

Case C-86/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

9 February 2022

Referring court:

Tribunale Amministrativo Regionale per il Lazio (Italy)

Date of the decision to refer:

7 February 2022

Applicant:

Papier Mettler Italia S.r.l.

Defendants:

Ministero della Transizione Ecologica (formerly the Ministero dell’Ambiente e della Tutela del Territorio e del Mare)

Ministero dello Sviluppo Economico

Subject matter of the main proceedings

Action brought before the Tribunale Amministrativo Regionale per il Lazio (Regional Administrative Court, Lazio) seeking the annulment of the ministerial decree of 18 March 2013 defining the technical specifications for shopping bags, in addition to damages for the unlawful conduct of the government.

Subject matter and legal basis of the request

Compatibility of the contested decree with Article 114(5) and (6) TFEU, Articles 1, 2, 9(1), 16(1) and 18 of Directive 94/62/EC, read in the light of points 1, 2 and 3 of Annex II to that directive, and Article 8 of Directive 98/34/EC.

Questions referred for a preliminary ruling

1. Do Article 114(5) and (6) TFEU, Article 16(1) of Directive 94/62/EC and Article 8 of Directive 98/34/EC preclude the application of a national provision such as that laid down in the contested interministerial decree, which prohibits the marketing of single-use shopping bags made of non-biodegradable materials but otherwise complying with the requirements laid down in Directive 94/62/EC, where that national provision containing more restrictive technical rules than the EU legislation was not notified by the Member State to the European Commission in advance, but only after the adoption and before the publication of the measure?

2. Must Articles 1, 2, 9(1) and 18 of Directive 94/62/EC, as supplemented by the provisions of points 1, 2 and 3 of Annex II to the directive, be interpreted as precluding the adoption of a national rule prohibiting the marketing of single-use shopping bags made of non-biodegradable materials, which otherwise comply with the requirements laid down in Directive 94/62/EC, or may the additional technical rules laid down by national law be justified by the aim of ensuring a higher level of environmental protection, considering, if need be, the specific problems regarding waste collection in the Member State and the need for that State to implement the EU obligations laid down in that related context?

3. Must Articles 1, 2, 9(1) and 18 of Directive 94/62/EC, supplemented by the provisions of points 1, 2 and 3 of Annex II to the directive, be interpreted as constituting a clear and precise rule aimed at prohibiting any obstacle to the marketing of bags complying with the requirements laid down in the directive and leading to the necessary disapplication of any conflicting national legislation by all organs of the State, including public authorities?

4. Lastly, could the adoption of national legislation prohibiting the marketing of single-use non-biodegradable shopping bags manufactured in compliance with the requirements laid down in Directive 94/62/EC, where that national legislation is not justified by the aim of ensuring a higher level of environmental protection, by the specific problems regarding waste collection in the Member State and by the need for that State to implement the EU obligations laid down in that related context, constitute a manifest and serious infringement of Article 18 of Directive 94/62/EC?

Provisions of European Union law relied on

Article 114(5) and (6) TFEU.

European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste.

That directive was adopted with the aim of harmonising national measures on the management of packaging, ensuring the proper functioning of the internal market and providing a high level of environmental protection.

By means of that directive, Member States were required, for the first time, to meet quantitative targets for the recovery and recycling of all packaging based on the total weight placed on the market in their respective domestic markets. In particular:

- Article 9 establishes, as ‘Essential requirements’, that ‘Member States shall ensure that three years from the date of the entry into force of this Directive, packaging may be placed on the market only if it complies with all essential requirements defined by this Directive including Annex II.’

- Article 18, on the other hand, states under the heading ‘Freedom to place on the market’, that ‘Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive.’

Annex II lays down different requirements for packaging: its manufacturing and composition (point 1), its reusable nature (point 2) and its recoverable nature (point 3). In relation to its recoverable nature, the law stipulates four alternative criteria: the recoverable nature of the packaging can be guaranteed either by recycling the material, or by means of energy recovery, or in the form of composting, or owing to its biodegradability.

The use of any of these packaging recovery technologies ensures that the packaging can be sold in the internal market of the European Union.

Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.

Provisions of national law relied on

Article 2 of Decreto legge n. 2/2012 (Decree Law No 2/2012) (as converted by legge n. 28/2012 (Law No 28/2012)), which imposes a general ban on the marketing of plastic bags, notwithstanding the extensions granted for the marketing of certain categories of bags until the adoption of another ministerial decree.

Decreto ministeriale del 18 marzo 2013 (Ministerial Decree of 18 March 2013) of the Ministero dell’Ambiente e della Tutela del Territorio e del Mare (Ministry of the Environment and the Protection of the Land and the Sea) and of the Ministero dello Sviluppo Economico (Ministry of Economic Development) defining the technical specifications of shopping bags (*Gazzetta ufficiale della Repubblica italiana* of 27 March 2013) (‘the contested decree’), which prohibits the manufacture and marketing of plastic shopping bags that do not meet the detailed requirements laid down in Article 2.

