

of solvents and that this prohibition on the imposition of restrictions not provided for applies both to the direct marketing of the products on the home market and to imported products.

3. Directive No 73/173 must be interpreted as meaning that it is not permissible for national provisions to prescribe that containers shall bear a statement of the presence of ingredients of the products in question in terms going beyond those laid down by the said directive.
4. When, pursuant to Article 100 of the Treaty, Community directives provide for the harmonization of measures necessary to ensure the protection of the health of persons and animals and establish Community procedures to supervise compliance therewith, recourse to Article 36 ceases to be justified and the appropriate controls must henceforth be carried out and the protective measures taken in accordance with the scheme laid down by the harmonizing directive.
5. National provisions going beyond those laid down in Directive No

73/173 are compatible with Community law only if they have been adopted in accordance with the procedure and formalities prescribed in Article 9 of the said directive.

6. If one Member State has incorporated the provisions of a directive into its internal legal order before the end of the period prescribed therein, that fact cannot produce any effect with regard to other Member States.
7. Since a directive by its nature imposes obligations only on Member States, it is not possible for an individual to plead the principle of "legitimate expectation" before the expiry of the period prescribed for its implementation.
8. Directive No 77/728 of the Council of the European Communities of 7 November 1977, in particular Article 9 thereof, cannot bring about with respect to any individual who has complied with the provisions of the said directive before the expiration of the adaptation period prescribed for the Member State any effect capable of being taken into consideration by national courts.

In Case 148/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura Penale, Milan, for a preliminary ruling in the action pending before that court between

PUBBLICO MINISTERO [Public Prosecutor]

and

TULLIO RATTI, residing in Milan

on the interpretation of two Council Directives on the approximation of the laws, regulations and administrative provisions of the Member States, the first No 73/173/EEC of 4 June 1973, relating to the classification, packaging and labelling of dangerous preparations (solvents) (Official Journal No L 189, p. 7) and the second, No 77/728/EEC of 7 November

1977, relating to the classification, packaging and labelling of paints, varnishes, printing-inks, adhesives and similar products (Official Journal No L 303, p. 23),

THE COURT

composed of: J. Mertens de Wilmars, President of Chamber, Acting as President, Lord Mackenzie Stuart (President of Chamber), P. Pescatore, M. Sørensen, A. O'Keefe, G. Bosco and A. Touffait, Judges,

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

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The board of directors of the undertaking *Silvam*, of Senago (Milan), represented by Mr Ratti, decided to package its solvents and to affix to the container labels conforming to Council Directive No 73/173/EEC of 4 June 1973. It also decided that Council

Directive No 77/728/EEC of 7 November 1977 would be applied to its varnishes.

Those two directives have not yet been incorporated into the Italian legal system. Law No 245 of 5 March 1963 (*Gazzetta Ufficiale*, p. 1451), applying both to solvents and varnishes, remains in force in Italy at the present time.

Law No 245 is in some aspects more stringent than the aforesaid directives (it requires in all cases an indication of the quantity of benzene, toluene and xylene in the solvent or varnish) and in others less so (it does not require a reference to all the ingredients considered to be toxic,

corrosive, irritant, oxidizing or highly inflammable) than the aforesaid directives. This causes difficulties both as regards products manufactured in Italy and imported products.

Mr Ratti was prosecuted by the Pubblico Ministero for an infringement of Law No 245 before the Fifth Criminal Chamber of the Pretura, Milan.

Considering that the dispute raised questions involving the interpretation of Community law, the Pretura referred the following preliminary questions to the Court of Justice:

