



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

17 March 2016*

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 882/2004 — Regulation (EC) No 854/2004 — Official controls of feed and food — Fees that may be charged by Member States to cover the costs incurred through official controls — Costs in connection with the training of official auxiliaries)

In Case C-112/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (Eastern Regional Court, Denmark), made by decision of 2 March 2015, received at the Court on 4 March 2015, in the proceedings

Kødbranchens Fællesråd, acting on behalf of Århus Slagtehus A/S, Danish Crown A.m.b.A. Oksekødsdivisionen, Hadsund Kreaturslagteri A/S, Hjalmar Nielsens Eksportslagteri A/S, Kjellerup Eksportslagteri A/S, Mogens Nielsen Kreaturslagteri A/S, Vejle Eksportslagteri A/S,

v

Ministeriet for Fødevarer, Landbrug og Fiskeri,

Fødevarestyrelsen,

THE COURT (Ninth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, E. Juhász and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Kødbranchens Fællesråd, acting on behalf of Århus Slagtehus A/S, Hadsund Kreaturslagteri A/S, Hjalmar Nielsens Eksportslagteri A/S, Kjellerup Eksportslagteri A/S, Vejle Eksportslagteri A/S, represented by H. Sønderby Christensen, advokat,
- Kødbranchens Fællesråd, acting on behalf of Danish Crown A.m.b.A. Oksekødsdivisionen and Mogens Nielsen Kreaturslagteri A/S, represented by M. Honoré and H. Djurhuus, advokater,
- the Danish Government, by C. Thorning, acting as Agent, and by R. Holdgaard, advokat,

* Language of the case: Danish.

— the European Commission, by H. Støvlbæk and D. Bianchi, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 27(4)(a) and Annex VI, points 1 and 2, of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1, and corrigendum OJ 2004 L 191, p. 1).
- 2 The request has been made in proceedings between Kødbbranchens Fællesråd (livestock sector's trade organisation) acting as the authorised representative for seven slaughterhouses, namely, Århus Slagtehus A/S, Danish Crown A.m.b.A. Oksekødsdivisionen, Hadsund Kreaturslagteri A/S, Hjalmar Nielsens Eksportslagteri A/S, Kjellerup Eksportslagteri A/S, Mogens Nielsen Kreaturslagteri A/S et Vejle Eksportslagteri A/S (together, 'the slaughterhouses') and Ministeriet for Fødevarer, Landbrug og Fiskeri (Ministry for Food, Agriculture and Fisheries) and Fødevarestyrelsen (Danish Veterinary and Food Administration) concerning the payment of fees incurred for the official control of feed and food.

Legal context

EU law

Regulation No 854/2004

- 3 Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ 2004 L 139, p. 206, and the corrigendum in OJ 2004 L 226, p. 83), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1) ('Regulation No 854/2004'), provides in Article 2(1)(h):

'1. For the purposes of this Regulation:

...

- (h) "official auxiliary" means a person qualified, in accordance with this Regulation, to act in such a capacity, appointed by the competent authority and working under the authority and responsibility of an official veterinarian.'

- 4 Article 5 of Regulation No 854/2004 provides in paragraphs (1), (4), (5)(a) and (7):

'(1) The official veterinarian shall carry out inspection tasks in slaughterhouses, game handling establishments and cutting plants placing fresh meat on the market in accordance with the general requirements of Section I, Chapter II, of Annex I, and with the specific requirements of Section IV, in particular as regards:

...

...

(4) Official auxiliaries may assist the official veterinarian with official controls carried out in accordance with Sections I and II of Annex I as specified in Section III, Chapter I. In that case, they shall work as part of an independent team.

(5)

(a) Member States shall ensure that they have sufficient official staff to carry out the official controls required under Annex I with the frequency specified in Section III, Chapter II.

...

(7) Member States shall ensure that official veterinarians and official auxiliaries are qualified and undergo training in accordance with Annex I, Section III, Chapter IV.'

5 Annex 1 to Regulation No 854/2004 concerns fresh meat and includes, inter alia, a Section I setting out the official veterinarian's audit and inspection tasks and a Section III entitled 'Responsibilities and Frequency of Controls'.

6 Chapter 1 of Section III of Annex I to Regulation No 854/2004, entitled 'Official Auxiliaries', states that 'Official auxiliaries may assist the official veterinarian with all tasks, subject to the following restrictions and to any specific rules laid down in Section IV'. That section includes a Chapter III entitled 'Involvement of Slaughterhouse Staff' which provides that Member States may permit slaughterhouse staff to take over the activities of the official auxiliaries in controlling the production of poultry and rabbit meat.

