

JUDGMENT OF THE COURT (Fourth Chamber)

15 April 1997 *

In Case C-105/95,

REFERENCE to the Court by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Münster (Germany), for a preliminary ruling under Article 177 of the EC Treaty in the proceedings pending before that court between

Paul Daut GmbH & Co. KG

and

Oberkreisdirektor des Kreises Gütersloh

on the interpretation of Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-1964, p. 185), as amended and consolidated by Council Directive 91/497/EEC of 29 July 1991 (OJ 1991 L 268, p. 69), Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters (OJ 1989 L 351, p. 34), and Articles 30 and 36 of the EC Treaty,

* Language of the case: German.

THE COURT (Fourth Chamber),

composed of: C. N. Kakouris (Rapporteur), acting as President of the Chamber,
P. J. G. Kapteyn and H. Ragnemalm, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Paul Daut GmbH&Co. KG, by Gerd Weyland, Rechtsanwalt, Gummersbach,
- the Oberkreisdirektor des Kreises Gütersloh, by Bärbel Schütte, Kreisoberrechtsrätin in the Rechtsamt der Kreisverwaltung Gütersloh, acting as Agent,
- the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of the Economy, and Gereon Thiele, Adviser in the same Ministry, acting as Agents,
- the Belgian Government, by Jan Devadder, Director of Administration in the Legal Service of the Ministry of Foreign Affairs, acting as Agent,
- the Commission of the European Communities, by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent, assisted by Gerrit Schohe, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Paul Daut GmbH&Co. KG, represented by Gerd Weyland; the German Government, represented by Ernst Röder; and the Commission, represented by Gerrit Schohe, assisted by Heinrich Winter, Commission expert, at the hearing on 3 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 24 October 1996,

gives the following

Judgment

- 1 By order of 17 March 1995, received at the Court Registry on 31 March 1995, the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court, North Rhine Westphalia), Münster, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-1964, p. 185), as amended and consolidated by Council Directive 91/497/EEC of 29 July 1991 (OJ 1991 L 268, p. 69), Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters (OJ 1989 L 351, p. 34), and Articles 30 and 36 of the EC Treaty.

- 2 That question was raised in proceedings between Paul Daut GmbH & Co. KG (hereinafter 'Daut') and the Oberkreisdirektor des Kreises Gütersloh (Chief Executive of the Gütersloh local authority), the competent authority regarding hygiene for foodstuffs and meat, in connection with the seizure by the latter at Daut's premises of some two tonnes of frozen mechanically recovered meat.

- 3 According to the documents forwarded by the national court, meat mechanically recovered from the bone is fresh meat in the form of pulp, obtained by mincing and subsequent extraction from bones by pressing. This technique makes it possible to recover the residues of meat still adhering to the bone. The meat is highly perishable and, unless heat treated, is unfit for human consumption.

- 4 In that connection, subparagraphs (c) and (g) of Article 6(1) of Directive 64/433, as amended, provide:

'1 Member States shall ensure that:

...

- (c) mechanically recovered meat undergoes heat treatment in accordance with Directive 77/99/EEC;

...

- (g) the treatment provided for in the preceding points is carried out in the establishment of origin or in any other establishment designated by the official veterinarian'.

5 The heat treatment is carried out in accordance with Council Directive 77/99/EEC of 21 December 1976 on health problems affecting intra-Community trade in meat products (OJ 1977 L 26, p. 85), as amended by Council Directive 92/5/EEC of 10 February 1992 (OJ 1992 L 57, p. 1). The treatment must take place in approved establishments, in accordance with Articles 6, 7 and 8 of Directive 77/99.

6 Finally, Article 6(a) of Directive 89/608 provides:

‘At the request of the applicant authority, the requested authority shall keep a watch or arrange for a watch to be kept or to be reinforced within its operational area where such irregularities are suspected, in particular:

(a) on establishments;

...’

7 The German legislature transposed Directives 64/433 and 77/99 into national law by adopting the Verordnung über die hygienischen Anforderungen und amtlichen Untersuchungen beim Verkehr mit Fleisch (Regulations on hygiene requirements and official inspections relating to trade in meat, hereinafter ‘the Regulations’) of 30 October 1986 (BGBl. I 1678), as amended in particular by the Law of 27 April 1993 (BGBl. I 512). It is clear from Paragraph 17(1)(2) of those Regulations that in Germany the import of mechanically recovered meat which has not undergone heat treatment in the State of origin is prohibited.

