OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 13 November 1990 *

Mr President,
Members of the Court,

1. In these proceedings, the Court is once again called on to interpret Regulation (EEC) No 2772/75 of the Council of 29 October 1975 on marketing standards for eggs ('the Regulation'). [1]

The facts underlying the main proceedings are relatively simple. Gold-Ei, the plaintiff in the main proceedings (hereinafter referred to as 'the Plaintiff') is a producers' organization whose members market eggs in packs which, in addition to the packing date and in the same print face, bear the statement 'Guaranteed packed on the day of laying'.

In May 1987, the supervisory authorities, relying on Articles 18 and 21 of the Regulation, as amended by Regulation (EEC) No 1831/84, [2] called on the Plaintiff to stop supplying packs bearing that wording.

The Verwaltungsgericht (Administrative Court) Schleswig-Holstein, before which the Plaintiff had commenced proceedings for a declaration that it was entitled to market eggs bearing the contested wording, provided that the latter was true, decided to suspend the proceedings and to ask the Court of Justice whether Regulation (EEC) No 2772/75 was to be interpreted as allowing a direct or indirect indication of the date of laying of the eggs to be given on the outside or inside of the egg packs.

2. Pursuant to the Regulation, in particular Article 21 thereof, packs should bear no other indications than those provided for in it.

Article 18 defines the information which may be shown on small packs. This includes the date of packing but not the date of laying of the eggs.

The Court has already given a ruling on another provision of the Regulation, Article 15, which imposes, with regard to the eggs themselves, a prohibition similar to that imposed by Article 21 for small packs, and it emphasized that the wording of the provision leaves no doubt as to the fact that traders are precluded from marking the eggs marketed by them with the date of laying. [3]

* Original language: Italian.

1 — OJ 1975, L 282, p. 56. The Court has given a number of judgments on the regulation at issue: see Case 204/88 *Paris* [1989] ECR 4361; Case 91/87 *Gutshof-Ei* [1988] ECR 2541; Case 130/85 *Wulro* [1986] ECR 2035. In addition, Case 203/90 is pending.

2 — OJ 1984, L 179, p. 2.

3 — Judgment in Case 204/88, *supra*, paragraph 8

On that occasion the Court also made it clear that, having regard in particular to the need to ensure that the information provided to consumers is reliable and therefore easily verifiable by the national authorities and to the fact that, according to the Commission, only large producers are in a position to make the investments necessary for the installation of reliable systems for the marking of eggs, there was nothing to justify the conclusion that, in reconciling the interests of consumers and the sometimes divergent interests of the various categories of producers, the Community institutions had committed any manifest error or exceeded their discretionary powers.

3. In the present case the Plaintiff, although not denying that it is prohibited to indicate the date of laying on small packs, nevertheless contends that such a prohibition does not extend to wording such as 'packed on the day of laying', since it does not indicate an additional date not provided for by the Regulation but rather an indication as to the efficiency and rapidity of the marketing system used by the producer.

Such an indication is therefore, in its view, lawful pursuant to subparagraph (c) of the second paragraph of Article 21 of the Regulation at issue, as amended by Regulation (EEC) No 1831/84, which allows statements designed to promote sales to be affixed to small packs, provided that such statements and the manner in which they are made are not likely to mislead the purchaser.

4. Let me say straight away that that argument appears sophistic and unconvincing. A statement affixed to a pack which bears the date of packing, indicating that the eggs were packed on the day of laying, is clearly intended to draw the consumer's attention not to the efficiency and rapidity of the marketing system but rather to the actual date of laying of the eggs, that being confirmed moreover by the fact that the slip accompanying the pack bears the words 'Congratulations on buying these top quality "Gold eggs" showing the date of laying'.

Whilst it is true that the indication of the date of laying is thus merely indirect, the fact remains that the statement leaves no room for uncertainty or doubt as to what that date is.

To allow such a statement to be printed on the egg packs would therefore be tantamount to total evasion of the prohibition imposed by the Community legislature, conflicting with its very substance.

Finally, it is not permissible to allow an extensive interpretation of the second paragraph of Article 21 of the Regulation at issue to be used in order to circumvent the prohibition laid down in the previous paragraph.

5. However, as I observed in my Opinion in the *Paris* case,[4] I cannot conceal my puzzlement as a consumer and my regret at the lack of an objectively reliable and comprehensive system for indicating the date of laying of eggs — a date which, without doubt, is of more interest than any other to the consumer;[5] however, having regard to the applicable legislation, I can but suggest that the Court reply as follows to the question submitted by the Verwaltungsgericht Schleswig-Holstein:

Regulation (EEC) No 2772/75 of the Council of 29 October 1975 on marketing standards for eggs, as amended by Regulation (EEC) No 1831/84, must be interpreted as meaning that direct or indirect indications of the date of laying of the eggs on the outside or inside of the packs are incompatible with the provisions of that regulation.

4 — Case 204/88, *supra*.

5 — It seems to me that Council Regulation (EEC) No 1907/90 (OJ 1990, L 173, p. 5), which has replaced Regulation No 2772/75, represents progress in that direction, in so far as it allows, under certain circumstances, other dates than that of packing to be shown (see the 17th recital and Articles 7 and 10).