7 Section III also includes a Chapter IV entitled 'Professional Qualifications'. Paragraph B of that chapter concerning 'Official Auxiliaries', provides:

'1. The competent authority may appoint as official auxiliaries only persons who have undergone training and passed a test ...

...

6. Official auxiliaries are to maintain up-to-date knowledge and to keep abreast of new developments through regular continuing education activities and professional literature. The official auxiliary is, wherever possible, to undertake annual continuing education activities.

...'

Regulation No 882/2004

8 Recitals 6, 11, 12 and 32 of Regulation No 882/2004 state as follows:

'(6) The Member States should enforce feed and food law, animal health and animal welfare rules and monitor and verify that the relevant requirements thereof are fulfilled by business operators at all stages of production, processing and distribution. Official controls should be organised for that purpose.

...

- (11) The competent authorities for performing official controls should meet a number of operational criteria so as to ensure their impartiality and effectiveness. They should have a sufficient number of suitably qualified and experienced staff and possess adequate facilities and equipment to carry out their duties properly.
- (12) The official controls should be carried out using appropriate techniques developed for that purpose, including routine surveillance checks and more intensive controls such as inspections, verifications, audits, sampling and the testing of samples. The correct implementation of those techniques requires appropriate training of the staff performing official controls. Training is also required in order to ensure that the competent authorities take decisions in a uniform way, in particular with regard to the implementation of the Hazard Analysis and Critical Control Points (HACCP) principles.

...

- (32) Adequate financial resources should be available for organising official controls. Hence, the competent authorities of the Member States should be able to levy the fees or charges to cover the costs incurred through official controls. In the process, the competent authorities of the Member States will be at liberty to establish the fees and charges as flat-rate amounts based on the costs incurred and taking the specific situation of the establishments into account. Where fees are imposed on operators, common principles should apply. It is appropriate therefore to lay down the criteria for setting the level of inspection fees. ...'

9 Article 1(1)(a) of Regulation No 882/2004 provides:

'This Regulation lays down general rules for the performance of official controls to verify compliance with rules aiming, in particular, at:

- (a) preventing, eliminating or reducing to acceptable levels risks to humans and animals, either directly or through the environment.'

10 Article 3(1) of that regulation sets out the general obligations of the Member States with regard to the organisation of official controls and provides, in particular, that those official controls 'are carried out regularly, on a risk basis and with appropriate frequency, so as to achieve the objectives' of that regulation, taking account of the matters specified in that provision.

11 Article 6 of that regulation, entitled 'Staff performing official controls', is worded as follows:

'The competent authority shall ensure that all of its staff performing official controls:

- (a) receive, for their area of competence, appropriate training enabling them to undertake their duties competently and to carry out official controls in a consistent manner. This training shall cover as appropriate the areas referred to in Annex II, Chapter I;
- (b) keep up to date in their area of competence and receive regular additional training as necessary,

...'

12 Article 26 of that regulation provides:

'Member States shall ensure that adequate financial resources are available to provide the necessary staff and other resources for official controls by whatever means considered appropriate, including through general taxation or by establishing fees or charges.'

13 Under Article 27(1) and (4)(a) of Regulation No 882/2004:

‘1. Member States may collect fees or charges to cover the costs occasioned by official controls.

...

4. Fees collected for the purposes of official controls in accordance with paragraph 1 or 2:

(a) shall not be higher than the costs borne by the responsible competent authorities in relation to the items listed in Annex VI.’

14 Annex VI to Regulation No 882/2004 provides that the criteria to be taken into consideration for the calculation of fees are:

‘1. The salaries of the staff involved in the official controls.

2. The costs for the staff involved in the official controls, including facilities, tools, equipment, training, travel and associated costs.

3. The laboratory analysis and sampling costs.’

Danish law

15 Article 1 of Ministerial Regulation No 1455 of 13 December 2006 on training for inspection technicians for the control of products of animal origin (bekendtgørelse nr. 1455 om uddannelsen til tilsynstekniker inden for kontrol med animalske produkter) (‘Regulation No 1455/2006’) provides:

‘The purpose of the training is to qualify the graduate, under the official veterinarian’s authority and responsibility, to assist in specific control tasks in slaughterhouses, game processing establishments and cutting plants which market fresh meat (see [Regulation No 854/2004]). The graduate shall furthermore be qualified to carry out inspections of poultry for slaughter under the official veterinarian’s responsibility.’

