Recent Case Law regarding free Movement of Foods established by the ECJ*

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I. Introduction

The free movement of foods has been a crucial issue in the case-law of the Court and more generally for the construction of the single market. Indeed many of the basic principles in the area of free movement of goods have been developed in cases involving food. The famous Cassis de Dijon case is a good example, as it concerned a type of food, namely a French liqueur which was prohibited for sale in Germany, allegedly on grounds of public health.

Why is this so? There is no doubt that food, with its potential impact on the human body, is particularly likely to raise legitimate concerns in the area of human health. As a result, public authorities are likely to take measures to prevent harm that could be caused by food to their population. At the same time, food is also an expression of national culture, very often influenced by factors like natural conditions. As a result, food regulations are often linked to genuine national preferences. Nevertheless, alleged justifications for national particularities in food regulations can be guided by a concern of public health or consumer protection, but they can also hide attempts to favour national producers.

That is where the European Court of Justice (hereafter: "Court" or "ECJ") steps in. Typically, the Court will be the arbitrator between, on the one hand, free movement of goods, guaranteed by Article 28 and 29 EC and, on the other hand, a general interest such as public health. Indeed, Article 30 EC provides for the possibility of prohibitions or restrictions of the free movement of goods for a number of reasons, of which the "health and life of humans" has probably been the most relevant with respect to food.

Let me first give a very brief historical overview of the Community's action on food.

The Community lacks a direct competence in the area of food. More recently, a provision on public health (Article 152) has been introduced in the EC Treaty, but it does not provide a legal basis for harmonisation by the Community in the area of public health.

Thus, for a long time, the Community was approaching the question of food mainly through the lens of trade and free movement of foodstuffs. From the early 60s until the middle of the 80s, the Community was therefore dealing with food by adopting a detailed harmonisation programme with the view of establishing an internal market for foodstuffs.

But since the area of food safety was not fully harmonised, the Member States remained, in non harmonised areas, free to adopt restrictive measures, according to Article 30 EC. Repeatedly facing cases of restrictions to free movement of food the ECJ tried to strike a balance by stating that Member States have the right to decide what degree of protection of health they want to assure, having regard to the requirements of free movement of goods within the Community. In this context it was for the national authorities to demonstrate in each case that the marketing of the product in question creates a "serious risk to public health".[1]

In 1986, in the view of the achievement of the Single European Market, the Community decided to abandon the method of detailed harmonisation and introduced the so-called new approach, an innovative approach based on the principle of mutual recognition combined with the use of the minimum harmonization method.

The BSE and dioxin crises in the 1990s made it clear that the free movement of foodstuffs could no longer be the overriding principle of EC food law.

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1 Case 227/82, judgment of 30 November 1983 (Van Bennekom ECR 3883); case 174/82, judgement of 14 July 1983 (Sandoz BV, ECR 2445, para 16).

From 1997, food safety became therefore a priority of the Community[2]. This led to a global approach to food safety, well summarised as "food safety from the farm to the fork". Regulation 178/2002[3], a framework regulation on food law represents now a general rule which, in addition to establishing the European Food Safety Authority and laying down procedures in matters of food safety, lays down the general principles and requirements of food law. Unlike earlier food-related Community legislation, these new specific measures have been mainly adopted as regulations rather than directives. Moreover they do not just contain general, abstract rules giving the characteristics that are necessary to put the goods or substances on the market, but, in order to ensure the efficient realisation of the objective of food safety, they go further and provide for the identification of products and substances that comply with the general rules (either by means of an individual authorisation process or by the establishment of a list).

II. The recent Community legislation under the scrutiny of the ECJ

Some areas, particularly relevant to food safety, like labelling or GMOs are quite extensively harmonised.

So far the ECJ has until now rarely dealt with measures, which are part of the new legislative package of EU food law.

The first important question the Court tried to solve is the notion of food. Before the adoption of the framework regulation, surprisingly there was no general definition of the notion of food under Community law. In the joined cases HLH Warenvertriebs GmbH[4] the Court was confronted with the necessity to distinguish between food and medicinal products. Indeed, depending on the qualifications of certain goods as food – and in particular food supplements – or medicinal products, the applicable legal regime would be significantly different. The cases concerned products that were placed on the market in the Netherlands as food supplements, but the German authorities refused to authorise their import and marketing in Germany, most importantly because the products were to be considered medicinal products and not food supplements. The plaintiffs considered that such a refusal violated Article 28 and 30 EC.