- (a) Does Council Directive 73/173/EEC of 4 June 1973, in particular Article 8 thereof, constitute directly applicable legislation conferring upon individuals personal rights which the national courts must protect?
- (b) Is it lawful, notwithstanding the provisions set out in the said article, to prescribe in national legislation obligations and limitations which are more precise and detailed than, or at all events different from, those set out in the directive, and might the foregoing be considered an obstacle to the free movement of and trade in the goods and products covered by that directive, namely solvents, in that such obligations and limitations directly effect the establishment and operation of the common market, having regard to the obligation imposed by national legislation to affix to containers information which is not required by the directive?
- (c) In particular, may the duty to indicate, on the container of the solvent or product offered for sale, that it contains benzene, toluene and xylene, specifying the total percentage of those substances and, separately, that of benzene alone, pursuant to Article 8 of Law No 245 of 5 March 1963, be considered incompatible with the said directive, either because of the obligatory nature of the duty to provide the information (failure to do so being punishable under the criminal law) or by reason of the detailed rules laid down for discharging that duty, having regard also to the general reasoning upon which the said directive appears to be based?
- (d) Do the said national provisions, which are applicable without distinction to all goods placed on the domestic market, nevertheless constitute an obstacle, a prohibition or a restriction on trade in and the free movement of such goods, even if such provisions were enacted for the purpose of ensuring greater protection for the physical safety of users of the products in question (and indeed a considerable volume of scientific literature, at least from the 1960s onwards, emphasizes the dangers inherent in substances such as benzene, toluene and xylene, especially for workers who may often have to use solvents which unknown to them, contain a high percentage of such substances, but not only for workers, since any consumer who uses a varnish containing the said substance may risk grave injury to his health)?
- (e) Is Council Directive 77/728/EEC of 7 November 1977, in particular Article 9 thereof, immediately and

directly applicable with regard to the obligations imposed on Member States to refrain from action from the date of notification of that directive in a case where a person, acting upon a legitimate expectation, has complied with the provisions of that directive before expiry of the period within which the Member State must comply with the said directive?

The order of 8 May making the reference to the Court was received at the Court Registry on 21 June 1978. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, the defendant in the main action, the Council and the Commission submitted written observations.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations of the accused in the main action

In the first place Mr Ratti points out that "the Italian legislation imposes criminal sanctions which are plainly contrary to Community rules both on solvents and varnishes" and goes on to examine what he considers to be the main question: "the effect which the two directives may have within the legal order of a particular Member State".

In order to answer this question he relies first of all upon the "settled case-law" of the Court, citing the judgments of 4 December 1974 in Case 41/74 *Van Duyn* [1974] 2 ECR 1337 and of 1 February 1977 in Case 51/76 *Verbond van Nederlandse Ondernemingen* [1977] 1 ECR 113 and others. According to that case-law a directive, he contends, has "direct effect" when it imposes detailed and complete obligations in such a way as to leave no margin of discretion to the Member State.

Then he attempts to show that the two directives "have direct effect". He points out that Article 8 of the directive concerning solvents imposes precise and detailed obligations which the Member States must incorporate into their legislation as they stand: thus detailed provisions are laid down concerning the size, colour, shape and position of the label. He makes the same point with regard to Article 9 of the directive concerning varnishes.

But in the latter case the question of the time-limit arises: the Member States have a period of 24 months in which to implement the directive, which does not have to become applicable until November 1979. So one could argue that Law No 245 still applied at the material time as far as the varnishes are concerned. But the accused in the main action considers it necessary to look into the reasons for which the Community legislature prescribed such a period. That can only be explained on purely economic grounds: clearing existing stocks, fresh analyses to be made, new labels, etc. . . . so it could only apply to obligations to take action: on the other hand the reason for prescribing such a period does not apply as regards the obligation contained in Article 9 of the directive, an obligation to refrain from action, for which no time-limit is

required, especially since the references and symbols used on the labels had already been incorporated into the Italian legal system by virtue of the Decree of 17 December 1977 (*Gazzetta Ufficiale*, Supp. No 30 of 31 January 1978).

Moreover, the accused in the main action refers to the "absurdity" of a situation in which "a producer in one Member State which has already implemented the directive cannot export to another Member State his product labelled in accordance with that directive because that State has not yet complied with it". That, he submits, constitutes "an infringement of the fundamental principles governing the free movement of goods within the Community".

Finally the accused in the main action argues that if his submissions do not constitute "the correct interpretation of the rules at issue, it would be necessary to conclude that the period of two years granted for implementation is not a period within which implementation must take place, but a period before the expiry of which implementation either is not possible or may be prohibited".

B — Observations of the Council

The Council begins by emphasizing the importance of the legislative technique of the directive, one used very often for the approximation of laws, and the Council attaches particular importance to the period within which the Member States must comply with the directive. On that point the Council considers that "it is only on expiry of such a period that the uniformity of the technical rules applicable to the products in question must necessarily be ensured throughout

the common market by virtue of the directive".

