OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 18 September 2007 [1]

I — Introduction

1. With the accession of 10 new Member States on 1 May 2004, existing Community law, the *acquis communautaire*, was extended to those States. However, much of that *acquis* was published in the *Official Journal of the European Union* in the 9 new official languages only after a considerable delay. Because Skoma-Lux sro ('Skoma-Lux') is alleged to have infringed the relevant provisions of Community customs law after the accession of the Czech Republic but before those provisions were published in the Czech special edition of the Official Journal, the Czech customs authorities imposed penalties. The Court of Justice must now ascertain the extent to which such rules may be applied against an individual before they are published in his language.

1 — Original language: German.

II — Legal framework

2. The publication of secondary law is governed in principle by Article 254 EC. Article 254(2), which is relevant here, provides:

'Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication.'

3. Article 4 of Council Regulation No 1 of 15 April 1958 determining the languages to

be used by the European Economic Community [2] governs the language regime:

'Regulations and other documents of general application shall be drafted in the 20 official languages.'

4. Article 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded [3] ('the Act of Accession') provides that Community law applies in the new Member States in principle from the date of accession, 1 May 2004:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

5. Article 58 of the Act of Accession governs the language regime and publication:

'The texts of the acts of the institutions, and of the European Central Bank, adopted before accession and drawn up by the Council, the Commission or the European Central Bank in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present 11 languages. They shall be published in the *Official Journal of the European Union* if the texts in the present languages were so published.'

6. Immediately after the accession of the 10 new Member States on 1 May 2004, a notice was published in several editions of the Official Journal. [4] In the paper version of

2 — OJ, English Special Edition 1952-1958, p. 59, as amended by the Act of Accession.

3 — OJ 2003 L 236, p. 33.

4 — OJ 2004 L 169 to 174, on the inside back cover of each edition.

the Official Journal and in the CD-Rom version it has the following wording:

'Notice to readers

A special edition of the *Official Journal of the European Union* containing the texts of the Acts of the institutions and of the European Central Bank adopted before accession will be published in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovene languages. The volumes of this edition will be issued gradually between 1 May and the end of 2004.

Pending publication, the electronic version of the texts is available on EUR-Lex.

The EUR-Lex site is at: http://europa.eu.int/eur-lex/en/accession.html.'

7. However, a different Czech version was published, at least temporarily, in the relevant editions of the Official Journal on EUR-Lex on the internet, which was still accessible on 25 June 2007, but had been replaced by the wording reproduced above in Czech by 1 August 2007. That version was headed 'Oznámení Komise', which means Commission notice, and contained an additional sentence in the second paragraph:

'Ta po nezbytnou dobu představuje zveřejnění v *Úředním věstníku Evropské unie* podle článku 58 aktu o přistoupení z roku 2003.'

According to that wording, pending publication of the special edition of the Official Journal, publication on EUR-Lex constituted publication within the meaning of Article 58 of the Act of Accession. [5]

8. The main proceedings concern the first paragraph of Article 199 of Commission

5 — Michal Bobek, The binding force of Babel, *EUI Working Papers Law* 2007/06, p. 11 (= *European law reporter* 2007, 110 [114]) also cites an English version of that sentence (' ... and will in the meantime constitute publication in the *Official Journal of the European Union* for the purposes of Article 58 of the 2003 Act of Accession'). In response to a question during the oral procedure the Commission did not dispute the existence of that sentence. Nevertheless, that sentence does not appear in the paper versions of that Official Journal in French, English or German, in the CD-Rom version of that Official Journal in Czech, or in the internet versions of that Official Journal available when this Opinion was drafted.

Regulation (EEC) No 2454/93 of 2 July 1993 [6] laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code:

'Without prejudice to the possible application of penal provisions, the lodging with a customs office of a declaration signed by the declarant or his representative shall render him responsible under the provisions in force for:

— the accuracy of the information given in the declaration;

— the authenticity of the documents attached;

and

— compliance with all the obligations relating to the entry of the goods in question under the procedure concerned.'

9. According to information from the Office for Official Publications submitted by the Commission, that provision was published in Czech in the special edition of the Official Journal on 27 August 2004 in its original and essentially unamended version, which continued to apply.

III — Facts and reference for a preliminary ruling

10. The applicant in the main proceedings, Skoma-Lux, imports wine into the Czech Republic and sells it. The Czech customs authorities allege that various customs declarations for imported wine lodged by it between 11 March 2004 and 20 May 2004 were inaccurate because the wine had been classified under the wrong heading of the Combined Nomenclature, despite appropriate instructions from the customs authorities. The customs authorities therefore imposed a fine on Skoma-Lux. The alleged customs offence consists in purported infringements of the provisions of Czech customs law and of the first paragraph of Article 199 of Regulation (EEC) No 2454/93, to which the present case relates.

11. Skoma-Lux appealed against the fine and objected, in particular, that the first paragraph of Article 199 of Regulation No 2454/93 had not yet been properly published in Czech in the *Official Journal of the European Union* on the relevant date.

6 — OJ 1993 L 253, p. 1, as amended by Commission Regulation (EC) No 2286/2003 of 18 December 2003 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1992 L 343, p. 1).

