member States ('the expert group document'). According to paragraph 2.1.3 of that document, published on the Commission's website, 'considering the different forms of delivering food to the ultimate consumer in catering establishments, it should be noted that portion-cups (e.g. jams, honey, mustard) which are presented as part of a meal to the guests of mass caterers should not be considered as units of sale. Therefore, it would be sufficient that, in such cases, the food information appear on multipacks'.

27. Lastly, Breitsamer und Ulrich submits that no objection has been made to the labelling of individual portions of honey produced by other undertakings or originating in Member States other than the Federal Republic of Germany even though those portions did not bear an indication of the country of origin of that honey.

28. The Landesanstalt für Lebensmittelsicherheit Bayern (Federal State Representative of Bavaria, Germany), a party to the main proceedings, submits that the intention underlying EU law militates in favour of informing the consumer about the food supplied to him as completely as possible and that the nature of the individual portions of the honey in question as 'prepacked' goods is not altered by the fact that they are packaged in a sealed carton.

29. According to the referring court, the honey in question falls under Annex I to the Honey Regulation, the transposition into German law of Directive 2001/110.

30. In those circumstances, the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are individual portions of honey which are packaged in bulk in a carton containing all the labelling elements, including the indication of the country of origin, and which are not sold as individual

portions to ultimate consumers nor supplied individually to mass caterers, “prepackaged foodstuff” or “prepacked food” within the meaning of Article 1(3)(b) of Directive 2000/13/EC and Article 2(2)(e) of Regulation (EU) No 1169/2011 respectively, for which there is a corresponding labelling requirement, or are such portions of honey not subject to the labelling requirements for prepackaged foodstuff/prepacked foods due to their not being offered for sale as a single item?

(2) Is the answer different if those individual portions are supplied in mass catering establishments not only in meals that are paid for as a whole but are also sold individually?’

The questions referred for a preliminary ruling

31. By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 1(3)(b) of Directive 2000/13 must be interpreted as meaning that each of the individual portions of honey presented in the form of portion-cups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.

32. As a preliminary matter, it should be noted that, according to the questions referred by the referring court, the individual portions of honey in question may be sold separately to the ultimate consumer in mass catering establishments, a statement which is contested by Breitsamer und Ulrich.

33. In that regard, according to settled case-law of the Court, 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. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see [judgments of 5 December 2006, Cipolla and Others, C-94/04 and C-202/04, EU:C:2006:758](#), paragraph 25, and of 7 April 2016, KA Finanz, C-483/14, EU:C:2016:205, paragraph 41).

34. That presumption of relevance cannot be rebutted by the simple fact that one of the parties to the main proceedings contests certain facts, the accuracy of which is not a matter for the Court to determine and on which the delimitation of the subject matter of those proceedings depends (see [judgments of 5 December 2006, Cipolla and Others, C-94/04 and C-202/04, EU:C:2006:758](#), paragraph 26, and of 14 April 2016, Polkomtel, C-397/14, EU:C:2016:256, paragraph 38).

35. In the present case, the issue whether the individual portions of honey in question are also sold separately is

part of the factual background of the case in the main proceedings, a matter which is not for the Court to ascertain.

36. In those circumstances, the Court considers it appropriate to answer the questions referred for a preliminary ruling by the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court). Nevertheless, in so far as concerns Regulation No 1169/2011, the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

37. Under Article 1(3)(b) of Directive 2000/13, ‘pre-packaged foodstuff’ within the meaning of that directive is defined as any single item for presentation as such to the ultimate consumer and to mass caterers, consisting of a foodstuff and the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging.

38. Under Article 13(1)(a) of that directive, when the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4(2) of the directive are to appear on the prepackaging or on a label attached thereto.

39. In that regard, Article 3(1)(8) of the directive provides that, among those particulars, the particulars of the place of origin or provenance must appear where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff.

40. Under recitals 4 and 5 of Directive 2000/13, the purpose of that directive is to enact rules of a general nature applicable horizontally to all foodstuffs put on the market, whilst rules of a specific nature which apply vertically only to particular foodstuffs should be laid down in provisions dealing with those products.

41. It must be found that Directive 2001/110 establishes such specific rules regarding honey. In accordance with Article 1 of that directive, the directive applies to the products defined in Annex I thereto. In the present case, it is common ground that the honey in question constitutes such a product.

42. The first sentence of Article 2 of Directive 2001/110 provides that Directive 2000/13 is to apply to the products defined in Annex I to Directive 2001/110, subject to certain conditions. As for Article 2(4)(a) of Directive 2001/110, that article provides, in essence, that, for the purposes of Directive 2000/13 and, in particular, of Articles 13 and 14 thereof, the particulars of the origin of the honey are considered to be particulars within the meaning of Article 3 of the latter directive.

43. Those provisions are clarified by recital 5 of Directive 2001/110, which states that ‘the general food-labelling rules laid down in Directive [2000/13] should apply subject to certain conditions. In view of the close link between the quality of honey and its origin, it is indispensable that full information on those matters be available so that the consumer is not misled regarding the quality of the product. The particular consumer

interests as regards the geographical characteristics of honey and full transparency in this regard necessitate that the country of origin where the honey has been harvested should be included in the labelling’.

44. It therefore follows from a combined reading of those two directives that the particulars of the country of origin of the honey must mandatorily appear on the prepackaging or on a label attached to a product covered by Directive 2001/110 since, in all cases, failure to give such particulars is capable of misleading the consumer to a material degree as to the true origin of the honey within the meaning of Article 3(1)(8) of Directive 2000/13.

45. Furthermore, Article 1(2) of Directive 2000/13 states that it is also to apply to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers, referred to as ‘mass caterers’. In the present case, as appears from the order for reference, the individual portions of the honey in question, packed in cartons, were supplied to such mass caterers.

46. However, it must be ascertained whether the derogations provided for in Article 13(1)(b) and Article 14 of Directive 2000/13 respectively are not to be applied in circumstances such as those in the case in the main proceedings.

47. In the first place, the first and second indents of Article 13(1)(b) of that directive provide, first, that where prepackaged foodstuffs are intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage and, second, where prepackaged foodstuffs are intended for supply to mass caterers for preparation, processing, splitting or cutting up, the particulars required under Articles 3 and 4(2) of the directive need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

48. However, those provisions are not applicable to circumstances such as those at issue in the main proceedings. As appears from the order for reference, the individual portions of the honey in question are presented in the form of portion-cups closed by an aluminium seal by Breitsamer und Ulrich that are offered as such to the ultimate consumer by the mass caterer to which they are supplied.

49. Consequently, although those portions intended for the ultimate consumer are marketed at a stage prior to their sale to him, the portions are sold to mass caterers, unlike the case referred to in the first indent of Article 13(1)(b) of Directive 2000/13. Moreover, the honey in question is not prepared, processed, split or cut up by those mass caterers within the meaning of the second indent of Article 13(1)(b) of that directive.

50. As regards, in the second place, Article 14 of Directive 2000/13, that article states that, where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without prepackaging, or where

foodstuffs are packaged on the sales premises at the consumer’s request or prepackaged for direct sale, the Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4(2) of that directive are to be shown and they may decide not to require the provision of all or some of these particulars, provided that the purchaser still receives sufficient information.

51. In the present case, it is common ground that the individual portions of the honey in question are not packaged on the sales premises at the consumer’s request or prepackaged for direct sale so that the cases referred to in Article 14 of the directive are irrelevant.