16 Article 2 of Ministerial Regulation No 1455/2006 provides:

‘1. Training consists of part-time professional training offered as continuing training by institutions approved for that purpose by the Ministry of Education.

2. Training shall correspond to 36 weeks of full-time training, of which 16 weeks is to be spent in practice.

...’

17 Article 3 of Ministerial Regulation No 1455/2006 provides:

‘1. An institution may accept for applicants for training with relevant occupational training or three years relevant work experience.

2. It is a prerequisite for enrolment in the training that there is in place a practical training agreement between the participant and a regional body of the Danish Veterinary and Food Administration (Fødevarestyrelsen).’

- 18 Article 1 of Ministerial Regulation No 1649 of 27 December 2013 concerning, inter alia, payment for the control of food and feed and live animals (bekendtgørelse om betaling for kontrol af fødevarer, foder og levende dyr m.v.)(‘Ministerial Regulation No 1649/2013’) provides:

‘This Regulation covers payment of duties for financing of controls, etc., including inspection, authorisation, registration, approval, reporting, certification and testing in connection with food, feed, live animals and establishments and equipment and products, including non-food products and products not of animal origin. Furthermore, payment of duties to finance assistance in connection with exports is covered.’

- 19 Article 3 of Ministerial Regulation No 1649/2013 provides:

‘Establishments which are authorised for slaughter under food legislation and not covered by paragraph 23 shall cover the cost of the Danish Veterinary and Food Administration’s (Fødevarestyrelsen’s) control under this chapter.’

- 20 Under Article 4 of Ministerial Regulation No 1649/2013:

‘1. The payment referred to in paragraph 3 shall be calculated on the basis of established direct and common control costs.

2. Direct control costs for each establishment shall cover salary, inter alia, for control staff, expenses for laboratory testing of samples and administrative overheads associated with carrying out the control at the establishment.

...

4. The following common costs shall be shared amongst the establishments in proportion to their direct control costs:

...

(3) Costs of and associated with the control staff’s participation in continuing and further training, including training for inspection technicians for control staff who are employed with a view to completing the training.

...’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 21 Since 2000 all Danish slaughterhouses must pay fees for meat inspection, the amount of which includes expenditure for the training of inspection technicians incurred by the Danish Veterinary and Food Administration. Previously, those expenses were covered under various schemes, one of which included those expenses in the national budget as public expenses.

- 22 Persons wishing to train as inspection technicians in the food sector are hired by the Danish Veterinary and Food Administration under fixed-term employment contracts as ‘inspection assistants’. Their engagement is subject to 36 weeks of training. According to the order for reference, the inspection assistants have not conducted meat inspections previously but must show, in order to be accepted for that training, three years’ relevant work experience or relevant training as butchers, sausage makers or casing cleaners. They must, in the course of that training as a technician, complete a period of work experience in a slaughterhouse then pass a test in order to be hired as inspection technicians. They can then be assigned to various slaughterhouses to carry out meat inspections.

- 23 It is apparent from the facts, as established by the referring court, that the total cost of that training, in particular that of the salaries paid to the trainees, is shared between the slaughterhouses, including those to which no inspection technician has been assigned or those in which there is a reduced number of inspection technicians. The slaughterhouses are, therefore, required to pay, as common costs, all expenses associated with the training of new inspection technicians, even where the inspection assistants do not pass the test required for subsequent appointment as an inspection technician. Those undertakings are also required to pay for the assistants who are hired by the Danish Veterinary and Food Administration, as inspection technicians having completed the training, for posts other than meat inspection posts or outside that administration. Furthermore, all slaughterhouses are required to pay for the training of new inspection technicians irrespective of whether inspection technicians are assigned to them.
- 24 On 5 January 2009 the livestock sector's trade organisation, as the authorised agent for seven slaughterhouses, brought an action for an order that the Ministry of Food, Agriculture and Fisheries recognise that neither the training costs of those hired with a view to completing the training to become inspection technicians, nor the salaries paid during that training, should be taken into account in the fixing of the fee charged to cover the costs of the official inspections. In addition, it has claimed repayment of any fees charged unlawfully.
- 25 In order to decide the case before it, the referring court considers that it is necessary to interpret Regulation No 882/2004 so as to determine whether the salaries and expenses connected to the training of new inspection technicians may be taken into account in the calculation of the amount of fees charged for meat inspection.
- 26 According to the referring court, it is clear from recital 32 and Articles 26 and Article 27(1) of Regulation No 882/2004 that the Member States may opt to finance the costs of public controls through a fee. However, it is also apparent from Article 27(4)(a) of that regulation that costs financed through a fee must not be higher than costs borne by the responsible competent authority in relation to the items listed in Annex VI to that regulation.
- 27 In those circumstances, the Østre Landsret (Eastern Regional Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 27(4)(a) and points 1 and 2 of Annex VI to Regulation No 882/2004 be interpreted as meaning that the Member States, in setting the fee charged to food establishments, are precluded from including expenditure for the salaries and training of the public-sector staff who are hired for the purpose of completing training which fulfils the requirements for “official auxiliary” under Regulation No 854/2004 but who, prior to being accepted into the training or in the course of their training, do not conduct meat inspections?’