12. Under those circumstances, the Krajský soud Ostrava (Regional Court, Ostrava) referred the following questions to the Court of Justice for a preliminary ruling:

'(1) May Article 58 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, on the basis of which the Czech Republic became a Member State of the European Union from 1 May 2004, be interpreted as meaning that a Member State may apply against an individual a regulation which at the time of its application has not been properly published in the *Official Journal of the European Union* in the official language of that Member State?

(2) If Question 1 is answered in the negative, is the unenforceability of the regulation concerned against an individual a question of the interpretation or of the validity of Community law within the meaning of Article 234?

(3) Should the Court of Justice conclude that the present reference for a preliminary ruling concerns the validity of a Community act within the meaning of the judgment in Case 314/85 *Foto-Frost* [1987] ECR 4199, is Regulation No 2454/93 invalid in relation to the applicant and its dispute with the customs authorities of the Czech Republic on the ground of the absence of proper publication in the *Official Journal of the European Union* in accordance with Article 58 of the Act concerning the conditions of accession?'

13. Skoma-Lux, the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Poland, the Kingdom of Sweden and the Commission took part in the written procedure. Skoma-Lux and the Republic of Estonia did not take part in the oral procedure, in which, in addition to the other parties mentioned above, the Slovak Republic participated.

IV — Legal assessment

14. The reference for a preliminary ruling essentially concerns the consequences of non-publication of a Community regulation in certain official languages.

15. The first question seeks to ascertain whether a Member State may apply a Community regulation against a citizen of the Union before it has been published in the *Official Journal of the European Union* in the relevant official language.

16. The second and third questions stem from the fact that the Court of Justice alone may decide on the validity of rules of secondary law.[7] If the absence of proper publication in certain official languages were to give rise to the invalidity of Community law — possibly temporarily and restricted to certain Member States — this would, strictly speaking, require an express decision to be taken by the Court of Justice in each individual case.

17. Since the question of the validity of acts which have not yet been published in the Official Journal in all the official languages is a preliminary issue to the question of their applicability against individual citizens of the Union, the second and possibly the third question should be answered first.

A — *The second question*

18. In order to answer this question it is necessary to examine the significance of the publication of an act in the official language of the Member State concerned.

19. It must be concluded from the first half of Article 2 of the Act of Accession that existing Community law is binding on the new Member States irrespective of whether it has already been properly published in their languages. Under that provision, the existing acts are binding on the new Member States without any further conditions from the date of accession. That is also the conclusion reached by the Commission and the Member States that are party to the proceedings, some of which also infer a binding effect from Article 10 EC.

20. However, a distinction must be drawn between the binding effect *on* the new Member States and validity *in* those States. Under the second half of Article 2 of the Act of Accession, the existing acts do not apply equally automatically in the new Member States, but only under the conditions laid down in the Treaties and in the Act of Accession. Validity in the new Member States must be understood in particular to mean application against an individual.

21. One condition laid down in the Act of Accession is the duty of publication under the second sentence of Article 58. Under that provision, the texts of the acts must be published in the new official languages in the *Official Journal of the European Union* if the

7 — Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 15 et seq., and Case C-461/03 *Gaston Schul Douane-expediteur* [2005] ECR I-10513, paragraph 17.

texts in the present languages were so published. Publication in the Official Journal allows the persons concerned to acquaint themselves with the content of the relevant rules and they have an obligation to do so. Following publication, all are deemed to be aware of the content of the Official Journal. [8]

22. This is also made clear specifically by the first sentence of Article 58 of the Act of Accession as far as the languages of the new Member States are concerned. Under that provision, those language versions are authentic under the same conditions as the texts in the languages of the old Member States. Consequently, they also have to be published in the Official Journal.

23. However, it is not yet clear what the consequences of the absence of such publication are.

24. In this respect it could be possible to adopt the view taken by Advocate General Lenz that the basic condition for a burden imposed on the citizen by legislative measures is their *constitutive* publication in an official organ. [9] The notion of constitutive publication is borrowed from German constitutional law, in which the promulgation of a law forms an integral part of law-making. [10] The law is non-existent before it is promulgated. The rule of law requires official promulgation which allows the public reliably to acquaint themselves with the applicable law. [11]

25. A similar result would be produced if the Court applied the judgment in *Hoechst* v *Commission* on the notification of a decision to its addressees to the publication of acts of general application. According to that judgment, as regards notification of an act, like any other essential procedural requirement, either the irregularity is so grave and manifest that it entails the non-existence of the contested act, [12] or it constitutes a breach of essential procedural requirements that may lead to its annulment. [13] That judgment

8 — Case 161/88 *Friedrich Binder* [1989] ECR 2415, paragraph 19, and Case C-370/96 *Covita* [1998] ECR I-7711, paragraph 26. However, the judgment in Case 160/84 *Oryzomyli Kavallas* v *Commission* [1986] ECR 1633, paragraphs 15 et seq. and 19, accepted that a few months after Greece's accession the authorities and traders there did not absolutely have to be aware of the content of the Official Journal. Contrary to the assumption made by the Polish Government, it is clear from the papers in that case that the act concerned had already been published at the relevant time in the Greek special edition of the Official Journal, and according to the Commission on the day before Greece's accession.

