

In Case 31/78

REFERENCE to the Court under [Article 267 TFEU] by the Pretura di Venasca for a preliminary ruling in the proceedings pending before that court between

FRANCESCO BUSSONE

and

ITALIAN MINISTRY FOR AGRICULTURE AND FORESTRY

on the interpretation and the validity of regulations of the [EU] on the common organization of the market in eggs or laying down detailed rules for the application of that organization, the consequences thereof or amendments thereto, that is Regulation (EEC) No 1619/68 of the Council of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 489), Regulation (EEC) No 95/69 of the Commission of 17 January 1969 (Official Journal, English Special Edition 1969 (I), p. 7), Regulation (EEC) No 2771/75 of the Council of 29 October 1975 (Official Journal L 282 of 1 November 1975, p. 49) and Regulation (EEC) No 2771/75 of the Council of 29 October 1975 (Official Journal L 282 of 1 November 1975, p. 56),

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sorensen, A. O'Keefe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl  
Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Decision

- 1 By an order of 7 March 1978 which was received at the Court Registry on 10 March 1978 the Pretura di Venasca referred to the Court of Justice for a preliminary ruling pursuant to [Article 267 TFEU] five questions relating to the interpretation and validity of [EU] regulations on the common organization of the market in eggs or concerning marketing standards for eggs.
- 2 The questions were raised in the context of a dispute in which the operator of a duly authorized egg-packing centre is claiming from the Italian Ministry for Agriculture and Forestry reimbursement of the sum of Lit 180 000 - plus interest and costs -paid by way of consideration for the issue of bands and labels to be affixed to egg packs.
- 3 The national court first asks the following question:

"Must Regulation (EEC) No 1619/68 of the Council (as last amended by Regulation (EEC) No 2772/75 (Official Journal L 282 of 1 November 1975, page 56)) and Regulation (EEC) No 95/69 of the Commission be interpreted to mean that they empower the Member States to reserve exclusively to their public authorities the preparation and distribution of bands and labels and in particular must the provision in -Article 5 of Regulation (EEC) No 95/69 in accordance with which such bands and labels 'shall bear an official marking laid down by the competent authority' be interpreted to mean that this provision implies that the public authorities have an exclusive right to affix the official marking and to prepare and distribute the labels?"

- 4 In order to reply to that first question it is necessary to describe the system adopted by the Council for the common organization of the market in eggs and the marketing standards and the detailed rules laid down by the Commission to implement that organization.

- 5 In order to take due account simultaneously of the objectives laid down in Article 39 [TFEU] and in [Article 206 TFEU], the stabilization of the market in eggs is to be implemented by complying with the "common rules on competition" which take the form of common quality standards and make no provision for a system of prices and intervention on the internal market of the [Union].
- 6 The marketing standards for eggs, which were deemed necessary to improve the quality of eggs and to facilitate their sale in the interests of producers, traders and consumers, lay down the criteria to be applied for the classification of eggs (Articles 1 to 13 to Regulation (EEC) No 2772/75), the common provisions relating to packaging (Articles 16 to 22) and the provisions relating to supervision by means of random sampling (Articles 26 to 28).
- 7 With regard more particularly to the system of packaging and labelling, by virtue of which the consumer is to be able to distinguish between eggs of different quality and weight grades, the first subparagraph of Article 17 (1) of Regulation (EEC) No 2772/75 provides that: "Large packs even when they contain eggs in small packs shall be provided with a band or label which cannot be re-used after the pack has been opened and which shall be issued by or under the supervision of the official agencies mentioned in Article 26", and Article 26 defines the nature of the said agencies in the following terms: "Compliance with this regulation shall be supervised by agencies appointed for the purpose in each Member State. A list of such agencies shall be forwarded to other Member States and to the Commission ... Any amendment to this list shall be communicated to other Member States and the Commission".
- 8 "Since graded eggs are liable to depreciate in quality", Regulation (EEC) No 95/69 laid down rigorous requirements for packaging set out in detail in particular in Article 5 which provides that: "( 1) The bands and labels ... shall be white and shall be printed in black. (2) ... these bands and labels, which may be numbered, shall bear an official marking laid down by the competent authority. Each Member State shall ... provide one or more specimens of the band and label to the other Member States and to the Commission".
- 9 From a comparison and joint interpretation of the first subparagraph of Article 17 (1) and Article 26 of Regulation (EEC) No 2772/75 and Article 5 of Regulation (EEC) No 95/69 it is clear that those provisions do not reserve to the public authorities the exclusive right to affix the marking and to prepare and distribute labels but that they leave the Member States entirely at liberty to entrust the organization of and the detailed rules for supervision to the agency which they regard as being the most suitable in their internal order to carry out that task.
- 10 The discretionary power held by the Member States in this respect by virtue of the aforesaid provisions authorizes them to entrust exclusively to the public authorities the preparation and distribution of bands and labels.