- 8 On the basis of the Regulations, therefore, the Oberkreisdirektor seized the meat concerned at Daut's premises. It appears from the documents in the main proceedings that the meat had been purchased, without having undergone heat treatment, from an undertaking in Belgium which had received Community approval, and was then imported into Germany in order to undergo treatment and further processing on Daut's premises, which had also received Community approval.
- 9 The Amtsgericht Rheda-Wiedenbrück found the director of Daut guilty of a criminal offence and fined him.
- 10 The Oberverwaltungsgericht, before which the case ultimately came, considers that it is clear from Article 6(1)(c) and (g) of Directive 64/433, as amended, that where heat treatment has not been carried out in the establishment of origin, the establishment to be designated by the official veterinarian of the Member State of origin must be situated in that State. However, it queries the compatibility of that provision, so construed, with Article 30 of the Treaty where mechanically recovered meat has been frozen before despatch to another Member State with a view to undergoing heat treatment in an appropriate establishment.
- 11 Accordingly, the Oberverwaltungsgericht decided to stay proceedings pending a preliminary ruling from the Court on the following question:

'Is it compatible with Articles 30 and 36 of the EC Treaty in conjunction with Council Directive 64/433/EEC of 26 June 1964 on health requirements and the marketing of fresh meat, in the consolidated version annexed to Council Directive 91/497/EEC of 29 July 1991, as amended by Council Directive 92/5/EEC of 10 February 1992, and in conjunction with Council Directive 77/99/EEC of 21 December 1976 on health problems affecting intra-Community trade in meat products, in the version annexed to Directive 92/5/EEC, if the respondent — on the basis of Paragraph 17(1)(2) of the Verordnung über die hygienischen

Anforderungen und amtlichen Untersuchungen beim Verkehr mit Fleisch (Regulations on hygiene requirements and official inspections relating to trade in meat) of 30 October 1986 (BGBl. I, 1678), as last amended by the EWR-Ausführungsgesetz (EEA implementation law) of 27 April 1993 (BGBl. I 512, 552) — objects to the import of frozen mechanically recovered meat in the case of an EC-authorized German establishment which is in a position to carry out heat treatment within the meaning of the meat products directive and obtains frozen mechanically recovered meat from an EC-authorized Belgian establishment in accordance with the designation of the official Belgian veterinarian in order to subject it to heat treatment within the meaning of the meat products directive and further process it, and if not is consultation with the competent German veterinary authority necessary and between whom?’

12 That question comprises three parts:

- In the first part of its question, the national court asks essentially whether Article 6(1)(c) and (g) of Directive 64/433, as amended, preclude national rules that prohibit the import of mechanically recovered meat which has not been subjected to heat treatment in the Member State of origin but is intended to be subjected to such treatment in an approved establishment in the Member State of importation designated by the official veterinarian in the State of origin;

- If not, the second point is whether Article 6(1)(c) and (g) of Directive 64/433, as amended, are compatible with the provisions of the Treaty on the free movement of goods, in particular where the imported meat has been frozen in the Member State of origin;

— In the event of an affirmative answer to the first part of the question, the national court asks, thirdly, whether consultation with the competent veterinary administration of the Member State of importation is necessary, and if so between what authorities.

The first part of the question

- 13 In the first part of its question, the national court asks essentially whether Article 6(1)(c) and (g) of Directive 64/433, as amended, preclude national rules that prohibit the import of mechanically recovered meat which has not been subjected to heat treatment in the Member State of origin but is intended to be subjected to such treatment in an approved establishment in the Member State of importation designated by the official veterinarian in the State of origin.
- 14 It is therefore necessary to consider whether, under those provisions, the official veterinarian of the Member State of origin may, in cases where there was no heat treatment in the establishment of origin, designate for the purposes of such treatment an approved establishment in another Member State.
- 15 It should be noted in that regard that the Community legislature, aware of the particularly sensitive and perishable nature of mechanically recovered meat, has specifically required the Member States, in accordance with Article 6(1)(c) of Directive 64/433, to ensure that such meat has undergone heat treatment before being consumed. Such treatment must be carried out in the establishment of origin or in any other establishment designated by the official veterinarian of the Member State of origin (subparagraph (g)).