9 — Opinion in Case C-91/92 *Faccini Dori* [1994] ECR I-3325, point 64.

10 — See Article 82 of the German Basic Law and the judgments of the Bundesverfassungsgericht (Federal Constitutional Court) of 19 March 1958 (2 BvL 38/56, BVerfGE 7, 330 [337]) and of 8 July 1976 (1 BvL 19 and 20/75, 1 BvR 148/75, BVerfGE 42, 263 [283]).

11 — Judgment of the Bundesverfassungsgericht of 22 February 1994, 8th decision on broadcasting (1 BvL 30/88, BVerfGE 90, 60 [86]).

12 — See Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 48 et seq.

13 — Case C-227/92 P *Hoechst* v *Commission* [1999] ECR I-4443, paragraph 72.

is not consistent with the earlier judgment in *ICI* v *Commission*, according to which irregularities in the procedure for notification of a decision are extraneous to that measure and cannot therefore invalidate it. [14]

26. It is not necessary to clarify here which of the two judgments applies to the case of an individual decision. To make the validity of acts of general application contingent on their correct publication in all the languages would in any case expose their effectiveness to a disproportionate risk.

27. The Community must publish those acts in all the official languages pursuant to Article 4 of Regulation No 1. There is thus a much greater risk of errors compared with publication in just one language. In addition, such errors would not be immediately evident, as most users consult only their own language version.

28. Probably the most important example of such dangers in practice is differences between language versions. Errors in the translation of the original version may affect both the decision-making of the Community institutions and the reliability of publication.

29. However, it is rightly the responsibility of those involved in the decision-making process to ensure that the translation which is authoritative for them is consistent with the other versions of a legislative proposal. This is done in the Council in particular, where the Member States are able to participate in finalising translations. [15] The effects of differences in translation on political decision-making do not therefore justify the annulment of acts in principle.

30. However, the Court has not used the consequences of differences in translation for legal subjects as a reason to annul acts. Rather, in consistent case-law it has stressed the need for a uniform interpretation of the different language versions in the interest of the effectiveness of Community law. In the case of divergences between the language

14 — Case 48/69 *Imperial Chemical Industries* v *Commission* [1972] ECR 619, paragraph 39.

15 — This work is done partly by a group of jurists and linguists in which the Member States are also represented; see, for example, Notice CM 2647/07 of 27 July 2007, http://register.consilium.europa.eu/pdf/en/07/cm02/cm02647.en07.pdf.

versions this must be done in particular by reference to the general scheme and purpose of the rules of which it forms a part. [16] As a result, certain language versions can prevail over others. [17]

31. Similarly, the Court has also not called into question the validity of the act in question in matters concerning publication as such.

32. For example, there are a number of cases in which the Court has derived rights for Turkish workers from the rules of Decision No 1/80 of the EEC-Turkey Association Council of 19 September 1980 on the development of the Association. [18] That decision was not published in the Official Journal. The Court found that although non-publication of those decisions may prevent their imposing obligations on a private individual, that individual is not thereby deprived of the power to invoke, in dealings with a public authority, the rights which those decisions confer on him. [19] Since an individual may thus also rely on unpublished acts of Community law — at least vis-à-vis the State — publication is not a requirement for their validity.

33. The answer to the second question is therefore that non-publication of a regulation in certain official languages does not call into question its validity. It does not therefore in itself oblige the court seised of the matter to make a reference for a preliminary ruling.

B — *The third question*

34. In the light of the answer to the second question it is not necessary to answer the third question.

C — *The first question*

35. Even if the validity of a regulation is not called into question by non-publication in

16 — See, for example, Case 29/69 *Stauder* [1969] ECR 419, paragraph 3; Case C-300/05 *ZVK* [2006] ECR I-11169, paragraph 16; and Case C-56/06 *Euro Tex* [2007] ECR I-4859, paragraph 27.

17 — See Case 80/76 *North Kerry Milk Products* [1977] ECR 425, paragraph 11; Case C-64/95 *Lubella* [1996] ECR I-5105, paragraph 18; and *ZVK* (cited in footnote 16, paragraph 22).

18 — See, most recently, Case C-502/04 *Torun* [2006] ECR I-1563; Case C-4/05 *Güzeli* [2006] ECR I-10279; and Case C-325/05 *Derin* [2007] ECR I-6495, as well as my Opinion in Case C-294/06 *Payir and Others*, pending before the Court.

19 — Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 24.

the *Official Journal of the European Union*, it does not follow that it could be applied against an individual. As has just been mentioned, the Court has rather taken account of the notion of legal certainty in imposing obligations on an individual.