52. Accordingly, in the light of the situation referred to in Article 13(1)(a) of Directive 2000/13, the obligation to label individual portions of honey such as those at issue in the main proceedings, and therefore to indicate the particulars of the country or countries of origin of that honey in accordance with Article 2(4)(a) of Directive 2001/110, depends on whether those portions must be considered to be ‘pre-packaged foodstuffs’ for the purposes of Article 1(3)(b) of Directive 2000/13.

53. In that regard, it is clear from Article 8(2)(c) of Directive 2000/13 that a prepackaged item may consist of two or more individual prepackaged items. Therefore, the mere fact that cartons in which the individual portions of the honey in question are packaged could themselves be regarded as prepackaging does not mean that those individual portions may not be ‘pre-packaged foodstuffs’ within the meaning of Article 1(3)(b) of Directive 2000/13.

54. In the present case, individual portions of honey such as those at issue in the main proceedings satisfy several of the conditions provided for in Article 1(3)(b) of Directive 2000/13 for being regarded as ‘pre-packaged foodstuffs’ within the meaning of that provision.

55. As is apparent from the facts set out in paragraph 48 above, first, the individual portions of the honey in question are intended to be offered as such to the ultimate consumer after the mass caterer to whom the carton was delivered has opened the carton and, second, those portions were packed before being offered for sale and their packaging encloses them completely in such a way that their contents cannot be altered without opening or changing the packaging.

56. However, it should be noted that there are differences between the various language versions of Article 1(3)(b) of Directive 2000/13.

57. Thus, the versions in English (‘any single item’) and in Polish (‘każd[a] pojedyncz[a] sztuk [a]’), in particular, use terms which refer to a single element, without further qualification. However, other language versions of the same provision, such as the versions in Spanish (‘la unidad de venta’), German (‘die Verkaufseinheit’) or French (‘l’unité de vente’), also refer to a single element, but with reference in addition to the concept of a ‘sale’.

58. According to the Court’s settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the

interpretation of that provision or be given priority over the other language versions in that regard. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgments of 27 March 1990, Cricket St Thomas, C-372/88, EU:C:1990:140, paragraphs 18 and 19; of 15 November 2012, Kurcums Metal, C-558/11, EU:C:2012:721, paragraph 48; and of 17 March 2016, Kødbranchens Fællesråd, C-112/15, EU:C:2016:185, paragraph 36).

59. As regards the general scheme of Directive 2000/13, it should be noted that, although the various language versions of Article 1(3)(b) of that directive differ, that provision, in any event, mentions being offered for ‘sale’, whether it be in Spanish (‘puesto a la venta’), in

German (‘vor dem Feilbieten’), in English (‘being offered for sale’), in French (‘présentation à la vente’) or in Polish (‘oferowanie na sprzedaż’).

60. Article 13(1) of the directive, concerning prepackaged foodstuffs, also refers to the ‘sale’ of foodstuffs. In the same vein, Article 14 of Directive 2000/13 refers to the case where foodstuffs are offered for ‘sale’ to the ultimate consumer or to mass caterers without prepackaging.

61. Moreover, other provisions of that directive refer to the ‘purchaser’. In addition to Article 14, Article 2(1)(a)(i) of the directive states that the labelling and methods used must not be such as could mislead the purchaser to a material degree, particularly as to the characteristics of the foodstuff including its origin or provenance.

62. Consequently, it follows from the general scheme of Directive 2000/13 that, in addition to the other conditions laid down in Article 1(3)(b) of that directive, the labelling obligation under Article 13(1) of the directive concerns foodstuffs intended to be presented as such for sale to the ultimate consumer and mass caterers.

63. That may take the form of the separate sale of individual portions of honey such as those at issue in the main proceedings to the ultimate consumer in a mass catering establishment, such as a restaurant or a canteen.

64. Such a situation also arises where those portions are offered for sale as part of a preprepared meal for an all-inclusive price, for instance as part of a set menu prepared in a mass catering establishment or as a component of a hotel buffet.

65. As the Advocate General stated in [point 54 of her Opinion](#), that fixed price covers all of the goods and services needed in supplying that meal and therefore includes the various components of the meal, including, where relevant, individual portions of honey such as those at issue in the main proceedings.

66. That interpretation of Article 1(3)(b) of Directive 2000/13 is supported by the purpose of the directive.

67. It appears both from recital 6 and Article 2 of the directive that its aim is to inform and protect the ultimate consumer of foodstuffs, in particular as regards the nature, identity, properties, composition, quantity, durability, origin or provenance and method of manufacture or production of those products (judgment of 23 November 2006, Lidl Italia, C-315/05, EU:C:2006:736, paragraph 47 and the case-law cited).

68. In that regard, as recital 8 of Directive 2000/13 states, detailed labelling, in particular giving the exact nature and characteristics of the product, must enable the consumer to make his choice in full knowledge of the facts.

69. Accordingly, that directive requires that the consumer have correct, neutral and objective information that does not mislead him (see, to that effect, [judgment of 4 June 2015, Teekanne, C-195/14, EU:C:2015:361, paragraph 32](#) and the case-law cited).

70. As was stated in paragraph 43 above, it is apparent from recital 5 of Directive 2001/110 that the particular interest which the consumer has in the geographical characteristics of honey and full transparency in that regard necessitate that the country of origin in which the honey was harvested should be included in the labelling.

71. Such an indication on individual portions of honey such as those at issue in the main proceedings therefore helps, as regards the decision to purchase separately or whether to consume or not that honey where it is offered as part, or available as part, of a pre-prepared meal sold for a fixed price, to enable the ultimate consumer to make his choice in full knowledge of the facts.

72. It should be added that, under Article 13(4) of Directive 2000/13, in the case of packaging or containers the largest surface of which has an area of less than 10 cm², only the particulars listed in Article 3(1), points 1, 4 and 5 of that directive need be given. Accordingly, in that case, an indication of the country of origin, which appears in Article 3 (1)(8), would not be required.

73. All of the interested parties present at the hearing submitted that the largest surface of the individual portions of the honey in question had a surface area greater than 10 cm².

74. It is for the referring court to ascertain whether that area is in fact greater than 10 cm². Should that not be the case, it would not be necessary, in accordance with Article 13(4) of Directive 2000/13, to indicate the country of origin on individual portions of honey such as those at issue in the main proceedings.

75. If it is the case, it follows from all the foregoing considerations that each of the individual portions of honey in the form of portion-cups closed by an aluminium seal packed in a carton closed by a food business operator and sold in that form to mass caterers constitutes a ‘pre-packaged foodstuff’, subject to the obligation to indicate the country of origin of the honey, where the mass caterers sell those portions separately or offer them for sale to the ultimate

consumer as part of pre-prepared meals for an all-inclusive price.

76. None of the arguments to the effect that there is no requirement to label individual portions of honey such as those at issue in the main proceedings is capable of calling that interpretation into question.

77. First, one argument is that it follows from the expert group document, cited in paragraph 26 above, that individual portion-cups of honey presented to the ultimate consumer as part of a meal in a catering establishment are not to be regarded as single items and that, as a result, an indication of the origin of that honey must appear only on the carton.

78. However, suffice it to note that the expert group document is not in any way binding. The document itself indeed states in paragraph 1 that it has no formal legal status and that, in the event of a dispute, ultimate responsibility for the interpretation of EU legislation lies with the Court.

79. Second, according to a second argument, a food business operator may label on each individual portion of honey a note such as ‘may not be sold separately’, as a result of which, there being no separate sale, an indication of the country of origin of the honey on each of those portions is allegedly not required by Directive 2000/13.