The Council summarizes the five questions submitted in two main questions:

(1) "Under what conditions may the directives in question have direct effect?"

On that point the Council considers that the case-law of the Court is sufficiently clear. It merely draws attention to an incorrect use of terminology: the Pretura asks whether the directive is "directly applicable", whereas the case-law of the Court has established the concept of "direct effect". The Council goes on to state that the only cases of direct effect recognized by the Court for the benefit of individuals are those "in which the obligation which the directive imposes on the Member State is perfect in the sense that it is not conditional upon or suspended until the effluxion of a period of time".

As regards the nature of the obligations imposed by the directives, the Council considers that the obligation to prohibit the marketing of products not complying with the rules of the directives is naturally an obligation to take action, and the same applies to the obligation to allow the marketing of products which comply with the rules of the directives, because the Member State must amend its internal law.

(2) "From what time is such effect produced?"

The first argument advanced by the Council is that, since the Member State possesses "at least a margin of discretion as regards the date on which it must conform with the directive, within the

limits of the period allowed”, it is not obvious that it has direct effect.

The Council goes on to state its opinion that, even if in certain circumstances the Court attributes direct effect to certain provisions contained in directives, “it could not attribute to individuals the right to rely on an obligation imposed on a Member State by a directive before the Commission or the other Member States are able to rely on it in an action under Article 169 or 170 of the Treaty”. Before expiry of the prescribed period there cannot be a failure to comply with the directive.

Finally, in reply to the written defence submitted to the Pretura, Milan (points 2, 3, 4), the Council does not deny that the fact that the directives in question concern all the Member States may have influenced the manner in which the Court might interpret them. But to its knowledge the Court has not, until now, taken such a fact into consideration in order to decide that provisions have direct effect; in any case that does not imply that the period granted to the Member State for compliance with the directive has no purpose. The Council concludes, following the case-law of the Court (Case 9/70 *Grad v Finanzamt Traunstein* [1970] 2 ECR 825), that “a prohibition contained in an instrument addressed to the Member States takes effect only from the time when the common system must be applied throughout the common market when the objective is to ensure the application of such a system”; the objective in question is to ensure such application at the latest by the end of the period.

Therefore the Council considers that Question (e) should be answered in the negative, Article 9 of Directive No

728/77 not being capable of having direct effect before expiry of the period prescribed in Article 12. “This reply is equally applicable to Directive No 173/73”.

C — Observations of the Commission

After recalling the facts and stating that the Italian Law No 245 lays down conditions which are more stringent than the two directives in some aspects and less so in others, the Commission replies to the five questions submitted.

First question

The Commission insists that the language used by the Pretura is incorrect: the expression “directly applicable” cannot be used; only the concept of “direct effect” developed by the Court can be used, as it is directives which are concerned. The Commission recalls the three tests which must be satisfied before a provision of a directive may have direct effect: (i) a clear and precise obligation, (ii) not accompanied by conditions, (iii) with no margin of discretion left to the Member State. Analysing Directive No 173/73/EEC, article by article, the Commission “considers that Articles 2, 4, 5 and 6 . . . and also Article 8 in conjunction with those provisions, have direct effect and consequently the individual is entitled to rely on them in the competent national court”.

Second question

In the light of the answer to the first question, the Commission submits that “a Member State may not in its national

legislation lay down conditions more restrictive than those of the directive". The foregoing applies both to products placed directly on the home market and to imported products. "Moreover, as regards the latter, it is beyond doubt that the imposition of conditions different from those prescribed by the directive would constitute an infringement of the principle of the free movement of goods established by Article 30 of the Treaty".

Third question

In the Commission's view it seems clear that Article 8 of the Italian Law 245, which "requires *in all cases*" an indication of the presence and percentage of toluene, xylene and benzene, prescribes obligations different from those laid down in the directive.

Fourth question

The Commission considers that the provisions of the Italian Law "constitute measures having an effect equivalent to quantitative restrictions on imports within the meaning of Article 30 of the Treaty". Article 36 of the Treaty cannot be used to justify a derogation from a harmonizing measure in a particular sector. The only possibility would be to "have recourse, provisionally and under the supervision of the Commission, to the safeguard clause contained in Article 9 of the directive".