The Court decided to give priority to the application of the legislation on medicinal products. This means that the member states, where the product is imported, can lawfully require the acquisition of a marketing authorisation issued in accordance with the provisions of the Community rules on medicinal products, even where the imported product is lawfully marketed as foodstuff in another Member state.

A second major point which the Court clarified in HLH Warenvertriebs GmbH is the relationship between the General food law (GFL)[5] and specific pieces of legislation, in the present case the food supplement directive 2002/46. The Court held that the basic regulation contained general provisions, the application of which was precluded where another Community regulation contains specific rules. In an opinion I recently delivered in the case Lidl Italia[6,7], I explicitly referred to the HLH Warenvertriebs GmbH case and confirmed the complementary function of the general food law with regard to more specific legislation[8].

A case I would also like to highlight was the case where the Court confirmed for the first time the "new" legislative technique used by the Community in the area of food law. In Alliance for Natural Health and Nutri-Link[9] the plaintiffs questioned the validity of the recent directive 2002/46 of 10 June 2002 on food supplements.

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2 Conclusions of the European Council in Luxembourg (Annex 2, Declaration of the European Council on food safety) 12-13 December 1997, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm ; Conclusions of the European Council in Helsinki, 10 December 1999, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/ACFA4C.htm.

3 Regulation (EC) 178/2002 of the European Parliament and the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ 2002 L31 1-24. The latter is commonly called "general food law" or "GFL".

4 Joined cases C-211/03, C-229/03 and C-316/03 to C-318/03, judgment of 9 June 2005 (HLH Warenvertriebs GmbH and Orthica, ECR I-5141).

5 See note 3.

6 Case C-315/05 (Lidl Italia, not yet decided).

7 In Lidl Italia, the specific regulation to be construed was 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 L 109, 6.5.2000, p. 29-42).

8 See my Opinion delivered on 12 September 2006 in case C-315/05 (Lidl Italia), Para. 57.

9 Joined cases C-154/04 and 155/04, Judgement of 12 July 2005 (Alliance for Natural Health and Nutri-Link, ECR- I-06451).

One of the arguments of the claimants was that the Community institutions did not have the competence to legislate in this area on the basis of Article 95 EC. In this respect, it must be borne in mind that there is no specific provision in the EC treaties allowing the Community to legislate in the area of food and food safety. The Court considered that food supplements are regulated by Member States in a very diverse manner that may impede free movement and create unequal conditions for competition. Thus, the challenged directive improves the conditions for the establishment and the functioning of the internal market. According to the Court, the fact that public health may have been a decisive factor in the choices to be made by Community institutions does not affect this conclusion.

The plaintiffs also claimed that the Directive infringed the principle of proportionality, notably because it prohibited certain forms of vitamins or minerals in their natural form but allowed them in their inorganic forms. In this respect, it is interesting to note that Advocate-General Geelhoed, in his opinion, considered that the Directive infringed the principle of proportionality, because, in his view, basic principles of Community law, such as the requirements of legal protection, of legal certainty and of sound administration have not been properly taken into account[10].

The Court did, to a large extent, share the Advocate-General's doubts as to the proportionality of the measure; nevertheless it ultimately declared the directive valid. Invoking the precautionary principle, the ECJ considered that the objective of the single market and the protection of human health could be reconciled by reserving the benefit of free movement only to those food supplements containing substances, for which, at the time of the adoption of the relevant directive, the European scientific authorities were in possession of sufficient and appropriate scientific evidence to justify their authorisation. However the Court tempers this strict system by requiring a procedure by which individual market operators can request the updating of the positive list of permitted food supplements on the basis of scientific and technological evolution. Thanks to this creative reading of the directive, the latter was "saved" from being declared invalid.

III. Food and cultural identity – an eternal obstacle for free movement of food?

Other areas, which seem not so relevant for food safety, are not harmonised or at least not fully harmonised and are therefore still subject to the general rules of free movement of goods of Article 28ff EC Treaty. These areas will therefore put the Court before the classic problems of balancing legitimate interests of Member States, mainly public health, against the basic freedom of free movement of goods.

No one among us will probably disagree that food is one of the strongest expressions of national peculiarities. Don't we associate quite naturally foie gras with France and pasta with Italy? In turn culinary habits quite naturally influence national food regulations and Europeans are very sensitive to any apparent meddling of the Community with "their" food. Given national sensitivities and the absence of an explicit and direct competence of the Community for food regulation, the Court has tried, over the years, to keep a coherent balance between the principle of free movement of food and the restrictions to free movement of food under Article 30 EC.