11 The first question should be answered to that effect.

12 The following second question is asked:

"Must the said regulations be interpreted to mean that the Member States may make the issue of bands and labels conditional on payment of a consideration far in excess of the cost of such bands and labels?"

- 13 That question may be divided into two parts, the first asking whether the regulations authorize the Member States to make the issue of bands and labels conditional on payment of a consideration, the second, if that is the case, raising the problem of the validity of that consideration if the amount is far in excess of the cost of such bands and labels.
- 14 Whilst the regulations on the common organization of the market in eggs and on marketing standards for eggs contain detailed rules relating to grading by quality and weight, packing, warehousing, transport, presentation and marking of eggs they contain no provision relating to the selling price of labels or the method of financing the administrative costs inherent in the supervision.
- 15 As the regulations neither oblige Member States to distribute the labels to users free of charge nor prohibit them from requiring a consideration for the issue of bands, it must be concluded that they leave the Member States free to resolve the problem of financing the supervision.
- 16 That freedom allowed to the Member States cannot, however, be used in such a way as to jeopardize the objective of the rules which grant it.
- 17 Article 4 of Italian Law No 419 provides that: "the revenue from the sale of labels shall serve to finance the checks specified for the application of the present law".
- 18 The Italian State has thus chosen as the means of financing the system the sale of the labels whose price represents both the intrinsic cost (manufacture and distribution) of the labels and a contribution to the administrative costs resulting from the carrying out of the supervision required by the [Union] rules.
- 19 The sale of the labels is thus directly linked to the introduction of the [Union] system of

supervision intended to improve the quality of eggs and, consequently, facilitate their sale and thus promote the interests of producers, traders and consumers.

- 20 The answer should therefore be given to the national court that in the absence of any provision in the [Union] rules relating to the means of financing the costs arising from the supervision the Member States may make the issue of bands and labels conditional on payment of a consideration in respect of that supervision.
- 21 With regard to the second part of the second question, that is to say the case where the amount of the consideration is far in excess of the cost of the system, the principle must be laid down that whilst the [Union] provisions leave the Member States free to choose the means of financing the supervision which they require, the choice of the Member States is confined to the strictly necessary objectives of the financing itself.
- 22 The consideration charged to the authorized packing centres must not exceed the real costs of the supervisory system in question.
- 23 An excessive financial consideration would be incompatible with the objectives of the common organization of the market as it would affect the competitiveness of Italian producers and would distort the "common rules on competition".
- 24 Whilst it is inevitable that the cost of undertaking the supervision and issuing labels will not be identical in all the Member States, the consideration charged to the authorized packing centres should not, on the other hand, exceed the costs of the operations in question in each of those States.
- 25 It is for the national court to determine whether or not the amount charged is justified in order to assess the limits which the consideration must not exceed.
- 26 The following third question is asked:

"Must the said regulations be interpreted to mean that their direct applicability must not be jeopardized by the adoption of national provisions which, whilst purporting to implement the regulations in question, introduce additional conditions, such as those reserving to the public authorities the right to prepare and distribute bands and labels and making the issue of such bands and labels subject to the payment of a pecuniary consideration?"

