



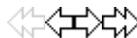
Navigazione



Documenti

- [C-113/15 - Sentenza](#)
- [C-113/15 - Conclusioni](#)
- [C-113/15 - Domanda \(GU\)](#)

•



1 / 1

[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > [Documenti](#)



[Avvia la stampa](#)

Lingua del documento :

ECLI:EU:C:2016:718

JUDGMENT OF THE COURT (Third Chamber)

22 September 2016 (\*)

(Reference for a preliminary ruling — Directive 2000/13/EC — Labelling and presentation of foodstuffs — Article 1(3)(b) — Concept of ‘pre-packaged foodstuff’ — Article 2 — Consumer information and protection — Article 3(1)(8) — Place of origin or provenance of a foodstuff — Article 13(1) — Labelling of a prepackaged foodstuff — Article 13(4) — Packaging or containers the largest surface of which has an area of less than 10 cm<sup>2</sup> — Directive 2001/110/EC — Article 2(4) — Indication of the country or countries of origin of honey — Individual portions of honey packaged in cartons supplied to mass caterers — Individual portions sold separately or supplied to ultimate consumers as part of meals for an all-inclusive price — Indication of the country or countries of origin of that honey)

In Case C-113/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany), made by decision of 11 February 2015, received at the Court on 6 March 2015, in the proceedings

**Breitsamer und Ulrich GmbH & Co. KG**

v

**Landeshauptstadt München,**

intervening party:

**Landesanstaltschaft Bayern,**

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, D. Šváby, J. Malenovský, M. Safjan (Rapporteur) and M. Vilaras, Judges,

Advocate General: E. Sharpston,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 28 January 2016,

after considering the observations submitted on behalf of:

- Breitsamer und Ulrich GmbH & Co. KG, by M. Kraus, Rechtsanwalt,
- Landeshauptstadt München, by S. Groth and K. Eichhorn, acting as Agents,
- Landesanstaltschaft Bayern, by R. Käß, Oberlandesanstalt,
- the European Commission, by S. Grünheid, K. Herbout-BorczaK and K. Skelly, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 April 2016,

gives the following

**Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 1(3)(b) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29) and of Article 2(2)(e) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European

Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

2 The request has been made in proceedings between Breitsamer und Ulrich GmbH & Co. KG and the Landeshauptstadt München (Federal State Capital Munich, Germany) concerning the obligation to indicate, on each individual portion of honey packaged in bulk in cartons supplied to mass caterers, the country of origin of that honey when those portions are sold separately or offered for sale to ultimate consumers in pre-prepared meals for an all-inclusive price.

### **Legal context**

#### *EU law*

#### Directive 2000/13

3 According to recitals 4 to 6, 8, 14 and 15 of Directive 2000/13:

‘(4) The purpose of this Directive should be to enact Community rules of a general nature applicable horizontally to all foodstuffs put on the market.

(5) Rules of a specific nature which apply vertically only to particular foodstuffs should be laid down in provisions dealing with those products.

(6) The prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.

...

(8) Detailed labelling, in particular giving the exact nature and characteristics of the product which enables the consumer to make his choice in full knowledge of the facts, is the most appropriate since it creates fewest obstacles to free trade.

...

(14) The rules on labelling should also prohibit the use of information that would mislead the purchaser or attribute medicinal properties to foodstuffs. To be effective, this prohibition should also apply to the presentation and advertising of foodstuffs.

(15) With a view to facilitating trade between Member States, it may be provided that, at stages prior to sale to the ultimate consumer, only information on the essential elements should appear on the outer packaging and certain mandatory particulars that must appear on a prepackaged foodstuff need appear only on commercial documents referring thereto.’

4 Article 1 of that directive stated:

‘1. This Directive concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer and certain aspects relating to the presentation and advertising thereof.

2. This Directive shall apply also to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers (hereinafter referred to as “mass caterers”).

3. For the purpose of this Directive,

(a) “labelling” shall mean any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff;

(b) “pre-packaged foodstuff” shall mean any single item for presentation as such to the ultimate consumer and to mass caterers, consisting of a foodstuff and the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging.’

5 Article 2(1)(a)(i) of the directive provided:

‘The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production.’

6 Article 3(1)(8) of the directive provided:

‘In accordance with Articles 4 to 17 and subject to the exceptions contained therein, indication of the following particulars alone shall be compulsory on the labelling of foodstuffs:

...