80. However, as was stated in paragraphs 63 and 64 above, the obligation to label individual portions of honey such as those at issue in the main proceedings, in accordance with Article 13(1)(a) of Directive 2000/13, concerns inter alia the case in which those portions are intended to be offered for sale as such to the ultimate consumer in a mass catering establishment, namely where those portions are sold separately or where they are offered for sale in pre-prepared meals for an all-inclusive price.

81. In those circumstances, there is no need to distinguish between whether or not the individual portions of honey such as those at issue in the main proceedings are sold separately.

82. In the light of the foregoing considerations, the answer to the questions referred is that Article 1(3)(b) of Directive 2000/13 must be interpreted as meaning that each of the individual portions of honey presented in the form of portion-cups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.

Costs

83. 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 (Third Chamber) hereby rules:

Article 1(3)(b) 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 must be interpreted as meaning that each of the individual portions of honey presented in the form of portioncups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.

[Signatures]

* Language of the case: German.

OPINION OF ADVOCATE GENERAL SHARPSTON

delivered on 5 April 2016 (1)

Case C-113/15

Breitsamer und Ulrich GmbH & Co. KG

v

Landeshauptstadt München

(Reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany))

(Directive 2001/110/EC — Article 2(4) — Indication of the country or countries of origin where honey has been harvested — Directive 2000/13/EC — Article 1(3)(b) — Meaning of ‘pre-packaged foodstuff’ — Whether to indicate the country of origin on individual portions of honey sold in cartons to mass caterers and subsequently sold separately or included in purchased meals — Article 13(4) — Scope of the exception for small packaging — Regulation (EU) No 1169/2011 — Article 2(2)(e) — Meaning of ‘pre-packed food’ — Article 16(2) — Scope of exception for small packaging)

1. The present case concerns the labelling of individual portions of honey which are packaged and sold together in a carton whose label indicates the country of origin of the honey. The Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court) asks in essence whether EU legislation requires that the country of origin of the honey also be stated on each individual portion which is subsequently either sold separately or included in a purchased meal. That question has arisen in the context of proceedings brought by an undertaking harvesting and bottling honey (Breitsamer und Ulrich GmbH & Co. KG; ‘Breitsamer’) against the Landeshauptstadt München (City of Munich). Breitsamer was fined in 2012 for placing individual portions on the market during the first half of 2011 without indicating the country of origin of the honey.

EU law

Labelling of foodstuffs: Directive 2000/13 and Regulation No 1169/2011

2. Directive 2000/13/EC (2) (‘the Foodstuffs Labelling Directive’) consolidated previous legislation approximating the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. (3) Its purpose was to enact EU rules of a general nature to be applied to all foodstuffs put on the

market. (4) Specific rules applying only to particular foodstuffs were to be laid down in separate provisions dealing with those products. (5) The prime consideration for any rules on the labelling of foodstuffs was the need to inform and protect the consumer. (6) Detailed labelling, in particular describing the exact nature and characteristics of the product so as to enable the consumer to choose in full knowledge of the facts, was considered to be the most appropriate since it created the fewest obstacles to free trade. (7)

3. Article 1(1) stated that the Foodstuffs Labelling Directive was concerned, *inter alia*, with the labelling of foodstuffs to be delivered as such to the ultimate consumer. Article 1(2) extended the directive's scope to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers (collectively defined by the directive as 'mass caterers').

4. Article 1(3)(a) defined 'labelling' as '*... any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff*'. Article 1(3)(b) stated that a 'pre-packaged foodstuff' meant '*... any single item for presentation as such to the ultimate consumer and to mass caterers, consisting of a foodstuff and the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging*'.

5. In accordance with Article 2(1)(a)(i), labelling could not be such as to mislead the purchaser to a material degree, particularly as to the characteristics of the foodstuff which included its origin. Article 2(3)(a) stated that that rule also applied to the presentation of foodstuffs, in particular their shape, appearance or packaging, the packaging materials used, the way in which they were arranged and the setting in which they were displayed.

6. Article 3(1) provided that '*in accordance with Articles 4 to 17 and subject to the exceptions contained therein, indication of the ... particulars [listed in items (1) to (10)] alone shall be compulsory on the labelling of foodstuffs*'. (8) Item (8) in that list was worded as follows: '*particulars of the place of origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff*'.

7. Pursuant to Article 4(2), EU provisions applicable to specified foodstuffs could require that other particulars, in addition to those listed in Article 3, be given on the labelling. In the absence of such EU provisions, Member States nevertheless themselves could provide for such particulars to be shown in accordance with the procedure laid down in Article 19. (9)

8. Article 13(1)(a) required that the particulars provided for in Articles 3 and 4(2) be shown on the pre-packaging or on a label attached to the pre-packaging. Notwithstanding that requirement and without

prejudice to EU provisions on nominal quantities, Article 13(1) (b) stated that, where such foodstuffs were intended '*... for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage [first indent] [or] for supply to mass caterers for preparation, processing, splitting or cutting up [second indent] ...*', those particulars needed to appear only on the commercial documents referring to the foodstuffs where it could be guaranteed that such documents, containing all the labelling information, either accompanied the foodstuffs to which they referred or were sent before or at the same time as delivery. (10)

9. Article 13(4) set out circumstances in which less mandatory information had to be stated. In particular, only the particulars at items (1), (4) and (5) in Article 3(1) (11) needed to be given in the case of '*... packaging or containers the largest surface of which has an area of less than 10 cm² ...*'.

10. The first paragraph of Article 14 provided that '*where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without pre-packaging, or where foodstuffs are packaged on the sales premises at the consumer's request or pre-packaged for direct sale, the Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4(2) are to be shown*'. The second paragraph of Article 14 authorised Member States not to require all or some of those particulars to be stated, provided that the purchaser still received sufficient information.

11. Regulation (EU) No 1169/2011 (12) repealed, *inter alia*, the Foodstuffs Labelling Directive as from 13 December 2014. (13)

12. According to recital 3 of Regulation No 1169/2011, in order to achieve a high level of health protection for consumers and to guarantee their right to information, it is necessary to ensure that they are appropriately informed about the food they consume. Recital 8 states that the general labelling requirements are complemented by provisions applicable to all foods in particular circumstances or to certain categories of foods and that, in addition, there are specific rules that apply to specific foods. According to recital 17, the prime consideration behind requiring mandatory food information is to enable consumers to identify and make appropriate use of a food and to make choices that suit their individual dietary needs. Recital 20 states that food information law should prohibit the use of information that would mislead the consumer in particular as to the characteristics of the food, its effects or properties. To be effective, that prohibition should also apply to the advertising and presentation of foods. Recital 22 identifies the need to draw up a list of all mandatory information which should in principle be provided for all foods intended for the final consumer and mass caterers. That list should maintain the information that is already required under existing EU legislation given that that is generally considered to be a valuable *acquis* in terms of consumer information.

Recital 32 notes that mandatory origin provisions have been developed on the basis of ‘vertical approaches’ — for instance for honey — and refers, in that regard, to Council Directive 2001/110/EC (14) (‘the Honey Directive’).

13. In accordance with Article 1(2), Regulation No 1169/2011 ‘... lays down the means to guarantee the right of consumers to information and procedures for the provision of food information ...’. Article 1(3) states that the regulation applies to ‘... food business operators at all stages of the food chain, where their activities concern the provision of food information to consumers’ and ‘... all foods intended for the final consumer, including foods delivered by mass caterers, and foods intended for supply to mass caterers’. Article 1(4) provides that the regulation applies also without prejudice to labelling requirements contained in specific EU provisions applicable to particular foods.