1. Applicability against individuals

36. In 1979 the Court held that a fundamental principle in the Community legal order requires that a measure adopted by the public authorities should not be applicable to those concerned before they have the opportunity to make themselves acquainted with it. [20] The principle of legal certainty requires that rules should allow individuals to ascertain unequivocally what their obligations are under those rules. [21] The principle of legal certainty must be observed all the more strictly in the case of a measure liable to have financial consequences. [22]

37. It would be conceivable for publication in some of the official languages to be sufficient to allow an adequate opportunity for making acquaintance with the rules. At any rate, the Court has expressly rejected the existence of a general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances. [23]

38. However, with regard to general rules which impose obligations on an individual, that is to say primarily regulations, the Court has rightly rejected any restriction of linguistic equality. It thus stated that an individual must be aware of the content of the Official Journal only once the relevant edition is actually available in his language. [24]

39. Similarly, in the judgments on the protected designations of origin '*Prosciutto di Parma*' (Parma ham) and '*Grana Padano*' (northern Italian extra-hard cheese), the Court held that certain conditions for using those designations could not be applied against the economic operators, since the conditions in question had not been brought to their knowledge by adequate publicity in

20 — Case 98/78 *Racke* [1979] ECR 69, paragraph 15, and Case 99/78 *Weingut Decker* [1979] ECR 101, paragraph 3.

21 — Case 348/85 *Denmark* v *Commission* [1987] ECR 5225, paragraph 19; Case C-209/96 *United Kingdom* v *Commission* [1998] ECR I-5655, paragraph 35; Case C-245/97 *Germany* v *Commission* [2000] ECR I-11261, paragraph 72; Case C-469/00 *Ravil* [2003] ECR I-5053, paragraph 93; and Case C-108/01 *Consorzio del Prosciutto di Parma and Salumificio S. Rita* [2003] ECR I-5121, paragraph 89.

22 — Case 326/85 *Netherlands* v *Commission* [1987] ECR 5091, paragraph 24; Case C-94/05 *Emsland-Stärke* [2006] ECR I-2619, paragraph 43; Case C-248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I-10211, paragraph 79; and Case C-158/06 *Stichting ROM-projecten* [2007] ECR I-5103, paragraph 26.

23 — Case C-361/01 P *Kik* v *OHIM* [2003] ECR I-8283, paragraph 82.

24 — Case C-370/96 *Covita* (cited in footnote 8, paragraph 27) and Case C-228/99 *Silos* [2001] ECR I-8401, paragraph 15, both make reference to Case 98/78 *Racke* (cited in footnote 20, paragraph 15), which does not, however, expressly mention the aspect of the individual language version.

Community legislation. [25] The Court did not concur with the suggestion made by Advocate General Alber [26] that it is sufficient for the persons concerned to be able to obtain information on the specification from the Commission.

40. In those cases, the respective designations for sliced ham, grated cheese or packaged products could be used only if they were sliced, grated or packaged in the region of production. Those specifications were available only in Italy, at least in the case of '*Prosciutto di Parma*', and could not therefore be applied against the economic operators concerned in the United Kingdom. [27]

41. As Latvia rightly states, any other outcome, in particular failure to publicise in the language of the person concerned, would run counter to Article 21(3) EC. Under that provision, the institutions and certain bodies must correspond with the citizens of the Union in one of the languages mentioned in Article 314 EC. [28] If, however, non-binding correspondence must take place in an official language chosen by a citizen of the Union, then a fortiori only the obligations which have been publicised in his official language may be applied against him. [29]

42. As Latvia also points out, being bound by rules which have been publicised only in other languages would at the same time place the citizen at a disadvantage compared with other citizens of the Union who are able reliably to find out about their obligations in their own language. Precisely such discrimination is precluded by the first sentence of Article 58 of the Act of Accession, which provides that the new language versions are authentic under the same conditions as the texts drawn up in the languages of the old Member States. It would therefore be incompatible to make the authenticity of different language versions contingent on varying requirements in relation to their publicity.

43. Consequently, it follows from the second half of Article 2 of the Act of Accession that Community regulations may be applied against citizens in the new Member States under the second sentence of Article 58 of the Act of Accession in principle only after

25 — See *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, paragraph 95 et seq., and *Ravil*, paragraph 99 et seq., both cited in footnote 21.

26 — Opinion in *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, cited in footnote 21, point 125 et seq.

27 — *Consorzio del Prosciutto di Parma and Salumificio S. Rita* (cited in footnote 21, paragraph 98).

28 — *Kik* v *OHIM* (cited in footnote 23, paragraph 83).

29 — See Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraph 48 to 52.

they have been properly publicised in their respective official language.

2. Proper publicity

44. It must now be clarified in the light of the assessment thus far whether the first paragraph of Article 199 of Regulation No 2454/93 was properly publicised in good time.

45. Under the second sentence of Article 58 of the Act of Accession and under the first sentence of Article 254(1) and Article 254(2) EC proper publicity requires publication in the *Official Journal of the European Union*. In the present case, such publication occurred only after the contested customs declarations, in the form of a special edition of the Official Journal. It does not therefore justify applying the relevant provisions against Skoma-Lux.

46. However, some of the parties and the Commission in particular point out that a Czech translation of the act in question which had been checked by the Council and by the Commission was already available on the internet before the accession of the Czech Republic, on the free EUR-Lex website run by the Office for Official Publications. Any individual therefore had the opportunity to find out about the rules in question.