(8) particulars of the place of origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff.’

7 Article 4(2) of Directive 2000/13 was worded as follows:

‘Community provisions applicable to specified foodstuffs and not to foodstuffs in general may provide that other particulars in addition to those listed in Article 3 must appear on the labelling.

...’

8 Article 8(2)(c) of that directive stated:

‘Where a prepackaged item consists of two or more individual prepackaged items containing the same quantity of the same product, the net quantity shall be indicated by mentioning the net quantity contained in each individual package and the total number of such packages. Indication of these particulars shall not, however, be compulsory where the total number of individual packages can be clearly seen and easily counted from the outside and where at least one indication of the net quantity contained in each individual package can be clearly seen from the outside.’

9 Article 13(1) and (4) of the directive provided:

‘1. (a) When the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4(2) shall appear on the prepackaging or on a label attached thereto.

(b) Notwithstanding point (a) and without prejudice to Community provisions on nominal quantities, where prepackaged foodstuffs are:

- intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage,
- intended for supply to mass caterers for preparation, processing, splitting or cutting up,

the particulars required under Articles 3 and 4(2) need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

(c) In the case referred to in point (b), the particulars referred to in Article 3(1) points 1, 5 and 7 and, where appropriate, that referred to in Article 10, shall also appear on the external packaging in which the foodstuffs are presented for marketing.

...

4. In the case of the glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar and packaging or containers the largest surface of which has an area of less than 10 cm<sup>2</sup> only the particulars listed in Article 3(1) points 1, 4 and 5 need be given.

...’

10 Article 14 of the directive provided:

‘Where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without prepackaging, or where foodstuffs are packaged on the sales premises at the consumer’s request or prepackaged for direct sale, the Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4(2) are to be shown.

They may decide not to require the provision of all or some of these particulars, provided that the purchaser still receives sufficient information.’

11 In accordance with Article 53(1) of Regulation No 1169/2011, Directive 2000/13 was repealed with effect from 13 December 2014.

Directive 2001/110/EC

12 According to recital 5 of Council Directive 2001/110/EC of 20 December 2001 relating to honey (OJ 2002 L 10, p. 47):

‘The general food-labelling rules laid down in Directive [2000/13] should apply subject to certain conditions. In view of the close link between the quality of honey and its origin, it is indispensable that full information on those matters be available so that the consumer is not misled regarding the quality of the product. The particular consumer interests as regards the geographical characteristics of honey and full transparency in this regard necessitate that the country of origin where the honey has been harvested should be included in the labelling.’

13 Article 1 of Directive 2001/110 states:

‘This Directive shall apply to the products defined in Annex I. These products shall meet the requirements set out in Annex II.’

14 Article 2 of that directive provides:

‘Directive [2000/13] shall apply to the products defined in Annex I, subject to the following conditions:

1. the term “honey” shall be applied only to the product defined in Annex I, point 1, and shall be used in trade to designate that product;

...

4. (a) the country or countries of origin where the honey has been harvested shall be indicated on the label.

However, if the honey originates in more than one Member State or third country that indication may be replaced with one of the following, as appropriate:

- “blend of EC honeys”,
- “blend of non-EC honeys”,
- “blend of EC and non-EC honeys”.

(b) For the purpose of Directive [2000/13] and in particular Articles 13, 14, 16 and 17 thereof, the particulars to be indicated according to subparagraph (a) shall be considered as indications according to Article 3 of that Directive.’

15 Annex I to Directive 2001/110 is headed ‘Names, product descriptions and definitions’.

*German law*

The Honey Regulation

16 Paragraph 3(4) and (5) of the Honigverordnung (Honey Regulation) of 16 January 2004 (BGBl. 2004 I, p. 92), in the version in force at the material time in the main proceedings (‘the Honey Regulation’), states:

‘(4) In addition to the information provided for by the [Lebensmittel-Kennzeichnungsverordnung (Food Labelling Regulation) of 15 December 1999 (BGBl. 1999 I, p. 2464, ‘the Food Labelling Regulation’)], the labelling of the products listed in Annex I must contain the following information which is to be indicated in accordance with subparagraph 5:

1. The country or countries of origin where the honey was produced; for honey produced in several countries of origin one of the following indications can be used to the extent that the honey was produced there:

- (a) “blend of EC honeys”,
- (b) “blend of non-EC honeys”,
- (c) “blend of EC and non-EC honeys”,

...