Fifth question

First of all the Commission considers that "direct effect" applies as far as Article 3, 5, 6, 7 and 9 of Directive No 77/728/EEC are concerned. But to resolve the problem of the implementation period the Commission considers it necessary first to determine "at what

time the obligation of a Member State arises by virtue of a directive". It is thus not possible to imagine a Member State's obligation arising before expiry of the period of 24 months prescribed by Article 12 of the directive. According to the case-law of the Court (Case 9/70 *Franz Grad* cited above), Article 191 of the Treaty cannot be invoked in this case.

The Commission continues its argument by calling in aid a general rule of interpretation: as "it is relatively exceptional for a directive to have direct effect", it must be interpreted restrictively. Article 189 of the Treaty calls for the same interpretation.

Replying to the argument of the defence, whereby Article 9 constitutes an obligation to refrain from action, the Commission expresses the view that that article is merely a "descriptive summary" of the directive and as such it must be analysed as "the positive obligation to adopt the necessary internal measures of implementation". That obligation can arise only on expiry of the period of 24 months.

As for the reasoning followed by the national court, which "mentions the possibility of a legitimate expectation of the individual who has complied with the provisions of the directive before expiry of the prescribed period", the Commission considers that it is not possible to speak of such an expectation because the obligation is imposed only on Member States and not on individuals. As long as there is no default on the part of the State, individuals cannot exercise a right as against the State.

Even for imported products the Commission considers that Article 30 cannot be applied, because the problem raised here concerns the succession of one national set of rules governing this

field by another, the central question being to ascertain on what final date that succession must take place. The Commission is of the opinion that the former rules remain valid "until expiry of the period which the State is allowed for the purpose of amending its legislation".

In conclusion the Commission suggests that the following answers be given to the Pretura, Milan:

- "(a) Articles 2, 4, 5 and 6 of Council Directive No 173/73, and also Article 8 in conjunction with the said provisions, have direct effect;
- (b) It is now lawful to prescribe in national legislation obligations and limitations which are more precise and more detailed than, or at all events different from, those set out in the said directive; moreover, as regards products imported from other Member States, such obligations would constitute an obstacle to the free movement of goods;
- (c) The obligation, imposed by the legislation of a Member State to indicate on the container of a solvent that it contains benzene, toluene and xylene, specifying the total percentage of those products and, separately, the percentage of benzene alone, is incompatible with the said directive;

(d) The objective of ensuring better protection for the physical safety of the users of the products in question does not justify Member States in imposing requirements different from those prescribed by the directive in question;

(e) Articles 3, 5, 6, 7 of Council Directive No 77/728, and also Article 9 in conjunction with those provisions, have direct effect; they have such effect on expiry of the period stated in Article 12, that is to say, on 9 November 1979".

III — Oral procedure

Mr Ratti, the accused in the main action, represented by Mr De Falco, the Council represented by its Legal Adviser, Mr Fornasier, and the Commission, represented by its Legal Adviser, Mr. Alessi, presented oral argument at the hearing on 25 January 1979.

In reply to a question asked by the Court, Mr Ratti stated that it would be practically impossible to export Silvam products with labels complying with the Italian Law affixed to the containers.

The Advocate General delivered his opinion on 20 February 1979.

Decision

By an order of 8 May 1978, received at the Court on 21 June 1978, the Pretura Penale, Milan, referred several questions to the Court for a pre-

liminary ruling under Article 177 of the EEC Treaty on the interpretation of two Council directives on the approximation of the laws, regulations and administrative provisions of the Member States, the first, No 73/173/EEC of 4 June 1973 on the classification, packaging and labelling of dangerous preparations (solvents) (Official Journal No L 189, p. 7) and the second, No 77/728/EEC of 7 November 1977 on the classification, packaging and labelling of paints, varnishes, printing inks, adhesives and similar products (Official Journal No L 303, p. 23).