- 27 That question raises the point as to whether the fact that the preparation and distribution of labels is reserved to the public authorities and their issue is made conditional on payment of a pecuniary consideration is contrary to the directly applicable nature of the regulations, which would be prejudiced by the introduction of "additional conditions" "purporting to implement the regulations in question".
- 28 According to the second paragraph of [Article 288 TFEU] a regulation shall have general application and shall be directly applicable in all Member States.
- 29 By reason of its nature and its function in the system of the sources of [Union] law, therefore, a regulation has direct effect.
- 30 The direct applicability of a regulation requires that its entry into force and its application in favour of or against those subject to it must be independent of any measure of reception into national law.
- 31 Proper compliance with that duty precludes the application of any legislative measure, even one adopted subsequently, which is incompatible with the provisions of that regulation.
- 32 That prohibition is, however, relaxed to the extent to which the regulation in question leaves it to the Member States themselves to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation.
- 33 The position is that established by Regulations (EEC) Nos 1619/68 and 95/69, which provide *inter alia* that "large packs . . . shall be provided with a band or label ... which shall be issued by or under the supervision of the official agencies ... appointed for the purpose in each Member State ... a list of [which] shall be forwarded to other Member States and to the Commission" (Articles 17 and 26 of Regulation (EEC) No 1619/68) and that the latter shall be provided with "one or more specimens of the band and label" ... "which may be numbered [and] shall bear an official marking laid down by the competent authority" (Article 5 of Regulation (EEC) No 95/69).
- 34 Nor is it ruled out that in that case the costs of printing and distributing the bands and labels, and those arising from the implementation of the specific checks required by the basic regulations, should be regarded as a service rendered to the user such as to justify the imposition of a pecuniary charge, on condition that it does not exceed the real cost of the supervisory system in question.
- 35 Indeed the fact that a Member State reserves to its public authorities the preparation of

bands and labels in no way disrupts the functioning of the common organization and does not obstruct and is not of such a nature as to obstruct the free movement of the product.

36 The reply should therefore be given that the directly applicable nature of Regulation (EEC) No 1619/68, replaced by Regulation (EEC) No 2772/75, and Regulation (EEC) No 95/69 is not affected by the adoption of national rules required by the said regulations for their application which comply with the aim and objectives of the regulations by introducing additional conditions such as reserving to the public authorities the preparation and distribution of the bands and labels and making the issue thereof conditional on payment of a pecuniary consideration, on condition that the consideration is not disproportionate to the cost of the supervisory system in question.

37 The national court asks the following fourth question:

"Does reservation to the public authorities of the right to prepare and distribute labels, and making the issue thereof subject to the payment of a sum in excess of their cost, result in discrimination on grounds of nationality which is prohibited in accordance with [Article 18 TFEU]?"

38 In respect of this question, which raises the problem of whether the Italian legislation is in conflict with the principle of non-discrimination enshrined in [Article 18 TFEU], it should be observed that that legislation is not applicable on the basis of the nationality of the traders, but on the basis of the location of the authorized packing centres, whether the business is carried on by Italian or non-Italian traders.

39 It should be noted that according to the information contained in the file on the case, the majority of Member States have adopted systems according to which the price of the labels and the costs of the supervision - where such operations are not entrusted to the public authorities - are nevertheless charged to the operators of authorized packing centres.

40 From these factors it follows that a principle such as that on which the relevant Italian legislation is based does not constitute discrimination on grounds of nationality and therefore does not infringe [Article 18 TFEU].

