

Case C-319/21**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:**

21 May 2021

Referring court:

Corte d'appello di Venezia (Italy)

Date of the decision to refer:

27 April 2021

Appellant:

Agecontrol SpA

Respondents:

ZR

Lidl Italia Srl

Subject matter of the main proceedings

Appeal brought by Agecontrol SpA against judgment No 2053/2019 delivered by the Tribunale di Treviso (District Court, Treviso, Italy), which upheld the action brought by ZR and Lidl Italia Srl against order No 28 of 30 April 2018. By that order, Agecontrol SpA imposed the administrative fine of EUR 4 400.00 laid down in Article 4(1) of decreto legislativo del 10 dicembre 2002, n. 306 (Legislative Decree No 306 of 10 December 2002) on both parties because they had issued two accompanying documents for fruit and vegetables departing from Lidl Italia Srl's distribution platform and shipped to its sales outlets that incorrectly indicated the country of origin of the goods.

Question referred for a preliminary ruling

‘Must Article 5(4) of Commission Implementing Regulation (EU) No 543/2011, read in conjunction with Article 5(1) and Article 8 of that regulation and with Articles 113 and 113a of Council Regulation (EU) No 1234/2007 of 22 October

2007, be interpreted as meaning that an accompanying document must be issued indicating the name and the country of origin of fresh fruit and vegetables shipped pre-packed or in the original packaging provided by the producer, during transport from a seller company's distribution platform to a point of sale of the same company, irrespective of the fact that one side of the packaging features the information particulars required by Chapter I [of Title II] of Regulation (EU) No 543/2011 (including the name and country of origin of the goods) indelibly printed directly onto the package or on a label which is an integral part of the package or affixed to it, and irrespective of the fact that this information is also shown on the invoices issued by the supplier from which the goods were purchased by the seller company kept in that company's accounting offices and on a notice placed in an obvious position inside the means of transport in which the goods are being conveyed?'

Provisions of EU law cited

Council Regulation (EC) No 1234/2007 ('Regulation No 1234/2007'); in particular Article 113(3) and Article 113a.

Commission Implementing Regulation (EU) No 543/2011 ('Regulation No 543/2011'); in particular Article 4(2) and Articles 5 and 8.

Article 267 TFEU.

Provisions of national law cited

Article 4(1) of Legislative Decree No 306 of 10 December 2002 ('Legislative Decree No 306/2002'): '*Unless the act constitutes an offence, anyone who breaches the rules governing fresh fruit and vegetables adopted by the Commission of the European Communities in Articles 113 and 113a of Council Regulation (EC) No 1234/2007 of 22 October 2007, as amended, shall be required to pay an administrative fine of between EUR 550 and EUR 15 500.*'

Succinct presentation of the facts and procedure in the main proceedings

- 1 By order No 28 of 30 April 2018, Agecontrol SpA imposed the administrative fine of EUR 4 400.00 laid down in Article 4(1) of Legislative Decree No 306/2002 on ZR, as the offender, and Lidl Italia Srl, as a jointly liable party. It was established during a verification carried out on 25 September 2013 at the site of Lidl Italia Srl's distribution platform that two accompanying documents had been issued on 3 June 2013 and 29 July 2013 for fruit and vegetables departing from Lidl Italia Srl's distribution platform and shipped to its points of sale, which indicated a different country of origin of the goods from that printed by the producer on the original packaging in which the goods were sold and also shown on the price label issued by Lidl Srl, in breach of Article 5(4) of Regulation No 543/2011.

- 2 ZR and Lidl Italia Srl challenged that order before the Tribunale di Treviso (District Court, Treviso, Italy). By judgment No 2053/2019, that court upheld the action and set aside the order.
- 3 By an appeal lodged on 11 March 2020, Agecontrol SpA appealed that judgment before the Corte d'appello di Venezia (Court of Appeal, Venice, Italy).