(5) ... Moreover, the first and second sentences and the first half sentence of the third sentence of Paragraph 3(3) and subparagraph 4 of the Food Labelling Regulation apply *mutatis mutandis* to the manner in which the particulars under subparagraph 4 shall be shown.’

17 Paragraph 4(3) of the Honey Regulation prohibits the offer for sale of any product which does not display the indication required under Paragraph 3(4) of that regulation.

## The Food Labelling Regulation

18 Paragraph 1(1) of the Food Labelling Regulation states:

‘This regulation applies to the labelling of packaged foodstuffs in prepackaging within the meaning of Paragraph 42(1) of the [Gesetz über das Inverkehrbringen und die Bereitstellung von Messgeräten auf dem Markt, ihre Verwendung und Eichung sowie über Fertigpackungen (Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging) of 25 July 2013 (BGBl. 2013 I, p. 2722)] which is intended to be supplied to consumers [Paragraph 3(4) of the Lebensmittel- und Futtermittelgesetzbuch (Food and Feed Safety Code)]. Restaurants, canteen caterers as well as commercial caterers are equivalent to a consumer in so far as food is intended to be consumed on their premises.’

19 Paragraph 3(3) and (4) of that regulation provides:

‘(3) The particulars laid down in subparagraph 1 must be marked in German on the prepackaging or on a label attached thereto in a conspicuous place in such a way as to be easily visible, clearly legible, indelible and easy to understand. The particulars laid down in subparagraph 1 may be given in another easily understandable language provided that the information to the consumer is not restricted. The particulars may not be covered or separated by other particulars or images; the particulars laid down in subparagraph 1(1), (4) and (5) and the particulars of quantity laid down in Paragraph 43(1) of the Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging must be indicated in the same field of vision.

(4) By way of derogation from subparagraph 3,

1. the particulars laid down in subparagraph 1 concerning

(a) prepared individual and ready-to-eat meals which are intended to be supplied to canteen caterers to be consumed on the premises,

(b) prepackaged food intended to be offered for sale under the name of a seller or of a company established in an EU Member State or another contracting State of the European Economic Area Agreement, at the time of delivery to that seller,

(c) prepackaged food which is intended to be supplied to consumers within the meaning of the second sentence of Paragraph 1(1) for preparation, processing, splitting or supply, ...

...

can appear on the commercial documents relating to the food if it can be guaranteed that such documents, containing all the labelling information, either accompany the food to which they relate or were sent before or at the same time as delivery. In the cases outlined

in subparagraph 4, points 1(b) and (c), the particulars laid down in subparagraph 1(1), (2) and (4) must also appear on the outer packaging of the food. In the case outlined in subparagraph 2(3), the particulars laid down in subparagraph 1(1) and (4) must not appear in the same window.’

Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging

20 Under Paragraph 42(1) of the Law on the placement and provision of measuring instruments on the market, their use and calibration as well as on prepackaging, ‘prepackaging’ is defined as packaging in any form in which the product is packaged in the absence of the buyer and sealed in the absence of the buyer so that the quantity of the packaged product cannot be changed without opening or noticeably tampering with its packaging.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

21 Breitsamer und Ulrich, an undertaking operating in the European Union in the production and bottling of honey, places, inter alia, the product ‘Breitsamer Imkergold’ (‘the honey in question’) on the market. The product consists of 120 individual portions of 20 grams of the same honey in a portion-cup closed with an aluminium seal (‘the individual portions of the honey in question’). Those 120 portions are placed in a carton sealed by that undertaking and sold in that form to mass caterers.

22 The mandatory particulars relating to that foodstuff and provided for in Directives 2000/13 and 2001/110, in particular, the country of origin of the honey, are indicated on that carton packaging. There is no indication of the country of origin on the individual portions of the honey in question.

23 On 30 October 2012, the Federal State Capital Munich fined the managing director of Breitsamer und Ulrich for infringing the statutory labelling requirements laid down in the Honey Regulation on the ground that, in the first half of 2011, that undertaking had put honey on the market in individual portions which did not indicate the country of origin of that honey.

24 On 5 November 2012, Breitsamer und Ulrich brought an action before the Verwaltungsgericht München (Administrative Court of Munich, Germany) for a declaration that it had not infringed the Honey Regulation by not indicating the country of origin of the honey in question on each individual portion of that honey. In a judgment of 25 September 2013, the Verwaltungsgericht München (Administrative Court of Munich) dismissed that action.