First, I would like to give you an example of a case, where the Court has left a Member State an unexpectedly wide margin of discretion in its invocation of public health as a justification of restrictions to free movements of goods. In the Schwarz[11] case the ECJ accepted to uphold an Austrian regulation which provides for sweets to be wrapped when they are sold in vending machines, although Austria is the only country of the EU to have such a requirement. The plaintiff, a distributor of sweets, considered that the obligation to condition and package goods differently when they were sold in vending machines in Austria was restricting free movement of goods in a way that is incompatible with the EC Treaty. The ECJ considered that although the regulation caused additional costs for the importer, which makes the import more difficult, it could be justified by reasons of public interest linked to the protection of public health. Indeed,

10 Opinion of 5 April 2005.

11 Case C-366/04, judgement of 24 November 2005, (Schwarz, ECR 2005 Page I-10139).

in the past, unwrapped sweets in vending machines had in particular suffered contamination by insects and humidity. The Court also noted that nothing leads to the conclusions that the public health grounds invoked by the Austrian government were diverted from their proper purpose in such a way as to create discrimination in respect of goods originating in other member States or indirectly protect certain national products. Therefore, the Court considered that the regulation at issue was not contrary to the principles of free movement of goods. Thus the Court gave a wide interpretation of the public health exception contained in Article 30 EC – and this in spite of the existence of less restrictive ways to protect public health.

In this respect, Advocate-General Geelhoed had indeed considered in his opinion that banning products which elsewhere in the Community can be marketed and dispensed from vending machines unwrapped was not a suitable means of prevention and it restricts trade in these products more than necessary[12]. He also expressed the view that it would seem more appropriate to adapt regulations on the technical design of the vending machines than to impose specific packaging requirements on the products[13]. Unlike the Court, the Advocate-General had therefore concluded that the Austrian regulation was not justifiable under Article 30 EC.

Another example where the Court appears to have been relatively lenient with a national regulation that is likely to threaten the free movement of goods is given in two cases concerning the qualification of "bio" for organic food[14]. A national regulation in Spain authorised the use of the terms "bio" and "biológico" in respect of products which have not been organically produced. A Community regulation of 1991[15] regulated the use of the terminology to be used to designate products which have been organically produced, it was modified in 2004[16] and said that certain diminutive forms like "bio" or "eco" would refer to products which have been organically produced and this in any language and throughout the Community. The ECJ was asked to construe the relevant provisions applicable before 2004. Indeed, the 1991 regulation only contained the term "ecológico" including the diminutive form "eco".

The Court held that Spain could not be blamed for allowing the use of the forms "bio" and "biológico" since those forms were not specifically mentioned in the 1991 regulation. According to the Court, the fact that the term "bio" has been explicitly added in 2004 confirms this interpretation. The Court so allowed an interpretation of secondary legislation that lead to diverging situations in the single market and therefore also to possible obstacles to free movement of organic food.

This risk was highlighted by Advocate-General Kokott in her opinion. In the Advocate-General's view, it would be inconsistent if one and the same term, such as "bio" were reserved in one Member State for products obtained by organic production methods but were left unprotected in other Member States. If "bio" were protected in only some of the Community languages as a reference to the organic production method, consumers might be mislead when shopping in other Member States, or when buying products marketed in other languages. Spain in the Advocate General's opinion had therefore infringed Community law.

In other cases, however, national measures which are likely to threaten the free movement of goods were sanctioned by the Court, as this happened recently in the so-called "shallot war" involving France and the Netherlands[17]. Two Dutch companies had developed two species of shallots, called „matador" and "ambition", grown from seed, and, after registering them in a Community-wide "common catalogue" with the European Commission, attempted to market them throughout the Community. However, a French regulation only allowed vegetables produced by vegetative propagation to be marketed as "shallots" and excluded those grown from seed. Thus marketing the Dutch shallots was illegal in France and even considered a criminal offence.

The Court decided that the controversial French regulation on shallots infringed the principles of free movement of goods, as it obliged importers to market shallots originating in other Member States under a different denomination in France. Such a restrictive measure was not seen necessary to

12 Opinion delivered on 28 June 2005, para. 41.

13 Ibid.

14 Case C-135/03, judgement of 14 July 2005 (Commission/Spain, ECR-6909); case C-107/04, judgement of 14 July 2005, (Comité Andaluz de Agricultura Ecologica, ECR -7137).

