

Case C-443/98

Unilever Italia SpA

v

Central Food SpA

(Reference for a preliminary ruling
from the Pretore di Milano)

(Technical standards and regulations — Obligations of notification and
postponement of adoption — Applicability in civil proceedings)

Opinion of Advocate General Jacobs delivered on 27 January 2000	I-7537
Judgment of the Court, 26 September 2000	I-7565

Summary of the Judgment

1. *Approximation of laws — Procedure for the provision of information in the field of technical standards and regulations — Technical regulations and specifications — National rules on labelling — Included*
(Council Directive 83/189, Art. 1(2))

2. *Approximation of laws — Procedure for the provision of information in the field of technical standards and regulations — Obligation of Member States to observe periods of postponement of adoption of a technical regulation — Possibility for individuals to rely on the corresponding provisions — Breach of the obligation — Consequence — Inapplicability of technical regulations adopted in breach of that obligation*
(Council Directive 83/189, Arts 8 and 9)

1. National rules embodying a specification contained in a document which lays down the characteristics required of a product, including the requirements applicable to the product as regards labelling, constitute technical specifications within the meaning of Article 1(2) of Directive 83/189 laying down a procedure for the provision of information in the field of technical standards and regulations, irrespective of the grounds on which they were adopted.

(see para. 25)

2. The inapplicability of a technical regulation as a legal consequence of non-compliance with the obligation of notification under Article 8 of Directive 83/189 laying down a procedure for the provision of information in the field of technical standards and regulations may be relied on in proceedings between individuals. The same applies to non-compliance with the obligation to observe the periods of postponement of adoption of a draft technical regulation pursuant to Article 9 of that directive. Whilst it is true that a

directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual, that case-law does not apply in proceedings between individuals where non-compliance with Article 8 or Article 9 of Directive 83/189, which constitutes a substantial procedural defect, renders a technical regulation adopted in breach of either of those articles inapplicable.

In such proceedings, Directive 83/189, which creates neither rights nor obligations for individuals, does not in any way define the substantive scope of the legal rule on the basis of which the national court must decide the case before it. It is therefore incumbent on the national court, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed in Article 9 of Directive 83/189.

(see paras 49-52 and operative part)