25 Breitsamer und Ulrich appealed against that judgment to the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court, Germany) on the ground that the individual portions of the honey in question do not constitute ‘prepackaged food’

within the meaning of the Food Labelling Regulation, in the version in force at the material time in the case in the main proceedings. According to the applicant, they are not single items since those portions are supplied in carton packaging to mass catering establishments which do not sell the portions individually.

26 Breitsamer und Ulrich also refer to a document entitled ‘Questions and answers on the application of Regulation (EU) No 1169/2011 on the provision of food information to consumers of 31 January 2013, drafted by a working group from the European Commission’s Health and Consumer Directorate-General formed by experts from the Member States (‘the expert group document’). According to paragraph 2.1.3 of that document, published on the Commission’s website, ‘considering the different forms of delivering food to the ultimate consumer in catering establishments, it should be noted that portion-cups (e.g. jams, honey, mustard) which are presented as part of a meal to the guests of mass caterers should not be considered as units of sale. Therefore, it would be sufficient that, in such cases, the food information appear on multipacks’.

27 Lastly, Breitsamer und Ulrich submits that no objection has been made to the labelling of individual portions of honey produced by other undertakings or originating in Member States other than the Federal Republic of Germany even though those portions did not bear an indication of the country of origin of that honey.

28 The Landesanstalt für Lebensmittelsicherheit Bayern (Federal State Representative of Bavaria, Germany), a party to the main proceedings, submits that the intention underlying EU law militates in favour of informing the consumer about the food supplied to him as completely as possible and that the nature of the individual portions of the honey in question as ‘prepacked’ goods is not altered by the fact that they are packaged in a sealed carton.

29 According to the referring court, the honey in question falls under Annex I to the Honey Regulation, the transposition into German law of Directive 2001/110.

30 In those circumstances, the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are individual portions of honey which are packaged in bulk in a carton containing all the labelling elements, including the indication of the country of origin, and which are not sold as individual portions to ultimate consumers nor supplied individually to mass caterers, “prepackaged foodstuff” or “prepacked food” within the meaning of Article 1(3)(b) of Directive 2000/13/EC and Article 2(2)(e) of Regulation (EU) No 1169/2011 respectively, for which there is a corresponding labelling requirement, or are such portions of honey not subject to the labelling requirements for prepackaged foodstuff/prepacked foods due to their not being offered for sale as a single item?’

(2) Is the answer different if those individual portions are supplied in mass catering establishments not only in meals that are paid for as a whole but are also sold individually?

### **The questions referred for a preliminary ruling**

31 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 1(3)(b) of Directive 2000/13 must be interpreted as meaning that each of the individual portions of honey presented in the form of portion-cups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.

32 As a preliminary matter, it should be noted that, according to the questions referred by the referring court, the individual portions of honey in question may be sold separately to the ultimate consumer in mass catering establishments, a statement which is contested by Breitsamer und Ulrich.

33 In that regard, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see judgments of 5 December 2006, *Cipolla and Others*, C-94/04 and C-202/04, EU:C:2006:758, paragraph 25, and of 7 April 2016, *KA Finanz*, C-483/14, EU:C:2016:205, paragraph 41).

34 That presumption of relevance cannot be rebutted by the simple fact that one of the parties to the main proceedings contests certain facts, the accuracy of which is not a matter for the Court to determine and on which the delimitation of the subject matter of those proceedings depends (see judgments of 5 December 2006, *Cipolla and Others*, C-94/04 and C-202/04, EU:C:2006:758, paragraph 26, and of 14 April 2016, *Polkomtel*, C-397/14, EU:C:2016:256, paragraph 38).

35 In the present case, the issue whether the individual portions of honey in question are also sold separately is part of the factual background of the case in the main proceedings, a matter which is not for the Court to ascertain.

36 In those circumstances, the Court considers it appropriate to answer the questions referred for a preliminary ruling by the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court). Nevertheless, in so far as concerns Regulation

No 1169/2011, the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

37 Under Article 1(3)(b) of Directive 2000/13, ‘pre-packaged foodstuff’ within the meaning of that directive is defined as any single item for presentation as such to the ultimate consumer and to mass caterers, consisting of a foodstuff and the packaging into which it was put before being offered for sale, whether such packaging encloses the foodstuff completely or only partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging.