14. ‘Placing on the market’ means ‘... the holding of food ... for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves’ (Article 2(1)(a)). (15) ‘Mandatory food information’ means ‘... the particulars that are required to be provided to the final consumer by Union provisions’ (Article 2(2)(c)). ‘Pre-packed food’ corresponds with what was ‘pre-packaged food’ under the Foodstuffs Labelling Directive: its definition in Article 2(2)(e) is similar to that in Article 1(3)(b) of the latter (although Article 2(2)(e) refers to ‘food’ and ‘final consumer’ instead of ‘foodstuff’ and ‘ultimate consumer’). The definition of ‘pre-packed food’ does not cover foods packed on the sales premises at the consumer’s request or pre-packed for direct sale (Article 2(2)(e)). Article 2(3) states that the country of origin of a food means the origin of a food as determined in accordance with Articles 23 to 26 of Regulation (EEC) No 2913/92. (16)

15. Article 3(1) provides that ‘the provision of food information shall pursue a high level of protection of consumers’ health and interests by providing a basis for final consumers to make informed choices and to make safe use of food ...’.

16. The basic requirement, laid down in Article 6, is that any food intended for supply to the final consumer or to mass caterers is to be accompanied by food information in accordance with the regulation.

17. Article 8 is headed ‘Responsibilities’. Paragraph 6 concerns information relating to non-prepackaged food intended for the final consumer. As regards that category of food, food business operators, within the business under their control, are to ensure that such information is transmitted to the food business operator receiving the food in order to enable, when required, the provision of mandatory food information to the final consumer.

18. Article 9(1)(i) requires that, where provided for in Article 26 (17) (in accordance with Articles 10 to 35 and subject to the exceptions contained in Chapter IV on mandatory food information), the country of origin or place of provenance must be indicated.

19. In the case of pre-packaged food, Article 12(2) requires that mandatory food information appears directly on the package or on a label attached thereto.

20. Article 16(2) provides that, in the case of packaging or containers the largest surface of which has an area of less than 10 cm², only items (a), (c), (e) and (f) of the particulars listed in Article 9(1) (18) are mandatory on the package or on the label. The particulars referred to in item (b) of Article 9(1) (19) are to be provided through other means or are to be made available at the request of the consumer. Recital 39 explains that the purpose of that exemption is to avoid placing unnecessary burdens on food business operators and that it applies unless other EU rules make it mandatory to provide such information.

21. Article 26 lays down detailed provisions concerning, inter alia, the indication of the country of origin of the food. Article 26(1) states that it applies without prejudice to labelling requirements provided for in specific EU provisions. In accordance with Article 26 (2)(a), the indication of the country of origin or place of provenance is mandatory ‘where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance’. (20)

22. Where foods are offered for sale to the final consumer or to mass caterers without pre-packaging, or where foods are packed on the sales premises at the consumer’s request or pre-packed for direct sale, Article 44(1) states that (a) the provision of the particulars specified in point (c) of Article 9(1) is mandatory and (b) the provision of other particulars referred to in Articles 9 and 10 (21) is not mandatory unless Member States adopt national measures requiring the provision of some or all of those particulars or elements of those particulars. According to Article 44(2), Member States may adopt national measures concerning the means through which the particulars or elements of those particulars specified in Article 44(1) are to be made available and, where appropriate, their form of expression and presentation.

23. Article 54 sets out transitional measures. The first subparagraph of Article 54(1) provides that foods placed on the market or labelled prior to 13 December 2014 that do not comply with the requirements of Regulation No 1169/2011 may be marketed until their stocks are exhausted.

Production and marketing of honey: the Honey Directive

24. The Honey Directive recast Directive 74/409/EEC (22) in order to make the rules on the conditions for producing and marketing honey more accessible and to bring the latter directive into line with general EU law on foodstuffs, particularly legislation on, inter alia, labelling. (23) Recital 5 states that the general food labelling rules in the Foodstuffs Labelling Directive should apply subject to certain conditions. In view of

the close link between the quality of honey and its origin, it is indispensable that full information on those matters (that is, the quality and origin of the honey) be available so that the consumer is not misled regarding the quality of the product. The particular consumer interests as regards the geographical characteristics of honey and full transparency in that regard require that the country of origin (that is, where the honey was harvested) be included in the labelling.

25. Article 1 provides that the Honey Directive is to apply to the products defined in Annex I ('Names, product descriptions and definitions'). Those products must meet the requirements set out in Annex II ('Composition criteria for honey').

26. Article 2 confirms that the Foodstuffs Labelling Directive applies to the products defined in Annex I to the Honey Directive, subject to a series of conditions which it sets out. The condition laid down in Article 2(4)(a) is that 'the country or countries of origin where the honey has been harvested shall be indicated on the label'. Article 2(4)(a) also states that, '... if the honey originates in more than one Member State or third country that indication may be replaced with ... as appropriate: "blend of EC honeys", "blend of non-EC honeys", "blend of EC and non-EC honeys"'. Article 2(4)(b) stipulates that, for the purposes of the Foodstuffs Labelling Directive and in particular Articles 13, 14, 16 and 17 thereof, the particulars to be indicated according to Article 2(4)(a) of the Honey Directive are to be considered as indications under Article 3 of the Foodstuffs Labelling Directive.

27. The Honey Directive was amended by Directive 2014/63/EU (24) which entered into force on 23 June 2014 and thus after the individual portions of honey at issue were put on the market. Article 2(1) and (2) of Directive 2014/63 states that the deadline for Member States to apply the laws, regulations and administrative provisions necessary to comply with points (1), (2) and (6) of Article 1 ('Amendments') and Article 3 ('Transitional measures') of Directive 2014/63 was 24 June 2015. According to Article 3, products placed on the market or labelled before 24 June 2015 in accordance with the Honey Directive may continue to be marketed until the exhaustion of stocks. (25) In any event, as regards the indication of the country of origin, Directive 2014/63 merely adjusts the Honey Directive to the entry into force of the Treaty of Lisbon by replacing the reference to 'EC' in Article 2(4) (a) of the Honey Directive by a reference to 'EU'. (26)

German law

28. 'Pre-packaging' is defined by Paragraph 42(1) of the Gesetz über das Inverkehrbringen und die Bereitstellung von Messgeräten auf dem Markt, ihre Verwendung und Eichung sowie über Fertigpackungen (Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on pre-packaging) of 25 July 2013 as packaging in any form in which the product is packaged in the absence of the buyer and which is sealed in the absence of the buyer so that the quantity of the packaged product cannot be changed without opening or

noticeably tampering with the packaging. The national court states that both EU and national legislation consider the fact that a single item is offered for sale to be decisive both for, respectively, 'prepackaging' and 'prepacked food'.

29. Paragraph 1(1) of the Lebensmittel-Kennzeichnungsverordnung (the Food Labelling Regulation) (27) provides that that regulation applies to the labelling of pre-packaged foodstuffs that are intended to be supplied to consumers. Restaurants, canteen caterers and commercial caterers constitute 'consumers' in so far as food is consumed on their premises.

30. Paragraph 3(4) of the Honigverordnung (the Honey Regulation) of 16 January 2004, which according to the referring court corresponds to Article 2(4)(a) of the Honey Directive, provides that, in addition to the information provided for by the Food Labelling Regulation, the labelling of the products listed in Annex 1 (which states the definitions of and names under which honey may be sold and, according to the referring court, includes the product at issue) must contain the country or countries of origin where the honey has been harvested. For honey harvested in several countries of origin and to the extent that the honey was harvested there, the indications comprise (a) 'blend of EC honeys', (b) 'blend of non-EC honeys' and (c) 'blend of EC and non-EC honeys'.