2. Those questions are raised in the context of criminal proceedings against the head of an undertaking which produces solvents and varnishes, on a charge of having infringed certain provisions of the Italian Law No 245 of 5 March 1963 (Gazzetta Ufficiale of 21 March 1963, p. 1451) which require manufacturers of products containing benzene, toluene and xylene to affix to the containers of those products labels indicating, not only the fact that those substances are present, but also their total percentage and, separately, the percentage of benzene.
3. As far as solvents are concerned, that legislation ought, at the material time, to have been amended in order to comply with Directive No 73/173 of 4 June 1973, the provisions of which Member States were supposed to incorporate into their internal legal orders by 8 December 1974 at the latest, an obligation which the Italian Government has not fulfilled.
4. That amendment would have resulted in the repeal of the provision of the Italian Law which the accused is charged with contravening and would consequently have altered the conditions for applying the criminal sanctions contained in the law in question.
5. As regards the packaging and labelling of varnishes, Directive No 77/728 of 7 November 1977 had, at the material time, been adopted by the Council, but by virtue of Article 12 thereof Member States have until 9 November 1979 to bring into force the laws, regulations and administrative provisions necessary to comply therewith.
6. The incorporation of the provisions of that directive into the internal Italian legal order must likewise result in the repeal of the provisions of the Italian law which the accused is charged with contravening.

7 As regards the packaging and labelling of both the solvents and the varnishes produced by his undertaking, the accused complied, in the one case, with the provisions of Directive No 73/173 (solvents), which the Italian Government had failed to incorporate into its internal legal order, and, in the other case, with the provisions of Directive No 77/728 (varnishes), which Member States must implement by 9 November 1979.

8 The replies to the questions submitted, the first four of which concern Directive No 73/173, while the fifth concerns Directive No 77/728, must enable the national court to decide whether the penalties prescribed by Italian Law No 245 for an infringement of its provisions may be applied in the case in question.

A — The interpretation of Directive No 73/173

9 This directive was adopted pursuant to Article 100 of the Treaty and Council Directive No 67/548/EEC of 27 June 1967 (Official Journal, English Special Edition 1967, p. 234), amended on 21 May 1973 (Official Journal of 25 June 1973 No L 167, p. 1), on dangerous substances, in order to ensure the approximation of the laws, regulations and administrative provisions of the Member States on the classification, packaging and labelling of dangerous preparations (solvents).

10 That directive proved necessary because dangerous substances and preparations were subject to rules in the Member States which displayed considerable differences, particularly as regards labelling, packaging and classification according to the degree of risk presented by the said products.

11 Those differences constituted a barrier to trade and to the free movement of goods and directly affected the establishment and functioning of the market in dangerous preparations such as solvents used regularly in industrial, farming and craft activities, as well as for domestic purposes.

12 In order to eliminate those differences the directive made a number of express provisions concerning the classification, packaging and labelling of the products in question (Article 2 (1), (2) and (3) and Articles 4, 5 and 6).

13 As regards Article 8, to which the national court referred in particular, and which provides that Member States may not prohibit, restrict or impede on the grounds of classification, packaging or labelling the placing on the market of dangerous preparations which satisfy the requirements of the directive, although it lays down a general duty, it has no independent value, being no more than the necessary complement of the substantive provisions contained in the aforesaid articles and designed to ensure the free movement of the products in question.

14 The Member States were under a duty to implement Directive No 73/173, in accordance with Article 11 thereof, within 18 months of its notification.

15 All the Member States were so notified on 8 June 1973.

16 The period of 18 months expired on 8 December 1974 and up to the time when the events material in the case occurred the provisions of the directive had not been implemented within the Italian internal legal order.

17 In those circumstances the national court, finding that "there was a manifest contradiction between the Community rules and internal Italian law", wondered "which of the two sets of rules should take precedence in the case before the court" and referred to the Court the first question, asking as follows:

"Does Council Directive 73/173/EEC of 4 June 1973, in particular Article 8 thereof, constitute directly applicable legislation conferring upon individuals personal rights which the national courts must protect?"

18 This question raises the general problem of the legal nature of the provisions of a directive adopted under Article 189 of the Treaty.

19 In this regard the settled case-law of the Court, last reaffirmed by the judgment of 1 February 1977 in Case 51/76 *Nederlandse Ondernemingen* [1977] 1 ECR 126, lays down that, whilst under Article 189 regulations are directly applicable and, consequently, by their nature capable of producing direct effects, that does not mean that other categories of acts covered by that article can never produce similar effects.