38 Under Article 13(1)(a) of that directive, when the foodstuffs are prepackaged, the particulars provided for in Articles 3 and 4(2) of the directive are to appear on the prepackaging or on a label attached thereto.

39 In that regard, Article 3(1)(8) of the directive provides that, among those particulars, the particulars of the place of origin or provenance must appear where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff.

40 Under recitals 4 and 5 of Directive 2000/13, the purpose of that directive is to enact rules of a general nature applicable horizontally to all foodstuffs put on the market, whilst rules of a specific nature which apply vertically only to particular foodstuffs should be laid down in provisions dealing with those products.

41 It must be found that Directive 2001/110 establishes such specific rules regarding honey. In accordance with Article 1 of that directive, the directive applies to the products defined in Annex I thereto. In the present case, it is common ground that the honey in question constitutes such a product.

42 The first sentence of Article 2 of Directive 2001/110 provides that Directive 2000/13 is to apply to the products defined in Annex I to Directive 2001/110, subject to certain conditions. As for Article 2(4)(a) of Directive 2001/110, that article provides, in essence, that, for the purposes of Directive 2000/13 and, in particular, of Articles 13 and 14 thereof, the particulars of the origin of the honey are considered to be particulars within the meaning of Article 3 of the latter directive.

43 Those provisions are clarified by recital 5 of Directive 2001/110, which states that ‘the general food-labelling rules laid down in Directive [2000/13] should apply subject to certain conditions. In view of the close link between the quality of honey and its origin, it is indispensable that full information on those matters be available so that the consumer is not misled regarding the quality of the product. The particular consumer interests as regards the geographical characteristics of honey and full transparency in this regard necessitate that the country of origin where the honey has been harvested should be included in the labelling’.

44 It therefore follows from a combined reading of those two directives that the particulars of the country of origin of the honey must mandatorily appear on the prepackaging or on a label attached to a product covered by Directive 2001/110 since, in all cases, failure to give such particulars is capable of misleading the consumer to a material degree as to the true origin of the honey within the meaning of Article 3(1)(8) of Directive 2000/13.

45 Furthermore, Article 1(2) of Directive 2000/13 states that it is also to apply to foodstuffs intended for supply to restaurants, hospitals, canteens and other similar mass caterers, referred to as ‘mass caterers’. In the present case, as appears from the order for reference, the individual portions of the honey in question, packed in cartons, were supplied to such mass caterers.

46 However, it must be ascertained whether the derogations provided for in Article 13(1)(b) and Article 14 of Directive 2000/13 respectively are not to be applied in circumstances such as those in the case in the main proceedings.

47 In the first place, the first and second indents of Article 13(1)(b) of that directive provide, first, that where prepackaged foodstuffs are intended for the ultimate consumer but marketed at a stage prior to sale to the ultimate consumer and where sale to a mass caterer is not involved at that stage and, second, where prepackaged foodstuffs are intended for supply to mass caterers for preparation, processing, splitting or cutting up, the particulars required under Articles 3 and 4(2) of the directive need appear only on the commercial documents referring to the foodstuffs where it can be guaranteed that such documents, containing all the labelling information, either accompany the foodstuffs to which they refer or were sent before or at the same time as delivery.

48 However, those provisions are not applicable to circumstances such as those at issue in the main proceedings. As appears from the order for reference, the individual portions of the honey in question are presented in the form of portion-cups closed by an aluminium seal by Breitsamer und Ulrich that are offered as such to the ultimate consumer by the mass caterer to which they are supplied.

49 Consequently, although those portions intended for the ultimate consumer are marketed at a stage prior to their sale to him, the portions are sold to mass caterers, unlike the case referred to in the first indent of Article 13(1)(b) of Directive 2000/13. Moreover, the honey in question is not prepared, processed, split or cut up by those mass caterers within the meaning of the second indent of Article 13(1)(b) of that directive.

50 As regards, in the second place, Article 14 of Directive 2000/13, that article states that, where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without prepackaging, or where foodstuffs are packaged on the sales premises at the consumer’s request or prepackaged for direct sale, the Member States shall adopt detailed rules concerning the manner in which the particulars specified in Article 3 and Article 4(2) of that directive are to be shown and they may decide not to require the

provision of all or some of these particulars, provided that the purchaser still receives sufficient information.

