

Case C-270/07

Commission of the European Communities

v

Federal Republic of Germany

(Failure of a Member State to fulfil obligations — Common agricultural policy — Fees relating to veterinary inspections and controls — Directive 85/73/EEC — Regulation (EC) No 882/2004)

Judgment of the Court (First Chamber), 19 March 2009. I - 1985

Summary of the Judgment

1. *Agriculture — Approximation of laws on animal health — Financing of health inspections and controls of fresh meat — Directive 85/73 — Special fee covering actual costs*
(Council Directive 85/73, as amended by Directive 97/79, Annex A, Chapter I, point 4(b))
2. *Actions for failure to fulfil obligations — Subject-matter of the dispute — Determination during the procedure prior to the action — Adaptation because of a change in Community law — Lawfulness — Conditions*
(Art. 226 EC)

1. The fee provided for in point 4(b) of Chapter I of Annex A to Directive 85/73 on the financing of veterinary inspections and controls covered by Directives 89/662, 90/425, 90/675 and 91/496, as amended by Directive 97/79, must, first, not exceed the amount of the actual costs of the inspections and controls and, secondly, take into account all those costs, none of which may be excluded. It cannot therefore take the form of a 'standard' fee since a standard fee by its very nature exceeds the actual cost of the measures which it is intended to finance in certain cases and is lower than that cost in other cases.

On the other hand, the fact that a fee charged under that provision consists of various cost elements does not, in itself, render that fee incompatible with that provision.

The objective of transparency does not preclude such a fee from being levied, provided it shows clearly and in detail the nature of the various elements of which it consists, allowing the person liable to know the exact composition of the total fee.

In addition, in so far as such a fee does not cover cost elements other than those provided for in the Community legislation nor exceed the amount of the actual costs, it is not liable to prejudice the objective pursued by Directive 85/73 of taking action to counteract distortions of competition.

(see paras 32, 37, 41, 43)

2. In an action for failure to fulfil obligations, although the heads of claim set out in the originating application cannot in principle be extended beyond the failures to fulfil obligations alleged in the operative part of the reasoned opinion and in the letter of formal notice, it is none the less the case that the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the initial version of a Community measure, subsequently amended or repealed, and which were maintained in force under the new provisions. Conversely, the subject-matter of the dispute cannot be extended to obligations arising under new provisions which do not correspond to those arising under the initial version of the measure in question, as otherwise it would constitute a breach of the essential procedural requirements governing infringement proceedings.

(see para. 50)