- 20 It would be incompatible with the binding effect which Article 189 ascribes to directives to exclude on principle the possibility of the obligations imposed by them being relied on by persons concerned.
- 21 Particularly in cases in which the Community authorities have, by means of directive, placed Member States under a duty to adopt a certain course of action, the effectiveness of such an act would be weakened if persons were prevented from relying on it in legal proceedings and national courts prevented from taking it into consideration as an element of Community law.
- 22 Consequently a Member State which has not adopted the implementing measures required by the directive in the prescribed periods may not rely, as against individuals, on its own failure to perform the obligations which the directive entails.
- 23 It follows that a national court requested by a person who has complied with the provisions of a directive not to apply a national provision incompatible with the directive not incorporated into the internal legal order of a defaulting Member State, must uphold that request if the obligation in question is unconditional and sufficiently precise.
- 24 Therefore the answer to the first question must be that after the expiration of the period fixed for the implementation of a directive a Member State may not apply its internal law — even if it is provided with penal sanctions — which has not yet been adapted in compliance with the directive, to a person who has complied with the requirements of the directive.
- 25 In the second question the national court asks, essentially, whether, in incorporating the provisions of the directive on solvents into its internal legal order, the State to which it is addressed may prescribe “obligations and limitations which are more precise and detailed than, or at all events different from, those set out in the directive”, requiring in particular information not required by the directive to be affixed to the containers.
- 26 The combined effect of Articles 3 to 8 of Directive No 73/173 is that only solvents which “comply with the provisions of this directive and the annex thereto” may be placed on the market and that Member States are not entitled to maintain, parallel with the rules laid down by the said directive for imports, different rules for the domestic market.

- 27 Thus it is a consequence of the system introduced by Directive No 73/173 that a Member State may not introduce into its national legislation conditions which are more restrictive than those laid down in the directive in question, or which are even more detailed or in any event different, as regards the classification, packaging and labelling of solvents and that this prohibition on the imposition of restrictions not provided for applies both to the direct marketing of the products on the home market and to imported products.
- 28 The second question submitted by the national court must be answered in that way.
- 29 In the third question the national court asks whether the duty to indicate on the container of the solvent offered for sale that it contains benzene, toluene and xylene, specifying the total percentage of those substances and, separately that of benzene, pursuant to Article 8 of Law No 245 of 5 March 1963, may be considered incompatible with the said directive.
- 30 Article 8 of Italian Law No 245 of 5 March 1963 lays down a duty, "where solvents contain benzene, toluene or xylene, to affix to the containers offered for sale a label mentioning the presence of those substances in the solvents, the total percentage of those substances and, separately, the percentage of benzene . . .".
- 31 However, Article 5 of Directive No 73/173 requires in all cases that packages indicate clearly and indelibly the presence of substances classified as toxic under Article 2, such as benzene, and also that they show, but only in certain cases, the presence of substances classified as harmful, such as toluene and xylene in a concentration higher than 5%.
- 32 On the other hand no indication of the percentage, separate or in the aggregate, of those substances is required.
- 33 Thus the answer to the national court must be that Directive No 73/173 must be interpreted as meaning that it is not permissible for national provisions to prescribe that containers shall bear a statement of the presence of ingredients of the products in question in terms going beyond those laid down by the said directive.

34 The fourth question is drafted as follows:

“Do the said national provisions, which are applicable without distinction to all goods placed on the domestic market, nevertheless constitute an obstacle, a prohibition or a restriction on trade in and the free movement of such goods, even if such provisions were enacted for the purpose of ensuring greater protection for the physical safety of users of the products in question?”

35 This question is an allusion to Article 36 of the Treaty which permits exceptions to the free movements of goods to the extent to which they are justified on grounds of public security or the protection of health and life of humans and animals.

36 When, pursuant to Article 100 of the Treaty, Community directives provide for the harmonization of measures necessary to ensure the protection of the health of humans and animals and establish Community procedures to supervise compliance therewith, recourse to Article 36 ceases to be justified and the appropriate controls must henceforth be carried out and the protective measures taken in accordance with the scheme laid down by the harmonizing directive.

37 Directive No 73/173 provides that where a Member State established that a dangerous preparation, although satisfying the requirements of that directive, presents a health or safety risk, it may have recourse, temporarily and subject to the supervision of the Commission, to a protective measure provided for in Article 9 of the directive in accordance with the procedure laid down in that article.