47. It even seems that a 'notice to readers' appeared in several editions of the Official Journal, stating inter alia that publication on the internet replaced publication within the meaning of Article 58 of the Act of Accession pending the special edition of the Official Journal. In particular, that sentence was still contained in the Czech internet version of Official Journal L 169 of 1 May 2004 on 25 June 2007. [30]

48. However, that notice cannot lead to that form of provision of legislation being recognised as proper publicity. There is no legal basis for it. In this respect it differs from a communication on the possible consequences of non-notification of State aid to the Commission, which the Court regularly relies on [31] to preclude the protection of legitimate expectations of aid recipients.

49. For that very reason, in the view of the Commission and all the other parties, publication on the internet cannot replace proper publicity either.

30 — For details see point 6 et seq. above.

31 — Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14 and 15; Case 304/85 *Falck* v *Commission* [1987] ECR 871, paragraph 158; Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 102; Case C-99/02 *Commission* v *Italy* [2004] ECR I-3353, paragraph 19; and Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 110.

50. The Commission further mentions a 'publication' of all secondary-law regulations translated into Czech in paper form on 30 April 2004. It was entered in the Office's register and was publicised on the Office's premises.

51. Such 'publication' is not proper publicity either. In the absence of relevant information in the normal means of publicity, in particular the Official Journal, no one could expect such 'publication' to exist. The nature of the publicity cannot give grounds to suppose that that edition reached the public at all.

52. It must therefore be stated that the Community did not properly publicise the first paragraph of Article 199 of Regulation No 2454/93 in Czech before promulgation in the Czech special edition of the *Official Journal of the European Union.*

3. The significance of national publicity

53. In the order for reference, however, mention is made of other forms of publicity of the rules in question in Czech, namely publication by the Czech Ministry of Finance on the internet and the opportunity to consult the relevant legislation at the customs authorities. The question therefore arises whether proper notification of Community legislation could take place in this way in the Czech Republic under national law.

54. Recognising domestic publicity of Community law — directly applicable regulations in particular — to be proper could be misunderstood. The false impression should not be created that such rules require transposition into the domestic legal order. [32] Instead, the direct application of a Community regulation means that no measures are required for its reception into national law, [33] including any publicity by the Member States.

55. The Court has nevertheless recognised that under certain circumstances information about directly applicable Community rules may be useful. [34] It may even be in the interest of coherence of implementing provisions and of making them comprehensible to

32 — See Case 39/72 *Commission* v *Italy* [1973] ECR 101, paragraph 17; Case C-272/83 *Commission* v *Italy* [1985] ECR 1057, paragraph 26; and Case C-278/02 *Handlbauer* [2004] ECR I-6171, paragraph 25.

33 — Case 34/73 *Variola* [1973] ECR 981, paragraph 10, and Case 50/76 *Amsterdam Bulb* [1977] ECR 137, paragraph 4.

34 — Case 20/72 *Cobelex* [1972] ECR 1055, paragraph 20.

the persons to whom they apply to incorporate some elements of a Community regulation. [35]

56. The situation would be similar for national publicity provided there was no proper Community publicity in the relevant official language. It would reinforce the direct validity of regulations rather than jeopardise it.

57. The judgment on the protected designation of origin '*Grana Padano*' shows that this is possible. The Court allowed the national court the possibility of relying on the rules in question against economic operators if they were properly publicised in earlier national rules. [36]

58. The question whether the abovementioned forms of publicity can have such an effect is primarily a matter of Czech law, which is for the referring court to assess. Community law criteria stem above all from the principle of equivalence and the principle of effectiveness. [37] The principle of equivalence requires that subsidiary national publicity of Community provisions guarantees legal certainty at least to the same extent as publicity of national law in the Member State in question. At the same time, it would be incompatible with the principle of effectiveness if national publicity of Community provisions guaranteed less legal certainty than promulgation in the *Official Journal of the European Union.*

4. The general application of the *acquis communautaire* before proper publicity

59. In the absence of proper publicity at Community level, the further question arises whether an exception to the principle that only rules which have been properly publicised in an individual's language may be applied against him would be justified in the present case.

60. Although in general the principle of legal certainty precludes a Community measure from taking effect (or from beginning to apply in time) from a point in time before its

35 — *Commission* v *Italy* (cited in footnote 32, paragraph 27).

36 — *Ravil* (cited in footnote 21, paragraph 103).

37 — See, for example, Case C-201/02 *Wells* [2004] ECR I-723, paragraph 67; Case C-168/05 *Mostaza Claro* [2006] ECR I-10421, paragraph 24; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 43; and Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 28.

publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected. [38]

61. Such an exception could be included in the abovementioned notice to readers, [39] which stated, at least in certain language versions, that publication on the internet would be regarded for the time being as publication within the meaning of Article 58 of the Act of Accession. The purpose of the exception would be to apply the *acquis communautaire* before proper publicity in the new Member States. The expectations of those concerned would be protected by the publication of the texts on the internet.

62. However, a simple notice whose authors cannot even be identified from the version now available cannot introduce an exception to a general rule as was laid down in the present case in Article 2 and Article 58 of the Act of Accession. For this reason alone an exception on that basis is precluded.

63. Nevertheless, even if the legislature had envisaged an exception to the prohibition of retroactive effect, the relevant conditions would not be satisfied in the present case.