15 Regulation 2092/91/EC of 24 June 1991.

16 Regulation 392/2004 of 24 February 2004.

17 Case C-147/04, judgement of 10 January 2006 (De Groot en Slot Allium BV et Bejo Zaden BV, not yet reported).

ensure consumer protection. Indeed, appropriate labelling of the shallots would be sufficient for the purpose of ensuring the appropriate information of the consumer.

These few cases show us how strong much national specificities still are in the food sector and that the balance between justified restrictions and unjustified restrictions to free movement of food is not always easy to draw.

This task becomes however even more difficult when free movement is restricted because of a risk allegedly linked to food safety (increasing scientific alteration of food, notably through the controversial use of GMOs in the food industry).

Again, the Court has played an important role in balancing the interests and they have shaped the precautionary principle in the course of the last years to facilitate this task.

IV. Food and public health risk – the precautionary principle

The precautionary principle has become, over time, a general principle of Community law which allows the intervention into individual right for the sake of public interest, mainly the protection of the environment or public health, when there is scientific uncertainty as to the existence or the extent of the risks incurred.

1. The emergence of the precautionary principle in Community law

Let me first give a brief overview of the emergence of the precautionary principle in the area of food law. Indeed, it must be recalled that the precautionary principle has its origins in environmental law. It is also mentioned in this context in Article 174 (2) EC.

Its "move" into the food sector is quite recent and happened in the aftermath of the major food crises of the 90s, most importantly the BSE crisis. At this occasion, the EC had imposed a temporary ban on British beef on public health grounds based on the risk of transmissibility. This ban was challenged by the UK[18] and the lobby of UK farmers[19]. The court held in this context that "where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent". The EU institution did therefore not have to prove the existence of a risk, which may often be impossible, but it must prove that the measures taken are indispensable given the scientific evaluation of the risk that must be as comprehensive as possible. Thus the Court accepted the legality of safeguard measures taken by the Commission on the basis of the precautionary principle and recognised implicitly the precautionary principle.

The first supranational European Court[20] which dealt extensively with the precautionary principle was the EFTA Court in the Kellogg's case[21], an infringement proceeding against Norway. Norway prohibited the import of corn flakes that were enriched with vitamins and iron. The Norwegian government argued that such enrichment could only be made if there was a proven lack of nutritional need in the population, since excessive vitamin enrichment would lead to an excessive absorption of such substances.

The EFTA Court confirmed that a national government could invoke the precautionary principle, but only on the basis of a precise evaluation of the need for protection of human health. The proper application of the precautionary principle requires first that possible negative effects on human health are identified and second that a comprehensive risk assessment, based on the latest scientific knowledge, is carried out. In the case at issue, the Norwegian government had not carried out an appropriate risk management. It only relied on an apparent lack of nutritional need, which was insufficient.

While the Commission qualified the precautionary principle as a "general principle of food law" in Article 7 of the General Food Law (GFL) adopted in early 2002, the Community Courts have only quite recently applied the precautionary principle explicitly.

18 Case C-180/96, Judgment of 5 May 1998 (UK v. Commission, ECR I-02265).

19 Case C-157/96, Judgment of 5 May 1998 (National Farmers' Union, ECR I-02211).

20 It should be noted that already on 2 February 2000 the European Commission issued a Communication on the precautionary principle (COM (2000)1 final).

21 Case E-3/00, Decision of 1 April 2001 (EFTA Surveillance Authority v Norway, [2001] EFTA Court Report 2000/2001, 73).

The first Community Court to apply the precautionary principle was the Court of First Instance (CFI) in a number of cases where the Commission had taken a measure on the basis of the precautionary principle. The Pfizer[22] and Alpharma[23] cases concerned antibiotics which were used as supplements in animal feed and aimed at a faster growth and gain of weight. It was scientifically controversial whether the resistance developed by animals to these antibiotics were transmissible to humans, which would be problematic. In this case, the CFI conceded that the Community institutions did not have to wait until the existence and the danger of a risk materialised[24].