To ensure effective environmental protection and more efficient waste collection, among the requirements laid down by EU legislation for marketable packaging,

the decree is strongly in favour of the compostability and biodegradability options, imposing, *inter alia*, a ban on the marketing of bags that do not meet the specifications of UNI EN 13432:2002 (a technical standard defining the specifications for packaging recyclable by means of composting and biodegradation). Therefore, bags that do not comply with that technical standard – even if they comply with the other recoverability requirements laid down in point 3 of Annex II to the Packaging Directive – cannot be marketed in Italy, unless they comply with additional technical specifications relating to their thickness and shape, which are not specified in the EU directive.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The company Papier Mettler s.r.l. (the applicant) is involved in the distribution of paper packaging and synthetic packaging. It is part of a European network for the production of paper and plastic packaging. It is also involved in the recycling of raw materials through the separate collection and recycling of internal and external waste.
- 2 The applicant's business mainly focuses on the production of polyethylene packaging, including ordinary plastic shopping bags.
- 3 Considering itself injured by the contested decree, which, by clarifying the rules laid down in Decree-Law No 2/2012, prohibits the manufacture and marketing of plastic shopping bags that do not meet the stipulated requirements, the applicant brought an action before the referring court seeking its annulment.

The essential arguments of the parties in the main proceedings

- 4 The **applicant** submits that the contested decree contains provisions implementing the ban on the marketing of non-biodegradable plastic shopping bags – a prohibition laid down in Directive 94/62 – which are more restrictive than the directive allows. Article 2 of the contested decree provides that those plastic bags must meet specific technical requirements, which is contrary to Directives 94/62 and 98/34.
- 5 From a procedural point of view, the applicant maintains that, since Directive 94/62 is a simple harmonisation directive, the technical rules introduced by the national authority to strengthen environmental protection should have been notified to the Commission in advance under Article 114(5) and (6) TFEU.
- 6 The applicant notes the separate prior notification mechanism provided for in Article 16 of Directive 94/62. In accordance with that article, Member States must notify the Commission of the drafts of measures which they intend to adopt, in order to permit the latter to examine them in the light of existing provisions. A similar system is also provided for in Article 8 of Directive 98/34, according to which 'any draft technical regulation' and 'the grounds which make the enactment

of such a technical regulation necessary' must be communicated to the Commission before the adoption of the regulation. Consequently, in the light of those rules and the provisions of the national legislation at issue, the contested decree should have been notified in advance to the Commission.

- 7 However, the **defendant** submits that the contested decree was duly notified to the European Commission on 12 March 2013, and that its entry into force was subject to the successful outcome of the notification procedure provided for in Directive 98/34. The notification procedure was completed on 13 September 2013.
- 8 In substance, the **applicant** submits that the contested decree is unlawful because it contravenes the rules laid down in Directive 94/62, in so far as it prohibits the marketing of bags even if they comply with one of the requirements for recoverability stipulated in point 3 of Annex II to that directive.
- 9 Directive 94/62 lays down specific requirements for the marketing of packaging (see Annex II).
- 10 The contested decree prohibits the marketing of bags that do not meet the specifications of UNI EN 13432:2002 or that do not meet other technical specifications in terms of thickness and shape. Those requirements are not provided for in European legislation.
- 11 Therefore, bags that do not comply with that technical standard, despite complying with the recoverability requirements laid down in point 3 of Annex II to Directive 94/62, cannot be marketed in Italy. The Italian legislation at issue thus infringes Article 18 of Directive 94/62, which prohibits Member States from preventing the marketing of packaging produced in accordance with the provisions of that directive.
- 12 The applicant submits, therefore, that the defendant should have disapplied the national legislation which is contrary to EU law, in accordance with the obligation imposed on the government of each Member State and confirmed on several occasions by the Court of Justice (see judgments of 19 January 1993, *Commission v Italy*, C-101/91; of 28 June 2001, *Larsy*, C-118/00; and of 9 September 2003, *CIF*, C-198/01).
- 13 According to the applicant, the government's conduct is unjustified, since the Court of Justice has also clarified that where a matter has been the subject of exhaustive harmonisation at EU level, any national measure relating to that matter must be assessed in the light of the provisions of that legislation (see judgments of 13 December 2001, *DaimlerChrysler AG v Land Baden-Württemberg*, C-324/99, and of 17 April 2007, *A.G.M.-COS.MET Srl v Suomen valtio and Tarmo Lehtinen*, C-470/03).
- 14 Lastly, the applicant submits that the contested decree – especially in so far as it provides that, in order to inform consumers, all plastic bags marketed in Italy must be labelled with their specifications in Italian – is contrary to the principle of

freedom of movement of goods, since it amounts to an obstacle to imports and an additional burden for undertakings that, as in the present case, import goods to be marketed from other Member States.

- 15 The **defendant** submits that the technical rules laid down in the contested decree were necessary to counteract the problem of contamination of the separate collection of organic waste, due to the habit of Italian consumers of using single-use plastic bags for organic waste, and to encourage the use of biodegradable and compostable plastic bags.
- 16 The defendant also points out that the contested decree identifies the following types of marketable bags: (a) biodegradable and compostable single-use bags, conforming to harmonised standard UNI EN 13432:2002; (b) traditional plastic bags of a certain thickness, which are therefore reusable; (c) reusable shopping bags made of paper, natural fibre, polyamide fibre and non-polymer materials. It follows from those provisions that the contested decree did not introduce an outright ban on the marketing of plastic bags, but only a selective ban on the circulation of plastic bags that, unless they are a certain thickness, are unlikely to be reused and are soon destined to become plastic waste.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 17 In the light of the arguments put forward by the parties in the main proceedings, the referring court decided to refer the matter to the Court of Justice for a preliminary ruling.