64. Proper publicity of the entire *acquis communautaire* in nine new official languages certainly represents a particular challenge. The interest of guaranteeing the practical effectiveness of Community law in that situation may therefore justify cuts being made in the form of publicity. [40]

65. Contrary to the arguments made by Estonia and the Commission in particular, however, publication on the internet, as it was actually done, does not protect the legitimate expectations of those concerned. In purely practical terms that form of publication certainly does offer an economic operator who makes use of modern means of communication equally good if not better chances of acquainting himself with the relevant rules than does publication in the Official Journal. However, there are a number of shortcomings which preclude recognition of such publication as reliable in the present case.

38 — Case 98/78 *Racke* (cited in footnote 20, paragraph 20); Case C-368/89 *Crispoltoni* [1991] ECR I-3695, paragraph 17; Joined Cases C-487/01 and C-7/02 *Gemeente Leusden and Holin Groep* [2004] ECR I-5337, paragraph 59; and Case C-376/02 *'Goed Wonen'* [2005] ECR I-3445, paragraph 33.

39 — See point 6 et seq. above.

40 — Publication in the special edition of the Official Journal possibly does not have the same quality as publication in the normal Official Journal. For example, in the special edition it is not clear when the volume in question was published, i.e. when it was actually available.

66. Publication on the internet can guarantee a degree of reliability comparable to that of the paper version as regards publication only if additional steps are taken to ensure the durability and authenticity of publication.[41] It must be possible to consult the original publication — in a similar way to the paper version — in future in order to ascertain what rules were actually promulgated. Consequently, subsequent amendments must be published separately as *corrigenda*. Interference by unauthorised persons must also be ruled out so that no incorrect texts are published as authentic.

67. The abovementioned 'notice to readers' illustrates[42] that no such guarantees exist in the entire EUR-Lex service, perhaps not only in the case of temporary publication of the *acquis communautaire* in the languages of new Member States. The notice appeared in all the official languages in several editions of the *Official Journal of the European Union*. Those editions are available on EUR-Lex in the form of pdf documents which have the same appearance as the paper version of the Official Journal. Because of that visual impression, that internet publication could therefore be expected to be at least as reliable as the Official Journal itself.

68. However, that impression of reliability is deceptive. It is not now clear who the author of the notice is, whereas on 25 June 2007 at least the reproduction of the Czech version of the Official Journal on the internet described the document as a Commission notice. It also included the sentence, which is now omitted, stating that publication on the internet should be regarded as publication within the meaning of Article 58 of the Act of Accession. There is no information on the amendment of the document. It was only by chance that the change to the Czech version was discovered. It is suggested that the publication on the internet of other language versions was possibly also affected only in one article.[43] Under those conditions at least publicity on the internet does not constitute a sufficiently reliable source.

69. Furthermore, mention must be made of practical problems of access to publicity of the *acquis communautaire* in the new official languages on the internet. The internet address given[44] led to an English-language page where it was possible to select inter alia a further 'Czech' link. The page which then appeared showed the first level of the systematic directory of Community law in English, which led to a description of all directory levels for the individual chapters, which were likewise available only in English.

41 — See Bobek (cited in footnote 5, p. 12).

42 — See point 6 et seq. above.

43 — See the article by Bobek cited in footnote 5.

44 — http://europa.eu.int/eur-lex/fr/accession.html, visited on 25 June 2007. The page now appears to be no longer available.

Only from there was it possible to reach a directory level in which acts were listed with their Czech titles. The required act could be found there, however, only if the correct subchapter had been selected. It therefore appears rather unlikely that a Czech person applying the law, without any knowledge of English, could find the required act in this jungle.[45]

70. If, on the other hand, that person applying the law had knowledge of English, he could then take note of the 'important legal notice', reproduced below in English, which was added to the provisional notification of the *acquis communautaire* in exactly the same way as on all other EUR-Lex pages:

'Please note that it cannot be guaranteed that a document available on-line exactly reproduces an officially adopted text. Only European Union legislation published in paper editions of the *Official Journal of the European Union* is deemed authentic.'[46]

71. Therefore neither was the publication on EUR-Lex mentioned in the 'notice to readers' reliable nor did it claim any such reliability and, moreover, it was not really accessible without some knowledge of English. In those circumstances the persons concerned can hardly be expected to be guided by the texts reproduced there.

72. That conclusion is not precluded by the fact that many, perhaps even nearly all persons applying the law use the EUR-Lex service to find out about Community law. As a rule that information is guaranteed because in cases of doubt the persons applying the law can use a reliable information source, in the form of the Official Journal in paper form, to verify the contents of EUR-Lex. In the situation of accession, however, there was no such possibility for the new languages before the rules in question were published in the special edition of the Official Journal.

73. Legitimate expectations could also not be based on the publication of all secondary-law regulations translated into Czech in paper form on 30 April 2004, as mentioned by the Commission. It would be conceivable to recognise that paper edition produced in the Office for Official Publications as authentic documentation, which guarantees the internet publication and the paper edition of the Official Journal. However, this would have required the public, in particular users of the internet publication, to have been made aware of the existence of that paper edition and its function as a reliable source. No arguments have been made to that effect.