31. Paragraph 3(3), first sentence, of the Food Labelling Regulation — which (according to Paragraph 3(5) of the Honey Regulation) also applies to the information to be included on the label pursuant to Paragraph 3(4) of the Honey Regulation — states that the information must be marked on the packaging or on a label attached thereto, in German and in a conspicuous place so that it is easily visible, clearly legible, indelible and easy to understand. Paragraph 4(3) of the Honey Regulation prohibits the placing on the market of products that do not satisfy the mandatory requirements of Paragraph 3(4) of the Honey Regulation.

Facts, procedure and questions referred

32. One product which Breitsamer places on the market is 'Breitsamer Imkergold'. This product consists of 120 individual portions of 20 grams of the same honey, each closed with an aluminium seal. The labels or packaging of the individual portions do not indicate the country of origin of the honey. The 120 portions are contained in a single carton. The label on each carton contains the necessary information, including the country of origin of the honey.

33. On 30 October 2012, the City of Munich imposed a fine on the manager of Breitsamer for having placed on the market individual portions of honey whose packaging or label did not state the country of origin of the honey. On 5 November 2012, Breitsamer lodged an administrative complaint against that fine with the City of Munich. That same day, it brought an administrative action before the Verwaltungsgericht München (Administrative Court, Munich) for a declaratory judgment that no statement of country of origin was

required because the individual portions were not intended to be sold separately on the market and thus were not pre-packaged foodstuffs. Upon Breitsamer's request, the City of Munich suspended the administrative proceedings before it. On 25 September 2013, the Verwaltungsgericht München (Administrative Court, Munich) dismissed Breitsamer's action for a declaratory judgment. Breitsamer appealed against that judgment to the referring court.

34. Against that background, the referring court has asked the Court for guidance on the following questions:

'(1) Are individual portions of honey which are packaged in bulk in a carton containing all the labelling elements, including the indication of the country of origin, and which are not sold as individual portions to final consumers nor supplied individually to mass caterers, "pre-packaged foodstuff" or "pre-packed food" within the meaning of Article 1(3)(b) of [the Foodstuffs Labelling Directive] and Article 2(2)(e) of Regulation No 1169/2011 respectively, for which there is a corresponding labelling requirement, or are such portions of honey not subject to the labelling requirements for pre-packaged foodstuff/pre-packed foods due to their not being offered for sale as a single item?

(2) Is the answer different if those individual portions are supplied in mass catering establishments not only in meals that are paid for as a whole but are also sold individually?'

35. Breitsamer, the Landesadvokatur Bayern (Public Prosecutor's Office for the Land of Bavaria, Germany), the City of Munich and the European Commission filed written observations and presented oral argument at the hearing held on 28 January 2016.

Assessment

Preliminary remarks

36. By its two questions, the referring court in essence asks whether EU legislation requires the country of origin of honey to be stated on individual portions of honey which are packaged and sold together in a carton to mass caterers, where they are either subsequently sold separately to the ultimate consumer of the honey or supplied to him as part of a purchased meal. From the reference and the written observations filed and despite the formulation of the first question, it is not clear to me whether the individual portions of honey at issue in the main proceedings were (and continue to be) eventually sold separately to their ultimate consumers. In any event, that is a matter of fact to be decided by the competent national court. Furthermore, whether the facts at issue are covered by either the first or the second question is not material to my analysis of both; as I see it, answering either question involves taking into account the factual premiss of the other.

37. The referring court seeks clarification on the labelling requirements for honey under both the Foodstuffs Labelling Directive and Regulation No 1169/2011. It is common ground that, when the contested fine was imposed, the Foodstuffs Labelling Directive applied. (28) It is, therefore, that directive,

rather than Regulation No 1169/2011, which is relevant to the outcome of Breitsamer's administrative complaint. (29) However, the court proceedings brought by Breitsamer leading to the present reference seek to obtain a declaratory judgment to the effect that placing individual portions of honey grouped together within a carton on the market is not subject to the requirement that the country of origin be stated on each individual portion. The referring court notes that Breitsamer intends to continue its practice (if it is lawful for it to do so, I assume). Regulation No 1169/2011 (including its transitional rules (30)) is relevant to Breitsamer's activities as of 13 December 2014. I shall therefore consider the questions referred under both the Foodstuffs Labelling Directive and Regulation No 1169/2011.

The Honey Directive and the Foodstuffs Labelling Directive

38. The referring court explains that the honey at issue is covered by Annex I to the Honey Directive. (31) The Foodstuffs Labelling Directive also applies to that honey, subject to certain conditions. (32) Both directives thus apply together even if the Honey Directive sets out more specific rules in matters covered by both directives.

39. The Honey Directive read in isolation does not answer the questions troubling the referring court. Whilst the Honey Directive requires the country or countries of origin of the honey to be indicated on the label and lays down rules governing what that indication should comprise, (33) it does not specify to what precise product or at what specific stage in the supply chain that label must be attached. Did the Foodstuffs Labelling Directive, in so far as it applied horizontally to all foodstuffs put on the market, (34) lay down such detailed requirements?

40. In my view, it did.

41. The Foodstuffs Labelling Directive was concerned with the labelling of foodstuffs *'to be delivered as such to the ultimate consumer'* and those *'intended for supply to ... mass caterers'*. (35) Labelling requirements differed depending on whether or not the foodstuffs were pre-packaged. If foodstuffs were packaged prior to their sale, then certain mandatory labelling requirements applied. (36) If they were not pre-packaged, were packaged on the sales premises at the consumer's request or were pre-packaged for direct sale, Member States were to adopt detailed rules on how the particulars in Articles 3 and 4(2) had to be shown and could decide not to require that all or some of these particulars were provided as long as the purchasers still received sufficient information. (37)

42. It follows that, if the individual portions of honey at issue were pre-packaged foodstuffs, their packaging or label had to state in principle *'particulars of the place of origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff'*. (38) Whilst Article 3(1) (8) of the Foodstuffs Labelling Directive thus suggested that that requirement was in principle conditional, it seems to

me that that condition was automatically satisfied where the foodstuff was honey. That is because the legislature has expressly accepted in the Honey Directive that it is indispensable that full information on the origin of honey is available so that the consumer is not misled regarding the quality of the honey (which is closely linked to its origin). (39) Thus, under the Honey Directive, indicating the origin on the label is in principle an unqualified obligation. (40)

43. It is common ground that the individual portions of honey at issue are covered by the second and third elements of the definition of ‘pre-packaged’ honey in the Foodstuffs Labelling Directive. (41) It would appear that the honey is packaged into a small container which is closed with an aluminium seal, that opening the seal is required to alter its contents and that the honey was packaged in this manner before it was offered for sale (either individually or as part of a carton of individual portions). When any given individual portion of honey finally reached the stage in the supply chain where it was to be consumed, the honey was packaged in that manner. At the preceding stage, that packaged honey was packaged, together with other similar individual portions of honey, within a carton.

44. The main disagreement between the parties concerns whether, where an individual portion of honey is supplied by a mass caterer to the ultimate consumer as part of the latter’s purchase of a meal, it must be labelled appropriately so as to include the country of origin of the honey. This is the subject of the first question of the referring court. Breitsamer and the Commission argue that such individual portions are not covered by the definition of a prepackaged foodstuff; the Public Prosecutor’s Office for the Land of Bavaria and the City of Munich submit that they are.