- 16 It is clear from the meaning and purpose of Article 6(1)(c) and (g) of Directive 64/433 that, for health reasons, the treatment must take place as soon as possible, that is to say after the meat has been mechanically recovered from the bone. It is thus preferable for the heat treatment to take place in the establishment in which the process of mechanical recovery of the meat took place.
- 17 However, if, on economic grounds in particular, it is not appropriate for the heat treatment to be carried out at the establishment where the meat is produced, the treatment should be undertaken as soon as possible, that is to say in an approved establishment as close as possible to the establishment of origin.
- 18 The principle that the heat treatment should be carried out close to the place where the meat is produced and soon after completion of the production process does not mean, as the Commission correctly pointed out, that the choice made by the official veterinarian in the Member State of origin must be limited to establishments in the latter State. On the contrary, the most appropriate establishment may, in accordance with that principle, plausibly be located in another Member State, provided that it has received Community approval.
- 19 That interpretation is corroborated by Article 6(1)(g) of Directive 64/433, which allows the official veterinarian of the Member State of origin to designate 'any other' establishment. Moreover, that is the only interpretation compatible with the fundamental principles of unity of the Community market and freedom of movement for goods.
- 20 Finally, that interpretation also takes due account of the concern to protect public health. The official veterinarian of the Member State of origin, who is entrusted with Community responsibilities by Directive 64/433 for the purpose *inter alia* of applying the principles of unity of the market and freedom of movement for

goods, will, when designating an establishment, ensure that the protection of public health pursued by the Community rules is effectively guaranteed. To that end, Directive 89/608 allows him to seek assistance from the authorities of the Member State in whose territory the designated establishment is situated.

- 21 Consequently, legislation of a Member State which prohibits the import of mechanically recovered meat not subjected to heat treatment in the Member State of origin contravenes the abovementioned principle that the place of production of the meat must be geographically close to the place of treatment and the principles of unity of the Community market and freedom of movement for goods — *a fortiori* where the meat whose import is prohibited was frozen in the Member State of origin.
- 22 The answer to the first part of the question must therefore be that Article 6(1)(c) and (g) of Directive 64/433, as amended, preclude national rules that prohibit the import of mechanically recovered meat which has not been subjected to heat treatment in the Member State of origin but is intended to be subjected to such treatment in an approved establishment in the Member State of importation designated by the official veterinarian in the State of origin.
- 23 In view of that answer, it is unnecessary to answer the second part of the question.

The third part of the question

- 24 In the third part of its question, the national court asks essentially whether consultation with the competent veterinary administration of the Member State of importation is necessary, and if so between what authorities.

- 25 Directive 89/608 provides for mutual assistance between the administrative authorities of the Member States regarding the application of Community legislation on veterinary and zootechnical matters. The second recital in its preamble emphasizes the need to reinforce cooperation between the authorities responsible in each Member State for the application of the rules concerned, with a view in particular to ensuring the smooth functioning of the common market for agricultural products and achievement of the single market resulting from the abolition of veterinary checks at frontiers.
- 26 By virtue of Articles 1 and 2 of Directive 89/608, each Member State must inform the other Member States and the Commission of the central competent authority responsible in that Member State for monitoring the application of legislation on veterinary and zootechnical matters. Under Articles 4 and 8 of that directive, assistance between the competent authorities is provided either in response to a request from the central authority of a Member State (the applicant authority) sent to the central authority of another Member State (the requested authority), or else spontaneously when those authorities consider it useful for the purposes of compliance with the legislation on veterinary or zootechnical matters. Article 6 also allows a competent authority to ask the competent authority of another Member State for a watch to be reinforced in a given area, in particular on establishments.
- 27 Such a system thus allows the competent veterinary authority of a Member State, when it considers it appropriate to do so, to seek assistance from the competent veterinary authority of another Member State in order to carry out checks and prevent infringements. In such circumstances, the requested authority must provide assistance to the applicant authority. However, the possibility of such a request does not, so far as the heat treatment of mechanically recovered meat is concerned, affect the right of the official veterinarian of a Member State to designate an establishment situated in another Member State.

- 28 The answer to the third part of the question must therefore be that the competent veterinary authority of the Member State of origin may, under Directive 89/608, seek the assistance of the competent veterinary authority of the Member State of importation, without such a request affecting the right of the official veterinarian in the Member State of origin to designate, for the purposes of the heat treatment to be carried out, an establishment in the Member State of importation.

Costs

- 29 The costs incurred by the German and Belgian Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question referred to it by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Münster by order of 17 March 1995, hereby rules:

1. Article 6(1)(c) and (g) of Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat, as amended

and consolidated by Council Directive 91/497/EEC of 29 July 1991, preclude national rules that prohibit the import of mechanically recovered meat which has not been subjected to heat treatment in the Member State of origin but is intended to be subjected to such treatment in an approved establishment in the Member State of importation designated by the official veterinarian in the State of origin.

2. The competent veterinary authority of the Member State of origin may, under Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters, seek the assistance of the competent veterinary authority of the Member State of importation, without such a request affecting the right of the official veterinarian in the Member State of origin to designate, for the purposes of the heat treatment to be carried out, an establishment in the Member State of importation.

Kakouris

Kapteyn

Ragnemalm

Delivered in open court in Luxembourg on 15 April 1997.

R. Grass

J. L. Murray

Registrar

President of the Fourth Chamber