51 In the present case, it is common ground that the individual portions of the honey in question are not packaged on the sales premises at the consumer's request or prepackaged for direct sale so that the cases referred to in Article 14 of the directive are irrelevant.

52 Accordingly, in the light of the situation referred to in Article 13(1)(a) of Directive 2000/13, the obligation to label individual portions of honey such as those at issue in the main proceedings, and therefore to indicate the particulars of the country or countries of origin of that honey in accordance with Article 2(4)(a) of Directive 2001/110, depends on whether those portions must be considered to be 'pre-packaged foodstuffs' for the purposes of Article 1(3)(b) of Directive 2000/13.

53 In that regard, it is clear from Article 8(2)(c) of Directive 2000/13 that a prepackaged item may consist of two or more individual prepackaged items. Therefore, the mere fact that cartons in which the individual portions of the honey in question are packaged could themselves be regarded as prepackaging does not mean that those individual portions may not be 'pre-packaged foodstuffs' within the meaning of Article 1(3)(b) of Directive 2000/13.

54 In the present case, individual portions of honey such as those at issue in the main proceedings satisfy several of the conditions provided for in Article 1(3)(b) of Directive 2000/13 for being regarded as 'pre-packaged foodstuffs' within the meaning of that provision.

55 As is apparent from the facts set out in paragraph 48 above, first, the individual portions of the honey in question are intended to be offered as such to the ultimate consumer after the mass caterer to whom the carton was delivered has opened the carton and, second, those portions were packed before being offered for sale and their packaging encloses them completely in such a way that their contents cannot be altered without opening or changing the packaging.

56 However, it should be noted that there are differences between the various language versions of Article 1(3)(b) of Directive 2000/13.

57 Thus, the versions in English ('any single item') and in Polish ('każd[a] pojedyncz[a] sztuk[a]'), in particular, use terms which refer to a single element, without further qualification. However, other language versions of the same provision, such as the versions in Spanish ('la unidad de venta'), German ('die Verkaufseinheit') or French ('l'unité de vente'), also refer to a single element, but with reference in addition to the concept of a 'sale'.

58 According to the Court's settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of

that provision or be given priority over the other language versions in that regard. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgments of 27 March 1990, *Cricket St Thomas*, C-372/88, EU:C:1990:140, paragraphs 18 and 19; of 15 November 2012, *Kurcums Metal*, C-558/11, EU:C:2012:721, paragraph 48; and of 17 March 2016, *Kødbranchens Fællesråd*, C-112/15, EU:C:2016:185, paragraph 36).

59 As regards the general scheme of Directive 2000/13, it should be noted that, although the various language versions of Article 1(3)(b) of that directive differ, that provision, in any event, mentions being offered for ‘sale’, whether it be in Spanish (‘puesto a la venta’), in German (‘vor dem Feilbieten’), in English (‘being offered for sale’), in French (‘présentation à la vente’) or in Polish (‘oferowanie na sprzedaż’).

60 Article 13(1) of the directive, concerning prepackaged foodstuffs, also refers to the ‘sale’ of foodstuffs. In the same vein, Article 14 of Directive 2000/13 refers to the case where foodstuffs are offered for ‘sale’ to the ultimate consumer or to mass caterers without prepackaging.

61 Moreover, other provisions of that directive refer to the ‘purchaser’. In addition to Article 14, Article 2(1)(a)(i) of the directive states that the labelling and methods used must not be such as could mislead the purchaser to a material degree, particularly as to the characteristics of the foodstuff including its origin or provenance.

62 Consequently, it follows from the general scheme of Directive 2000/13 that, in addition to the other conditions laid down in Article 1(3)(b) of that directive, the labelling obligation under Article 13(1) of the directive concerns foodstuffs intended to be presented as such for sale to the ultimate consumer and mass caterers.

63 That may take the form of the separate sale of individual portions of honey such as those at issue in the main proceedings to the ultimate consumer in a mass catering establishment, such as a restaurant or a canteen.

64 Such a situation also arises where those portions are offered for sale as part of a pre-prepared meal for an all-inclusive price, for instance as part of a set menu prepared in a mass catering establishment or as a component of a hotel buffet.

65 As the Advocate General stated in point 54 of her Opinion, that fixed price covers all of the goods and services needed in supplying that meal and therefore includes the various components of the meal, including, where relevant, individual portions of honey such as those at issue in the main proceedings.