45. I agree with the latter view.

46. It is true that parts of the text of certain language versions of Article 1(3)(b) and other provisions of the Foodstuffs Labelling Directive, when read in isolation, might support a narrower reading, namely that only individual portions presented in their packaged form for sale to the consumer are ‘*single item[s] for presentation as such to the ultimate consumer*’ and thus to be classified as ‘pre-packaged foodstuffs’.

47. Thus, whilst some language versions of Article 1(3)(b) use the neutral term ‘single item’ (such as the English and Polish language versions), other language versions (including the German, Spanish, French, Dutch and Italian) use a term that can be translated into English as meaning ‘sales item’. The latter term also corresponds to the meaning attributed to the term ‘single item’ by a Working Group (consisting of experts from the Member States) set up by Commission’s Health and Consumer Directorate-General. That Working Group expressed the view, in a document without formal legal status, that ‘... *portion-cups (e.g. jams, honey, mustard) which are presented as part of a meal to the guests of mass caterers should not be considered as units of sale*’ (42) and thus do not fall within the scope of Article 1(3)(b) of the

Foodstuffs Labelling Directive. If the term ‘single item’ is read in that way, the scope of Article 1(3)(b) is restricted to covering only a single (that is, individual) item of foodstuff packaged prior to its sale that is offered as such for sale to the ultimate consumer, meaning the consumer at the final stage of the supply chain, who can then choose whether to purchase that foodstuff and ultimately ingest it.

48. It might also be said, in support of a narrow interpretation, that the legislature, in laying down in Article 14 the labelling requirements as regards foodstuffs that are not prepackaged within the meaning of Article 1(3)(b), referred to foodstuffs that are for sale, namely ‘*foodstuffs offered for sale to the ultimate consumer*’, ‘*foodstuffs ... packaged on the sales premises*’ (and thus not prior to their offer for sale) and foodstuffs ‘pre-packaged for direct sale’. Other parts of the Foodstuffs Labelling Directive also referred to ‘the purchaser’ rather than ‘the consumer’. (43) Moreover, whilst Article 5(1) governed the name under which the foodstuff was ‘sold’, no separate provision applied to the name under which foodstuffs were supplied to the consumer or made Article 5(1) applicable in such circumstances.

49. Furthermore (it might be said) the legislation provided that, exceptionally, only information on essential elements could appear on the outer packaging at stages prior to the sale to the ultimate consumer. (44) Thus, where such foodstuff was marketed at a stage prior to the sale to the ultimate consumer and where sale to a mass caterer was not involved at that stage, there was no need to state the origin of the foodstuff on the package or the label attached thereto. Article 13(1)(b) provided that it was sufficient to include that information only on the commercial documents given (subject to certain conditions). Thus, upstream in the supply chain, prior to the sale to the ultimate consumer or a mass caterer, Article 13(1) (a) did not apply to what were otherwise foodstuffs within the meaning of Article 1(3)(b). (However, as I see it, whilst this confirms that Article 13(1)(a) did indeed cover at least individual portions of honey sold separately to the ultimate consumer or to a mass caterer, (45) it does not necessarily mean that Article 13(1)(a) does not cover foodstuffs — such as those at issue — downstream in the supply chain.)

50. Finally, at least the English version of the original directive on the labelling of foodstuffs (Directive 79/112/EEC) stated that its field of application should be limited to foodstuffs intended for sale to the ultimate consumer. (46) That too might be said to militate in favour of a narrow reading.

51. In my opinion, these arguments in reality support the conclusion that the definition in Article 1(3)(b) of the Foodstuffs Labelling Directive covered at least an individual portion of honey, such as those at issue, if or when it is sold separately (the second question referred). As I see it, other parts of Article 1(3)(b) and the Foodstuffs Labelling Directive in general, as well as the objectives and general scheme of that directive,

both confirm that conclusion and suggest that the answer to the first question must also be ‘yes’.

52. The fact that some language versions of Article 1(3)(b) of the Foodstuffs Labelling Directive use the term ‘sales item’ rather than ‘single item’ cannot be decisive. It is well established that because EU legislation must be applied and interpreted uniformly, it must be interpreted on the basis of the real intentions of its author and the aim which the latter seeks to achieve in the light of, in particular, all language versions. (47) Thus, where there is divergence between the language versions, the provision at issue must be interpreted in the light of the objective and general scheme of the rules of which it forms part. (48)

53. Under the Foodstuffs Labelling Directive, a pre-packaged foodstuff consisted of a single item which was presented as such to the ultimate consumer. That reading accords with common sense. When read together with Article 1(1), which defined the general scope of the Foodstuffs Labelling Directive, it becomes clear that the first element of Article 1(3) (b) was to be read as referring to a (type of) ‘delivery’ of the foodstuff to the ultimate consumer. That would have included both delivering an individual packaged foodstuff so as to offer it for sale to the ultimate consumer and supplying the individual packaged foodstuff to the ultimate consumer as part of a purchased meal. At the same time, whilst the definition of a ‘pre-packaged foodstuff’ in Article 1(3)(b) of the Foodstuffs Labelling Directive required that the foodstuff be packaged prior to its sale, that sale could have been to the ultimate consumer or to the mass caterer. The foodstuff had to be packaged in a way that meant that it could be sold as such; that part of the definition did not require that that sale be to the ultimate consumer. Thus, the foodstuff could be packaged prior to its sale, either as an individual item or as part of a collective unit of foodstuffs, to a mass caterer and then subsequently be presented to the final consumer at the end of the supply chain as an individual packaged foodstuff as part of a purchased meal.

54. That reading of the phrase ‘any single item for presentation as such’ ensures that all language versions of Article 1(3)(b) of the Foodstuffs Labelling Directive are given a uniform meaning. Whilst it guarantees that the word ‘presentation’ is not read as meaning solely ‘sale’, it also prevents the word ‘sale’ in certain language versions from being rendered devoid of meaning. That is so because, when a consumer purchases a meal, there is consideration. The price paid covers all of the goods and services needed in supplying that meal. It thus includes consideration for the different components of that meal, including, where relevant, individual portions of honey such as those at issue.

55. The interpretation which I suggest also contributes to achieving the objectives of the Foodstuffs Labelling Directive.

56. The Foodstuffs Labelling Directive sought to prevent restrictions on the free circulation of products

and unequal conditions of competition and to impose general rules applicable to all foodstuffs placed on the market. (49) In my opinion, such restrictions could occur as long as a (packaged) foodstuff was on the market and available for transfer, including at the final stage of its supply chain when it was distributed to a consumer as part of the provision of a meal (which typically involves the supply of both services and goods (50)). Thus, as long as the (packaged) foodstuff remained on the market, there was an interest in approximating the laws of the Member States on the labelling of that product. In the situation described in the first question, the packaged foodstuff was last offered for sale when purchased by the mass caterer. However, that final sale did not — it seems to me — result in the foodstuff being taken off the market. (51) On the contrary: its subsequent supply (as part of the consumer’s purchase of a meal) to the consumer constituted a form of distribution for consideration and thus was a form of placing the product on the market. At the hearing, the Commission agreed with the latter proposition (despite its position on the first question).

57. The Foodstuffs Labelling Directive was also concerned with the need to inform and protect the consumer (52) by providing information (including on the country of origin of the foodstuff) enabling that consumer to choose the foodstuff in full knowledge of the facts which are deemed to be relevant to that choice. Detailed labelling was considered to be a useful instrument because it created the fewest obstacles to free trade. (53)

58. Foodstuffs are purchased primarily to be ingested. The interest of a consumer at the end of the supply chain in obtaining mandatory and other information about the foodstuff is equally relevant to both decisions (that is, to purchase and to ingest foodstuff). That interest does not disappear just because his choice is limited to whether or not to ingest a particular foodstuff provided as part of a purchased meal (the situation covered by the first question referred). In fact, his interest in full transparency as to the essential characteristics of the foodstuff is arguably little different from when he is free to purchase (or not purchase) that foodstuff separately with a view to ingesting it.