38 It follows that national provisions going beyond those laid down in Directive No 73/173 are compatible with Community law only if they have been adopted in accordance with the procedures and formalities prescribed in Article 9 of the said directive.

B — The interpretation of Council Directive No 77/728/EEC of 7 November 1977

39 In a fifth question the national court asks whether Council Directive No 77/728 of 7 November 1977, in particular Article 9 thereof, is immediately and directly applicable with regard to the obligations imposed on Member

States to refrain from action as from the date of notification of that directive in a case where a person, acting upon a legitimate expectation, has complied with the provisions of that directive before the expiry of the period within which the Member State must comply with the said directive.

40 The objective of that directive is analogous to that of Directive No 73/173 in that it lays down similar rules for preparations intended to be used as paints, varnishes, printing inks, adhesives and similar products, and containing dangerous substances.

41 Article 12 of that directive provides that Member States must implement it within 24 months of its notification, which took place on 9 November 1977.

42 That period has not yet expired and the States to which the directive was addressed have until 9 November 1979 to incorporate the provisions of Directive No 77/728 into their internal legal orders.

43 It follows that, for the reasons expounded in the grounds of the answer to the national court's first question, it is only at the end of the prescribed period and in the event of the Member State's default that the directive — and in particular Article 9 thereof — will be able to have the effects described in the answer to the first question.

44 Until that date is reached the Member States remain free in that field.

45 If one Member State has incorporated the provisions of a directive into its internal legal order before the end of the period prescribed therein, that fact cannot produce any effect with regard to other Member States.

46 In conclusion, since a directive by its nature imposes obligations only on Member States, it is not possible for an individual to plead the principle of "legitimate expectation" before the expiry of the period prescribed for its implementation.

- 47 Therefore the answer to the fifth question must be that Directive No 77/728 of the Council of the European Communities of 7 November 1977, in particular Article 9 thereof, cannot bring about with respect to any individual who has complied with the provisions of the said directive before the expiration of the adaptation period prescribed for the Member State any effect capable of being taken into consideration by national courts.

Costs

- 48 The costs incurred by the Council and by the Commission, which have submitted written observations to the Court, are not recoverable.
- 49 As the proceedings are, so far as the accused in the main action is concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura Penale, Milan, by an order of 8 May 1978 hereby rules:

1. After the expiration of the period fixed for the implementation of a directive a Member State may not apply its internal law — even if it is provided with penal sanctions — which has not yet been adapted in compliance with the directive, to a person who has complied with the requirements of the directive.
2. It is a consequence of the system introduced by Directive No 73/173 that a Member State may not introduce into its national legislation conditions which are more restrictive than those laid down in the directive in question, or which are even more detailed or in any event different, as regards the classification, packaging and labelling of solvents and that this prohibition on the imposition of restrictions not provided for applies both to the direct marketing of the products on the home market and to imported products.

3. Directive No 73/173 must be interpreted as meaning that it is not permissible for national provisions to prescribe that containers shall bear a statement of the presence of ingredients of the products in question in terms going beyond those laid down by the said directive.
4. National provisions going beyond those laid down in Directive No 73/173 are compatible with Community law only if they have been adopted in accordance with the procedures and formalities prescribed in Article 9 of the said directive.
5. Directive No 77/228 of the Council of the European Communities of 7 November 1977, in particular Article 9 thereof, cannot bring about with respect to any individual who has complied with the provisions of the said directive before the expiration of the adaptation period prescribed for the Member State any effect capable of being taken into consideration by national courts.

Mertens de Wilmars

Mackenzie Stuart

Pescatore

Sørensen

O'Keefe

Bosco

Touffait

Delivered in open court in Luxembourg on 5 April 1979

A. Van Houtte

Registrar

J. Mertens de Wilmars

President of the First Chamber
acting as President

OPINION OF MR ADVOCATE GENERAL REISCHL
DELIVERED ON 20 FEBRUARY 1979¹

*Mr President,
Members of the Court,*

The reference for a preliminary ruling on which I have to deliver an opinion today

concerns two Council Directives which were issued in order to eliminate obstacles to trade between Member States due to differences in national provisions of a technical nature. We are

¹ — Translated from the German.