45 — It should be pointed out that these barriers to access were removed for the comparable publication of the *acquis communautaire* in Bulgarian and Romanian. Whilst there is apparently no corresponding notice to readers, the provisional internet publication is accessible in those languages via the EUR-Lex front page and the directory levels for the Community law in force have also been translated.

46 — http://europa.eu/geninfo/legal_notices_en.htm#disclaimer.

74. It must therefore be stated that no provision is made for an exception to the requirement of proper publicity. Moreover, the actual forms of publication of the *acquis communautaire* before the publication of the special edition of the Official Journal do not satisfy the requirements for such an exception.

5. Special circumstances in the individual case

75. The Estonian and Polish Governments and the Commission nevertheless consider that it is possible to apply rules which have not been properly publicised against citizens of the Union if they were actually aware of those rules because of special circumstances in the individual case.

76. In addition to the previously mentioned forms of publication on the internet, they refer above all to the fact that Skoma-Lux has for some time been involved in commercial imports of goods. It should therefore be assumed that it was aware of the legal consequences of the Czech Republic's accession to the European Union. It also has to be examined whether Skoma-Lux could have acquainted itself with other — properly publicised — language versions of the relevant rules. In any case, all economic operators are aware of the obligation at issue, to make correct customs declarations.

77. The reference to other language versions is not very persuasive since this has already been rejected in the judgments in '*Prosciutto di Parma*' and '*Grana Padano*'.[47]

78. On the other hand, the last argument cited by the Commission could be based indirectly on those two judgments. In those cases the Court expressly held that the protection conferred by a protected designation of origin does not normally extend to operations such as slicing, grating and packaging the product.[48] It could be concluded, conversely, that at least generally common obligations of which economic operators must be aware may be applied against them exceptionally even irrespective of proper publicity.

79. However, there is a significant difference with the two abovementioned cases. The indications of origin without any doubt

47 — See *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, paragraph 95 et seq., and *Ravil*, paragraph 99 et seq., both cited in footnote 21.

48 — See *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, paragraph 94, and *Ravil*, paragraph 98, both cited in footnote 21.

enjoyed the effective protection of Community law. Only the scope of the protection was unclear, as its extension to the above-mentioned operations had not been properly publicised. If, however, it was obvious that such operations enjoyed protection, such publicity would possibly not have been required. In the present case, on the other hand, there is no properly publicised basic obligation.

80. It should also be pointed out that the first paragraph of Article 199 of Regulation No 2454/93 not only requires accurate information, but also imposes an obligation relating to the authenticity of the documents attached and compliance with *all* the obligations relating to the entry of the goods in question under the procedure concerned. It is not clear that an economic operator must expect to be responsible himself for the authenticity of the documents, [49] even if he cannot assess this himself. In any case, without proper publicity it seems impossible for him reliably to acquaint himself with all the obligations under Community law relating to the entry of the goods in question under the procedure concerned and to comply accordingly.

81. Against this background, the position taken by the Czech Republic, Latvia, Sweden and Slovakia is persuasive. They reject an examination of the individual case since the applicability of legislation may not be made dependent on unspecified circumstances in the individual case. The application of the law would be made completely unpredictable. In particular, it would no longer be clear to an individual when certain rules could be applied against him and when they could not. The principle of legal certainty would thus no longer be respected.

82. However, the authorities would also be faced with a barely manageable task. Rather than being able to deal with clear rules as proposed, in accordance with their capacities, they would also be required to examine in each individual case whether and to what extent rules of Community law which have not yet been properly publicised in an individual's language could be applied against him because of individual circumstances. This additional burden is particularly significant after an accession, as the competent authorities of the new Member States face great challenges at that time because of the rules which are new to them. [50]

83. The situation may have to be assessed differently where citizens of the Union rely on provisions which are favourable to them, but at the same time reject the application of

49 — See Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 115, and Case C-97/95 *Pascoal & Filhos* [1997] ECR I-4209, paragraph 57.

50 — This is illustrated by the judgment in *Oryzomyli Kavallas* v *Commission* (cited in footnote 8) on the accession of Greece.

provisions which are unfavourable to them. This is suggested by the recent judgment in *Stichting ROM-projecten*. [51] In that case the Court refused to apply against an individual beneficiary of Community financial assistance rules which had not been publicised, but made this subject to the condition of good faith. [52] The case related to the conditions for the grant of financial assistance which had been notified only to the Member State in question, but not to the beneficiary. This approach is relevant in particular in relation to the administration of benefits in a limited number of cases.

84. In the present case, however, there is nothing to suggest that Skoma-Lux is relying on provisions which are favourable to it. Instead, the case concerns obligations which arise irrespective of benefits administered by the State and in a large number of cases.

85. There are therefore no clear circumstances in the individual case which would allow the provisions of Community law in question to be applied against Skoma-Lux.

6. Interim conclusion

86. It follows from the second half of Article 2 of the Act of Accession that the first paragraph of Article 199 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 may be applied against citizens in the new Member States under the second sentence of Article 58 of the Act of Accession only after it has been properly publicised in their respective official language.