59. Finally, I note that my reading of Article 1(3)(b) of the Foodstuffs Labelling Directive does not render compliance with that directive more burdensome or possibly impracticable. In fact, to some extent it prevents the need to establish dual product lines. It is true that, under the narrow reading of Article 1(3)(b), manufacturers might have opted for the higher level of consumer protection by labelling all individual portions with the mandatory information, irrespective of whether or not they were intended for individual consumers who purchased an individual portion separately. However, manufacturers might instead have taken the commercial decision to establish dual product lines (one for the portions with the necessary information on the label and a second for the same portions without that information) (54) and might have

needed in any event to label the second type of product (for example, 'not destined for sale' (55)) so as to separate the supply of the two categories of products. In such circumstances, enforcement costs would have been incurred at different stages in the supply chain in order to keep the two supply lines separate.

60. I therefore conclude that individual portions of honey, consisting of honey that is packaged (prior to it being offered for sale) into a container which is closed with an aluminium seal which has to be opened if the contents are to be altered, which are packaged and sold to mass caterers together in a carton whose label indicates the country of origin of the honey, are 'pre-packaged foodstuffs' within the meaning of Article 1(3)(b) of the Foodstuffs Labelling Directive. That is also the case where such individual portions are supplied to the ultimate consumer as part of a purchased meal, rather than being sold as individual portions to ultimate consumers or being supplied individually to mass caterers.

61. It follows that, subject to any applicable exceptions, the country or countries of origin of the honey must be indicated on the labels or packaging of such individual portions.

62. As I see it, nothing in the request for a preliminary ruling suggests that any of the exceptions apply.

63. The circumstances described by the referring court do not involve pre-packaged portions of honey which were at a stage in the supply chain that was prior to the sale to the ultimate consumer and that did not (yet) involve mass caterers. Nor were the mass caterers to whom they were supplied using their content for any of the purposes described in Article 13(1)(b) (that is, purposes other than supplying the portion as such to the ultimate consumer). I therefore see no basis for applying Article 13(1)(b).

64. In its written observations, the Commission suggested that the question of whether the individual portions of honey at issue were 'pre-packaged honey' might not arise because, under Article 13(4) of the Foodstuffs Labelling Directive, the origin of the foodstuff did not have to be stated on packaging or containers the largest surface of which has an area of less than 10 cm² ('mini-containers').

65. The referring court has not mentioned that exception. Nor has it made relevant findings of fact. However, at the hearing, in response to a question from the Court, the main parties agreed that the exception could not apply because the containers Breitsamer was using for its individual portions were larger than mini-containers. Against that background, I shall address only very briefly the relationship between Article 2(4) of the Honey Directive and Article 13(4) of the Foodstuffs Labelling Directive.

66. At first glance, it would seem that the Foodstuffs Labelling Directive cannot be read as imposing a requirement to indicate the country of origin on individual portions packaged in mini-containers, irrespective of the circumstances in which they were sold or supplied to the ultimate consumer and thus irrespective of the definition of a pre-packaged

foodstuff. Such a reading presupposes that it is permissible to apply Article 13(4) in conjunction with the Honey Directive, which contains no exception to the requirement to state the country of origin. The Foodstuffs Labelling Directive applies to honey subject to the conditions laid down in (Article 2 of) the Honey Directive. (56) Thus, the obligations in both directives applied concurrently subject to the more specific rules found in the Honey Directive. And Article 2(4) (a) of the latter lays down, in seemingly absolute terms, the obligation to indicate on the label the country or countries of origin where the honey has been harvested.

67. However, Article 2(4)(a) of the Honey Directive does not specify to what (honey) products that label (with the required information) must be attached. (57) Article 2(4)(b) confirms that the obligations in the Foodstuffs Labelling Directive (including Article 13 thereof) govern that question without subjecting that application to the condition that Article 13(4) of the Foodstuffs Labelling Directive does not apply. It follows (albeit to me a little tortuously) that the exception in Article 13(4) of the Foodstuffs Labelling Directive, which reflected the EU legislature's recognition of the fact that the inclusion of more than very limited information on mini-containers was impracticable (irrespective of what foodstuff they contain), did apply in principle.

The Honey Directive and Regulation No 1169/2011

68. Do the answers to both questions differ when the Honey Directive is read in conjunction with Regulation No 1169/2011?

69. I do not think so.

70. Regulation No 1169/2011 now relates to, and applies together with, the Honey Directive in a similar manner to the Foodstuffs Labelling Directive. It lays down rules applicable to all foods, including those requiring the country of origin to be shown on the packaging or label attached thereto, (58) which are complemented by specific rules applicable to specific foods. (59) It thus applies without prejudice to labelling requirements set out in such other rules. (60)

71. The text of Regulation No 1169/2011, which defines 'pre-packed food' in the same manner as Article 1(3)(b) of the Foodstuffs Labelling Directive previously defined 'prepackaged foodstuffs', (61) is nonetheless overall even more favourable to a positive answer to the first question. Thus, the prime objective of Regulation No 1169/2011 is to ensure that final consumers are appropriately informed as regards the food they consume and are able to identify and make appropriate use of a food and to make choices suitable to their own dietary needs. (62) It applies to all foods intended for the final consumer, including foods delivered by mass caterers. (63) Any food intended for supply to the final consumer is to be accompanied by food information in accordance with the regulation. (64) Furthermore, unlike the Foodstuffs Labelling Directive, Regulation No 1169/2011 defines the notion of 'placing on the market'. (65) That definition does not refer solely to the sale of food: it also covers other forms of transfer and distribution. Finally, whilst

Article 8(6) imposes an obligation on a food business operator to ensure that, when required, mandatory food information is given to the final consumer, that provision presupposes that the food in question is not pre-packaged. Thus, I cannot accept that food should not be classified as ‘pre-packed food’ because a food business operator is required to give mandatory food information to a final consumer.

72. In my view, Regulation No 1169/2011 thus confirms that the country of origin of honey must normally be stated on the packaging or label of individual portions, including those that are supplied to a consumer as part of a purchased meal. However, under Regulation No 1169/2011, as under the Foodstuffs Labelling Directive, there is no obligation to indicate the country of origin of a foodstuff on mini-containers. The exception under Article 16(2) of Regulation No 1169/2011 is expressed in nearly identical terms to that earlier found in Article 13(4) of the Foodstuffs Labelling Directive. Even though the list of mandatory information under the former is slightly longer, Article 16(2) does not provide for any obligation to state the country of origin (that is, item (i) of Article 9(1)) on such packaging or containers. Now as before, the exception for mini-containers therefore continues to apply to honey packaged in such containers.

Conclusion

73. In the light of all the foregoing considerations, I suggest that the Court should answer the questions raised by the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court) as follows:

Individual portions of honey, consisting of honey that is packaged (prior to it being offered for sale) into a container exceeding 10 cm² in size which is closed with an aluminium seal which has to be opened if the contents are to be altered, which are packaged and sold to mass caterers together in a carton whose label indicates the country of origin of the honey, are ‘pre-packaged foodstuffs’ within the meaning of Article 1(3)(b) 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, as finally amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009, and ‘pre-packed foods’ within the meaning of Article 2 (2)(e) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004. This is also the case where such individual portions are supplied or sold to the ultimate consumer as part of a purchased meal, rather than being sold as

individual portions to final consumers or being supplied individually to mass caterers. Subject to any applicable exceptions, the country or countries of origin of the honey must therefore be indicated on the labels or packaging of such individual portions in accordance with Article 2(4)(a) of Council Directive 2001/110/EC of 20 December 2001 relating to honey, Articles 1(3)(b), 3(1)(8) and 13(1) of Directive 2000/13 and Articles 2(2)(e), 9(1)(i), 12(2) and 26(2)(a) of Regulation No 1169/2011.