66 That interpretation of Article 1(3)(b) of Directive 2000/13 is supported by the purpose of the directive.

67 It appears both from recital 6 and Article 2 of the directive that its aim is to inform and protect the ultimate consumer of foodstuffs, in particular as regards the nature, identity, properties, composition, quantity, durability, origin or provenance and method of manufacture or production of those products (judgment of 23 November 2006, *Lidl Italia*, C-315/05, EU:C:2006:736, paragraph 47 and the case-law cited).

68 In that regard, as recital 8 of Directive 2000/13 states, detailed labelling, in particular giving the exact nature and characteristics of the product, must enable the consumer to make his choice in full knowledge of the facts.

69 Accordingly, that directive requires that the consumer have correct, neutral and objective information that does not mislead him (see, to that effect, judgment of 4 June 2015, *Teekanne*, C-195/14, EU:C:2015:361, paragraph 32 and the case-law cited).

70 As was stated in paragraph 43 above, it is apparent from recital 5 of Directive 2001/110 that the particular interest which the consumer has in the geographical characteristics of honey and full transparency in that regard necessitate that the country of origin in which the honey was harvested should be included in the labelling.

71 Such an indication on individual portions of honey such as those at issue in the main proceedings therefore helps, as regards the decision to purchase separately or whether to consume or not that honey where it is offered as part, or available as part, of a pre-prepared meal sold for a fixed price, to enable the ultimate consumer to make his choice in full knowledge of the facts.

72 It should be added that, under Article 13(4) of Directive 2000/13, in the case of packaging or containers the largest surface of which has an area of less than 10 cm<sup>2</sup>, only the particulars listed in Article 3(1), points 1, 4 and 5 of that directive need be given. Accordingly, in that case, an indication of the country of origin, which appears in Article 3(1)(8), would not be required.

73 All of the interested parties present at the hearing submitted that the largest surface of the individual portions of the honey in question had a surface area greater than 10 cm<sup>2</sup>.

74 It is for the referring court to ascertain whether that area is in fact greater than 10 cm<sup>2</sup>. Should that not be the case, it would not be necessary, in accordance with Article 13(4) of Directive 2000/13, to indicate the country of origin on individual portions of honey such as those at issue in the main proceedings.

75 If it is the case, it follows from all the foregoing considerations that each of the individual portions of honey in the form of portion-cups closed by an aluminium seal packed in a carton closed by a food business operator and sold in that form to mass caterers constitutes a 'pre-packaged foodstuff', subject to the obligation to indicate the country of origin of the honey, where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.

76 None of the arguments to the effect that there is no requirement to label individual portions of honey such as those at issue in the main proceedings is capable of calling that interpretation into question.

77 First, one argument is that it follows from the expert group document, cited in paragraph 26 above, that individual portion-cups of honey presented to the ultimate consumer as part of a meal in a catering establishment are not to be regarded as single items and that, as a result, an indication of the origin of that honey must appear only on the carton.

78 However, suffice it to note that the expert group document is not in any way binding. The document itself indeed states in paragraph 1 that it has no formal legal status and that, in the event of a dispute, ultimate responsibility for the interpretation of EU legislation lies with the Court.

79 Second, according to a second argument, a food business operator may label on each individual portion of honey a note such as ‘may not be sold separately’, as a result of which, there being no separate sale, an indication of the country of origin of the honey on each of those portions is allegedly not required by Directive 2000/13.

80 However, as was stated in paragraphs 63 and 64 above, the obligation to label individual portions of honey such as those at issue in the main proceedings, in accordance with Article 13(1)(a) of Directive 2000/13, concerns inter alia the case in which those portions are intended to be offered for sale as such to the ultimate consumer in a mass catering establishment, namely where those portions are sold separately or where they are offered for sale in pre-prepared meals for an all-inclusive price.

81 In those circumstances, there is no need to distinguish between whether or not the individual portions of honey such as those at issue in the main proceedings are sold separately.

82 In the light of the foregoing considerations, the answer to the questions referred is that Article 1(3)(b) of Directive 2000/13 must be interpreted as meaning that each of the individual portions of honey presented in the form of portion-cups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.

### **Costs**

83 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Article 1(3)(b) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs must be interpreted as meaning that each of the individual portions of honey presented in the form of portion-cups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a ‘pre-packaged foodstuff’ where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price.**

[Signatures]

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\* Language of the case: German.

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