Later in 2002 the CFI decided the Artegodan case[25]. In this case, the plaintiffs questioned the competence of the Commission to prohibit a medicine used in the case of overweight. It was not scientifically settled whether the benefits of such medicine outweighed its possible negative side effects. The CFI held that the precautionary principle was a general principle of Community law that „required" the competent authorities to take appropriate measures to avoid potential risks to public health, safety and environment, by giving priority to the protection of such interests over economic interests. By making such a statement, the ECJ clearly emphasises the priority of the protection of health over economic interests. This case has also led to a heated debate on whether the Community institutions were obliged or just had the faculty to take action when facing a situation where the precautionary principle could be invoked.

Between September 2003 and December 2004, it was the ECJ's turn to deal explicitly and extensively with the precautionary principle in the so-called Vitamins line of cases. They concerned 4 infringement proceedings against Denmark, France, Italy and the Netherlands. They all prohibited the marketing of food enriched with vitamins and mineral salts. It was the first time that the precautionary principle was invoked by Member States.

Like in the EFTA Kellogg's case, the key question was whether the prohibition of such food violated the principle of free movement of goods, when, according to a well-established administrative procedure, the prohibition of the enrichment was exclusively justified by the fact that there was no proven nutritional need for supplementing the average population's diet by such substances. The ECJ considered that the national regulations fell into the scope of Article 28 EC and expressed for the first time its own interpretation of the precautionary principle:

The first case to be decided in this series was Commission/Denmark[26]. At this occasion the Court of Justice decided that the precautionary principle justified the adoption of restrictive measures when it proved to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted. By taking this view, the Court favoured the flexibility of the precautionary principle over the rigidity of the requirement of nutritional need.

The cases Commission/France[27] and Commission/Italy[28] were decided on the same day, as was Greenham and Abel[29], a reference for preliminary ruling made in the context of criminal proceedings against two individuals who sold food enriched with substances, the marketing of which was prohibited in France under French law. The Court made it clear that it was necessary to carry out a full-fledged judicial review of the national legislation when the precautionary principle was invoked. The Court would then have to verify the fulfilment of three conditions: (1) whether national measures are based on a sound scientific assessment; (2) whether the risk management decision is backed by scientific advice; (3) whether the measures adopted are the least restrictive ones. The need for such a comprehensive judicial review of national regulations became notably apparent in the case against

22 Case T-13/99, judgement of 11 September 2002 (Pfizer Animal Health / Council, ECR II-03305).

23 Case T-70/99, judgement of 11 September 2002 (Alpharma/Council, ECR II-03495).

24 "... it follows from the Community Courts' interpretation of the precautionary principle that a preventive measure may be taken only if the risk, although the reality and extent thereof have not been 'fully' demonstrated by conclusive scientific evidence, appears nevertheless to be adequately backed up by the scientific data available at the time when the measure was taken".

25 Joined cases T-74/00, T-76/00, T-83/00, T-84/00, T-85/00, T-132/00, T-137/00 and T-141/00, judgement of 26 November 2002 (Artegodan GmbH and Others v Commission, ECR II-04945).

26 Case C-192/01, judgement of 23 September 2003 (Commission/Denmark, ECR I-09693).

27 Case C-24/00, judgement of 5 February 2004 (Commission/France, ECR I-01277).

28 Case C-270/02, judgement of 5 February 2004 (Commission/Italy, ECR I-01559).

29 Case C-95/01, Judgment of 5 February 2004 (Criminal proceedings against John Greenham and Léonard Abel, ECR I-0133).

Italy, where the Italian government did not even explain on the basis of what scientific data it based its national measures.

The last decision in the series of the Vitamins infringement proceedings was Commission/Netherlands[30]. The Court confirmed its position expressed and discarded definitively the argument of the lack of nutritional need. It also tried to clarify how the precautionary principle affects the application of the principle of proportionality. The precautionary principle is autonomous and is not merely part of the proportionality test. Indeed when a given restrictive measure has fulfilled the conditions for the invocation of the precautionary principle, it still remains to be evaluated if the measure is also proportionate!

2. General comments on the case-law

The cases, in which the Court has dealt with the precautionary principle, seem to suggest that the judicial control is stricter when the precautionary principle is applied to evaluate an action taken by a Member State compared to situations where an EC institution invokes the principle. The explanation may be that different consequences will ensue when a Member State invokes the precautionary principle compared to when a Community institution does it. Indeed, a Member State tends to invoke the precautionary principle to adopt a national regulation that will normally restrict the free movement of goods and thus fragment the single market. In contrast, a Community institution will rely on the precautionary principle for the adoption of a measure that is maybe restrictive but which does not pursue any possible protectionist aims. Moreover, in the adoption process of such a Community measure, all Member States have normally the possibility to express their views. For all these reasons, it is not really surprising that the Court's control will be stricter when a Member State invokes the precautionary principle than when a Community institution does it.