Principal arguments of the parties to the main proceedings

- 4 Contrary to the position taken by the Treviso District Court in the judgment under appeal, Agecontrol SpA asserts that, on the basis of Article 113a of Regulation No 1234/2007 and of Articles 5(4) and 8 of Regulation No 543/2011, once marketing for food use is under way, fruit and vegetables must comply with EU rules at all times and at all stages, and therefore also if they are being transferred internally from a distribution platform to a supermarket belonging to the same economic operator. This applies in particular with reference to the information to be provided in the accompanying documents relating to such goods.
- 5 In support of this interpretation, the appellant cites Letter No 2160916 from the European Commission's Directorate-General for Agriculture and Rural Development (DG AGRI), which states as follows: *'That provision, which requires in particular that the country of origin be indicated on invoices and accompanying documents, applies at all stages of marketing and during the transport of fruit and vegetables. The only exemptions provided for the transport of fruit and vegetables are listed in Article 4(2) of that regulation and concern goods sold or shipped to storage facilities or preparation and packaging stations.'*
- 6 Conversely, ZR and Lidl Italia Srl submit that neither Italian nor EU law creates an obligation to issue a transport document for the transfer of fruit and vegetables from the owner company's warehouse to one of its points of sale. On the one hand, Article 5(2) of Regulation No 543/2011 imposes an obligation to issue an accompanying document, or to show the information particulars required by the marketing standards on a notice placed in an obvious position inside the means of transport, solely for goods shipped in bulk, given that these goods do not have packaging and it is not therefore possible in any way to print the information particulars required by EU law. On the other hand, Article 5(4) of that regulation simply requires that invoices and accompanying documents must show certain information, but, contrary to Agecontrol SpA's assertion, does not require pre-packed goods or those in packaging to be accompanied by a transport document containing the same particulars as those shown on the packaging or label, especially when the fruit and vegetables are being moved from the distribution platform to a point of sale belonging to the same commercial operator, as in the present case.
- 7 The respondents claim that the present case does not constitute an infringement of the marketing standards under EU law because the original packaging provided by the producer in which the fruit and vegetables were travelling showed printing or

a label indicating their correct provenance and that information was also provided on the price label issued by Lidl Italia Srl shown in the means of transport.

Succinct presentation of the reasons for the request

- 8 The referring court considers that there is uncertainty as to the interpretation of Article 5(4) of Regulation No 543/2011, inasmuch as that article does not list the cases in which there is an obligation to issue an accompanying document providing information about the country of origin during the transport of fruit and vegetables. Specifically, that court is asking whether such an obligation exists in the case where all of the following conditions are met: (a) the fruit and vegetables transported are travelling inside packaging that shows the particulars of their country of origin, either indelibly printed directly onto the package or on a label which is an integral part of the package or affixed to it; (b) the goods are being transported from a company's distribution platform to a point of sale belonging to the same company; (c) the invoices and accompanying documents concerning relations with the third-party suppliers of the goods show the particulars required by the regulation, in particular the origin of the goods; (d) the name and country of origin of the goods are also shown on a notice placed in an obvious position inside the means of transport in which the goods are travelling.
- 9 On the one hand, the view might be taken that this obligation applies only when the goods are being moved between Lidl Italia Srl and third-party suppliers, as this constitutes a 'marketing stage' for which EU law requires checks on compliance with the marketing standards.
- 10 In the referring court's view, it would even be possible to consider that the obligation in question exists only in the specific case of shipping of goods in bulk, described in Article 5(2) of Regulation No 543/2011, and not when the product is travelling in packaging showing the information particulars according to the requirements laid down in Article 5(1), given that Article 5(4) would not be immediately binding.
- 11 On the other hand, the referring court notes that this obligation could also be interpreted as meaning that it applies at all stages in the transport of fruit and vegetables with a view to their release for consumption. Indeed, Article 113a(3) of Regulation No 1234/2007 also lists simple delivery among the activities that owners of fruit and vegetables cannot carry out without complying with the marketing standards. Yet, delivery assumes the transfer of goods from one location to another, without regard to the fact, if no provision exists in law, that the place of departure and the place of arrival are under the control of the same legal entity.
- 12 The only derogations from this obligation are those provided for in Article 5(4) of Regulation No 543/2011 for receipts issued to end consumers during sale, and those listed in Article 4 of that regulation. These do not include the transfer of goods from a storage facility to a point of sale belonging to the same legal entity.

- 13 According to this second interpretation, it is of no consequence that in this case the information required by the EU legislation in relation to marketing is in any case correctly indicated in the accompanying documents for the fruit and vegetables concerning relationships with Lidl Italia Srl's supplier, on the packaging delivered by the supplier in which the goods are travelling and on a notice placed in an obvious position inside the means of transport in which the goods are being conveyed, because the formalities related to the issue of accompanying documents cannot be replaced by others.

WORKING DOCUMENT