41 The following fifth question is asked:

"In any case must Regulation (EEC) No 2771 /75 of the Council, in particular Article 2 thereof, and Regulations (EEC) Nos 2772/75 of the Council and 95/69 of the Commission be interpreted to mean that a national provision laying down additional and special conditions as compared with those conditions contained in the said

regulations may disturb the proper functioning of the organization of the market in eggs and in particular the proper observance, and accordingly the correct application and operation, of marketing standards?"

- 42 The answer to this question is already included in the answers to the preceding questions, in particular to the third question.
- 43 To be more precise, in the absence of express provisions on the compatibility with the organization of the market established by Regulation (EEC) No 2771/75, in particular Article 2 thereof, and Regulations (EEC) Nos 2772/75 and 95/69, of national rules adopted for the implementation of those regulations, it is necessary to seek the solution to the question asked in the light of the aims and objectives of the regulations within the context of the principles laid down by the Treaty itself.
- 44 The characteristic feature of the organization of the market in eggs is compliance with the common rules on competition and the introduction of common quality standards, having the purpose of encouraging trade initiatives with a view to improving the quality of the products and of perfecting the organization of production.
- 45 By not seeking to regulate prices in the context of that organization the [Union] has not sought to achieve uniformity of prices.
- 46 From the general system of the regulation it is clear that with regard to trade within the [Union] the organization of the market for the product in question is based on freedom of commercial transactions under fair competitive conditions, by way of an improvement in the quality of the product.
- 47 Whilst such a scheme precludes the adoption of any national rules which may hinder, directly or indirectly, actually or potentially, trade within the [Union] it does not preclude the adoption of national rules where the practical application of the system itself and of its detailed rules has specifically been entrusted to the Member States, while making them responsible - as the Italian legislature has done, subject to the reservation that the amount of the consideration charged should be justified - for establishing a system which complies with the aims and objectives of the regulations on the common organization of the market in eggs.

## Costs

48 The costs incurred by the Government of the Italian Republic and the Commission, which have submitted observations to the Court, are not recoverable.

49 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Pretura di Venasca by order of 7 March 1978, hereby rules:

- 1. Regulation (EEC) No 1619/68 of the Council of 15 October 1968 on marketing standards for eggs (Official Journal, English Special Edition 1968 (II), p. 489), replaced by Regulation (EEC) No 2772/75 of the Council of 29 October 1975 (Official Journal L 282, p. 56), and Regulation (EEC) No 95/69 of the Commission of 17 January 1969 (Official Journal, English Special Edition 1969 (I), p. 7) must be interpreted to mean that the discretionary power held by the Member States by virtue of those regulations authorizes them to entrust exclusively to the public authorities the preparation and distribution of bands and labels.**
- 2. In the absence of any provision in the [Union] rules relating to the means of financing the costs arising from \_ the supervision the Member States may make the issue of bands and labels conditional on payment of a consideration in respect of that supervision.**
- 3. It is for the national court to determine whether or not the amount of the consideration thus charged to the authorized packing centres is justified.**
- 4. The directly applicable nature of Regulation (EEC) No 1619/68, replaced by Regulation (EEC) No 2772/75, and Regulation (EEC) No 95/69 is not affected by**

the adoption of national rules required by the said regulations for their application which comply with the aim and objectives of the regulations by introducing additional conditions such as reserving to the public authorities the preparation and distribution of the bands and labels and making the issue thereof conditional on payment of a pecuniary consideration, on condition that the consideration is not disproportionate to the cost of the supervisory system in question.

5. [Article 18 TFEU] prohibiting discrimination on grounds of nationality does not apply to national rules which are not applicable on the basis of the nationality of the traders concerned and which take into consideration solely the location of the commercial activities.

Kutscher	Mertens de Wilmars	Mackenzie Stuart	Donner	Pescatore
Sorensen	O'Keeffe	Bosco	Touffait	

Delivered in open court in Luxembourg on 30 November 1978.

A. Van Houtte  
Registrar

H. Kutscher  
President