Another issue that should be highlighted is the progressive determination of the boundaries of the precautionary principle. Two cases may illustrate this point. The first is the Monsanto[31] case, where a number of biotechnology companies in the food sector challenged an Italian decree that suspended preventively the marketing and the use of some genetically modified food. The Community regulation applicable to these goods[32] provided for a simplified procedure for the evaluation of novel food for market approval if the novel food could be considered as „substantially equivalent" to existing foods. The question was therefore whether the presence of residues of transgenic protein in novel food would preclude the use of the simplified procedure. The Court was asked to construe the notion of "substantial equivalence" and to determine if this simplified procedure was compatible with the precautionary principle. Interestingly, the Court read the precautionary principle into the notion of "substantial equivalence". It considered that if unforeseeable effects were identifiable as potential risks for human health, the latter should be subject to a risk evaluation and would preclude the finding of substantial equivalence. In other words, the application of the precautionary principle could prevent a finding of substantial equivalence, which could in turn prevent the use of a simplified procedure for the market approval of novel food. It should be highlighted that, in this case, the precautionary principle is indeed used as a means of interpretation of a notion mentioned in secondary legislation.

After the Monsanto case, which shows the great potential of the precautionary principle, let me turn to another case which illustrates its limits. The Codacons and Federconsumatori case involves the labelling of baby food containing material derived from genetically modified organisms (GMOs) in very low quantities[33]. The main question in this case was whether baby food which contains less than 1% of GMOs must be specifically labelled as to the presence of GMOs. The applicable regulation[34] provided an exception in the obligation to label for food with a presence of less than 1% of GMOs – but it was questionable whether, in the

30 Case C-41/02, judgement of 2 December 2004 (Commission/Netherlands, ECR- I-11375).

31 Case C-236/01, judgement of 9 September 2003 (Monsanto Agricoltura Italia, ECR. I-08105).

32 Regulation (EC) No 258/97 of 27 January 1997 concerning novel foods and novel food ingredients (OJ 1997 L 43/1).

33 Case C-132/03, judgement of 26 May 2005, (Ministero de la Salute/Codacons and Federconsumatori, ECR I-04167).

34 Regulation (EC) No 1139/98 of 26 May 1998 concerning the compulsory indication on the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC (OJ 1998 L 159/4), amended by Commission Regulation (EC) No 49/2000 of 10 January 2000 (OJ 2000 L 6/13).

light of the precautionary principle, this exception also applied to baby food. The Court took the view the exception did apply to baby food as well. It recalls the precautionary principle requires that there remains an uncertainty as to the existence or the extent of the risks to public health. Therefore, it can only be invoked earlier in the decision process, namely when the full market approval is given for the controversial product. As a result, the precautionary principle cannot be invoked when the product has received full market approval after a full risk assessment.

The judgement has been criticised because it seems to give priority to free movement of food over the protection of health. However, by taking this decision, the Court has certainly been motivated by its desire to ensure legal certainty, by avoiding controversy and litigation after a product has received full market approval.

V. Conclusion

I would now like to conclude this speech, by which I have attempted to give you an overview of the very diverse case-law on free movement of food. Each in its own way, these examples illustrate, if need be, that food is probably one of the most sensitive areas for the Community to deal with. This can be explained in two ways. On the one hand, the food we consume has a direct effect on our body: this is the issue of food safety. On the other hand, food is, particularly in Europe, an aspect of our cultural identity: we could call this the cultural issue. It is therefore quite likely that regulations on food will have, more than other national regulations, a specific "national flavour". However, these national peculiarities often threaten the unity of the single market, which is one of the pillars of the Community.

Lacking specific competence in this area, the Community has intervened in this area on an ad hoc basis, mainly to ensure the functioning of the single market. More recently, by initiating and adopting a comprehensive legislative package, the Community has aimed at ensuring food safety "from the fork to the table". At the same time, the ECJ has pursued its task of safeguarding the free movement of food, while adequately taking into account the legitimate interests of Member States for protection of the consumer and public health.

As the uninterrupted flow of cases in this area shows us, the balance between free movement of food and legitimate general interests restricting the free movement of food is still delicate to reach. The emergence of the precautionary principle also shows that this balance of interests needs permanent refining.