V — Limitation of the effects of the judgment

87. The Czech, Latvian, Polish and Slovak Governments claim that the effects of the judgment should be limited to the future. Except for Slovakia, however, they suggest a counter-exception for proceedings already pending.

88. It is settled case-law that the interpretation which, in the exercise of the jurisdiction conferred on it by Article 234 EC, the Court gives to a rule of Community law clarifies and defines the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships which arose and were established before the judgment ruling on the request for inter-

51 — Cited in footnote 22.

52 — Cited in footnote 22, paragraph 31.

pretation, provided that in other respects the conditions for bringing a dispute relating to the application of that rule before the competent courts are satisfied. [53]

89. The persons concerned thus have the possibility in principle of relying on a provision the Court has interpreted with a view to calling in question legal relationships established in good faith. It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict that possibility. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties. [54]

90. The Court has taken such a step only where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force. Furthermore, both individuals and national authorities had been prompted to adopt practices which did not comply with Community law by reason of objective, significant uncertainty regarding the implications of Community provisions, to which the conduct of other Member States or the Commission may even have contributed. [55]

91. The Czech Republic, Latvia and Poland rely on the potentially serious financial consequences of an unlimited application of the proposed solution and the good faith of the Member States concerned.

92. The possibility of serious financial consequences is clear. For a period lasting several months, obligations stemming directly from Community law could not be applied against individuals in most of the new Member States. In so far as the relevant decisions and acts can still be contested in court, the persons concerned may rely on that fact. It cannot be ruled out that customs debts, customs fines or other charges are affected significantly.

53 — Case 24/86 *Blaizot* [1988] ECR 379, paragraph 27; Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 141; Case C-347/00 *Barreira Pérez* [2002] ECR I-8191, paragraph 44; Joined Cases C-453/02 and C-462/02 *Linneweber and Akritidis* [2005] ECR I-1131, paragraph 41; and Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 50.

54 — Case C-57/93 *Vroege* [1994] ECR I-4541, paragraph 21; Case C-104/98 *Buchner and Others* [2000] ECR I-3625, paragraph 39; Case C-372/98 *Cooke* [2000] ECR I-8683, paragraph 42; *Linneweber and Akritidis* (cited in footnote 53, paragraph 42); and *Skov and Bilka* (cited in footnote 53, paragraph 51).

55 — Joined Cases C-197/94 and C-254/94 *Bautiaa and Société française maritime* [1996] ECR I-505, paragraph 48, with reference to Case C-163/90 *Legros and Others* [1992] ECR I-4625, paragraph 30 et seq.

93. The Court does not have to clarify in the present proceedings who would bear responsibility for those consequences, and who would therefore be liable, whether it be the Community or the new Member States. If that issue has to be examined in future, it should certainly be taken into consideration that — as several of the Member States which are party to the proceedings argue — Article 2 and Article 58 of the Act of Accession place the new Member States in a difficult position. The *acquis communautaire* is binding on them and they must therefore implement it. Yet they can apply it against their citizens only after it has been properly publicised. Publicity is the task of the Community, however. At first sight responsibility therefore lies with the Community. [56]

94. However, it is settled case-law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effects of the ruling. [57] The same must apply in so far as the financial consequences are to the detriment of the Community.

95. It is also uncertain in the present case whether good faith can be assumed on the part of those affected by those consequences, i.e. the Member States and the Community. The Commission and the Member States which are party to the proceedings argue unanimously, on the basis of the existing case-law and quite rightly, that Community-law obligations stemming from the *acquis communautaire* could be applied against those concerned in the new Member States in principle only after the relevant provisions were published in the special edition of the Official Journal.

96. Differences exist only in so far as the view is taken by some — particularly by the Estonian and Polish Governments — that certain obligations could nevertheless be applied against citizens in particular because of the publication on the internet and on account of the circumstances in the individual case. However, such exceptional application is not really likely to create good faith in the applicability of obligations before the special edition of the Official Journal had appeared.

97. Nor has anything been submitted in the present case to suggest good faith in the publication of the *acquis communautaire* in good time. Whilst it must be recognised that publication was a major challenge, the necessary consequences should have been drawn from the beginning. This could have taken the form of greater efforts to complete publication in good time or appropriate transitional rules contained in the Act of

56 — With regard to a failure to act by a Member State, see *Stichting ROM-projecten* (cited in footnote 22, paragraph 33).

57 — Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 52; Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 68; and Case C-313/05 *Brzeziński* [2007] ECR I-513, paragraph 58.

Accession, such as use of a reliable publication on the internet.

98. The Court should not therefore limit the effects of the judgment in the present case.

VI — Conclusion

99. I therefore propose that the Court answer the questions referred for a preliminary ruling as follows:

(1) It follows from the second half of Article 2 and the second sentence of Article 58 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded that the first paragraph of Article 199 of Regulation (EEC) No 2454/93 laying down provisions for the implementation of Regulation (EEC) No 2913/92 may be applied against citizens in those new Member States under the circumstances described in the order for reference only after it has been properly publicised in their respective official language.

(2) Failure to publicise properly a regulation in certain official languages does not call into question its validity. It does not therefore in itself oblige the court seised of the matter to make a reference for a preliminary ruling.