1 – Original language: English.

2 – Directive 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), as finally amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 (OJ 2009 L 188, p. 14). The Foodstuffs Labelling Directive has now been repealed by Regulation (EU) No 1169/2011: see points 11 to 23 below.

3 – Recital 1.

4 – Recital 4.

5 – Recital 5.

6 – Recital 6.

7 – Recital 8.

8 – See also recital 9. The other particulars comprised the name under which a product was sold (item (1)); the list of ingredients (item (2)); the quantities of certain (categories of) ingredients (item (3)); the net quantity (item (4)); the date of minimum durability or ‘use by’ date (item (5)); special storage conditions or conditions of use (item (6)); information about the manufacturer, packager or seller (item (7)); instructions for use (item (9)); and (where relevant) actual alcoholic strength (item (10)).

9 – The details of that procedure are of no relevance to the present case.

10 – See also recital 15.

11 – Those particulars were (it will be recalled): the name under which the product was sold (item (1)); the net quantity in case of pre-packaged foodstuffs (item (4)); and the date of minimum durability or, as regards certain foodstuffs, the ‘use by’ date (item (5)).

12 – Regulation of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

13 – See recitals 6 and 11 and Articles 53(1) and 55.

14 – Council Directive of 20 December 2001 relating to honey (OJ 2002 L 10, p. 47).

15 – This is the definition found in point (8) of Article 3 of Regulation (EC) No 178/2002 of the European

Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1), to which Article 2(1)(a) refers.

16 – Council Regulation of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended. Articles 23 to 26 concern the determination of the non-preferential origin of goods.

17 – See point 21 below.

18 – Namely, the name of the food (item (a)), certain ingredients or processing aids (item (c)), the net quantity of the food (item (e)) and the date of minimum durability or the ‘use by’ date (item (f)).

19 – That is, the list of ingredients.

20 – See also recital 29.

21 – Article 10 concerns additional mandatory particulars for specific types or categories of foods and is not relevant to the present proceedings.

22 – Council Directive of 22 July 1974 on the harmonisation of the laws of the Member States relating to honey (OJ 1974 L 221, p. 10).

23 – Recital 4.

24 – Directive of the European Parliament and of the Council of 15 May 2014 amending Council Directive 2001/110/EC relating to honey (OJ 2014 L 164, p. 1).

25 – See also Article 2(1) and recitals 11 and 12.

26 – See Article 1(1) and recital 6.

27 – The referring court relies on the version published on 15 December 1999 (BGBl. 1999 I, p. 2464) and last modified by Article 2 of the Verordnung (regulation) of 25 February 2014

(BGBl. 2014 I, p. 218).

28 – The Foodstuffs Labelling Directive was repealed as from 13 December 2014: see Article 53 (1) of Regulation No 1169/2011.

29 – See point 33 above.

30 – See, in particular, the first subparagraph of Article 54(1) of Regulation No 1169/2011.

31 – See Article 1 of the Honey Directive.

32 – See Article 2 of the Honey Directive. See also Article 4(2) of the Foodstuffs Labelling Directive.

33 – See Article 2(4)(a) of the Honey Directive.

34 – See recital 4 of the Foodstuffs Labelling Directive.

35 – Article 1(1) and 1(2) of the Foodstuffs Labelling Directive.

36 – Articles 2, 4(2) and 13(1)(a) of the Foodstuffs Labelling Directive.

37 – Article 14 of the Foodstuffs Labelling Directive.

38 – Articles 1(3)(b), 3(1)(8) and 13(1)(a) of the Foodstuffs Labelling Directive.

39 – Recital 5 of the Honey Directive.

40 – Article 2(4)(a) of the Honey Directive.

41 – Article 1(3)(b) of the Foodstuffs Labelling Directive.

42 – ‘Questions and Answers on the application of the Regulation (EU) No 1169/2011 on the provision of food information to consumers.’ That document answers certain questions on the application of Regulation No 1169/2011 (the definition of ‘pre-

packed food’ there uses the same wording as that found in Article 1(3)(b) of the Foodstuffs Labelling Directive; see point 14 above and point 71 below). Its cover page confirms that ‘... it has no formal legal status and in the event of a dispute, ultimate responsibility for the interpretation of the law lies with the Court of Justice of the European Union’. For a version of this document in the English language: http://ec.europa.eu/food/safety/docs/labelling_legislation_qanda_application_reg1169-2011_en.pdf.

43 – See, for example, Article 2(1)(a) and the second paragraph of Article 14 of the Foodstuffs Labelling Directive.

44 – See Article 13(1)(b) and recital 15 of the Foodstuffs Labelling Directive.

45 – I pause to observe that I find it intrinsically unlikely to suppose that a mass caterer would normally buy individual portions of honey sold separately, one by one. It seems more plausible to think that he would probably buy a ‘catering pack’ containing multiple individual portions of honey sold together at a reduced price per unit.

46 – Fifth recital of Council Directive 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).

47 – See, for example, judgment in *Internetportal und Marketing*, C-569/08, EU:C:2010:311, paragraph 35 and the case-law cited.

48 – See, for example, judgment in *M and Others*, C-340/08, EU:C:2010:232, paragraph 44 and the case-law cited.

49 – Recitals 2 and 4 of the Foodstuffs Labelling Directive.

50 – For an illustration of the different services and goods involved in such transactions, see (in the context of value added tax) the judgment in *Bog and Others*, C-497/09, C-499/09, C-501/09 and C-502/09, EU:C:2011:135, paragraphs 64 to 81.

51 – Again, it seems unlikely to suppose that if the mass caterer requires large quantities of honey in order to produce some prepared foodstuff (such as a cake), he will buy a carton of 120 individual portions and tear each open rather than buying a catering-sized tub of honey. The economic rationale for buying the carton of 120 individual portions is, more plausibly, that the mass caterer thereby saves on the labour costs involved in portioning out the honey. And the individual portions are placed unaltered before the final consumer.

52 – See recital 6 of the Foodstuffs Labelling Directive.

53 – See recital 8 of the Foodstuffs Labelling Directive.

54 – Such a decision might (for example) be taken in conjunction with a commercial decision to fill the portion containers in the two different supply lines with honey from different sources and thus possibly of different quality/value.

55 – In fact, at the hearing, a large part of the discussions focused on the need to apply such a label so as to enjoy the freedom of not having to attach another label indicating the country of origin of the foodstuff.

56 – Recital 5 of the Honey Directive.

57 – See point 39 above.

58 – See Articles 9(1)(i), 12(2) and 26 of Regulation No 1169/2011.

59 – See, in particular, recitals 6, 8 and 22 of Regulation No 1169/2011.

60 – Article 1(4) of Regulation No 1169/2011. See also recital 32.

61 – Article 2(2)(e) of Regulation No 1169/2011.

62 – See recitals 3 and 17 and Article 3(1) of Regulation No 1169/2011.

63 – Article 1(3) and recital 22 of Regulation No 1169/2011.

64 – Article 6 of Regulation No 1169/2011.

65 – Article 2(1)(a) of Regulation No 1169/2011.