The question referred for a preliminary ruling

- 28 By its question the referring court asks, in essence, whether Article 27(4)(a) and Annex VI, points 1 and 2, of Regulation No 882/2004 must be interpreted as precluding Member States, when they set the fee amount for official controls charged to food establishments, including expenditure for the salaries and training of those who undergo the compulsory training for official auxiliaries and who do not conduct meat inspections either before or during that training.
- 29 At the outset, it should be noted that, in accordance with Article 5(1) and (4) of Regulation No 854/2004 and sections I and III of Annex I to that regulation, the official veterinarians are to carry out control and inspection tasks in slaughterhouses and may be assisted by official auxiliaries. It is clear, moreover, from Chapter III in Section III of that annex that in certain specific cases the slaughterhouse staff may be authorised to take over the activities of the specialised official auxiliaries.

- 30 Article 27(1) of Regulation No 882/2004 provides that ‘Member States may collect fees or charges to cover the costs occasioned by official controls’. In that regard, Article 27(4)(a) provides that those fees ‘shall not be higher than the costs borne by the responsible competent authorities in relation to the items listed in Annex VI’. Annex VI covers, inter alia, the salaries of the staff involved in the official controls and the costs of those staff including ‘training’.
- 31 It must be held in that respect that, contrary to what is maintained by the Danish Government, Article 27 of Regulation No 882/2004 does not give Member States discretion in relation to the criteria to be taken into consideration in setting the fees.
- 32 The EU legislature has adopted, with a view to taking action to counteract distortions of competition, harmonised rules on official controls, relating, in particular, to the various elements which may be taken into consideration in setting the fees intended to cover the costs of the official controls (see, to that effect, judgment in *Commission v Germany*, C-270/07, EU:C:2009:168, paragraph 42).
- 33 In that context, it is clear from the wording of Article 27(4)(a) of Regulation No 882/2004, as noted in paragraph 30 of the present judgment, that Annex VI of that regulation refers, exhaustively, to the criteria that may be taken into consideration in the setting of the fees connected to the official controls carried out in slaughterhouses.
- 34 It should be noted that the language versions of Regulation No 882/2004 differ as to the terms used in Annex VI to define the categories of person whose costs may be covered by the fees. Thus, that regulation in the German language version (*‘des für die amtlichen Kontrollen eingesetzten Personals’*) and the French version (*‘personnel chargé des contrôles officiels’*) refers to the staff who carry out the controls, whereas the English language version (*‘staff involved in the official controls’*) and the Italian version (*‘personale partecipante ai controlli ufficiali’*) use terms that could relate to a wider group of people. As to the Danish language version of that regulation, point 1 of the annex states that the salaries of the staff who carry out the official controls may be financed by the fees (*‘lønninger til personale, der udfører offentlig kontrol’*) whereas it is stated in wider terms at point 2 of the annex that the costs of staff in relation to official controls may be financed (*‘personaleudgifter i forbindelse med offentlig kontrol’*).
- 35 In its observations the Danish Government maintains that the degree of participation in the controls is not described in any of the language versions of Annex VI to Regulation No 882/2004 and takes the view, therefore, that the annex does not exclude the financing by a Member State of the training costs of a control auxiliary by a fee, even if those costs are not incurred for the benefit of the persons who carry out, effectively and directly, the controls.
- 36 In that regard, it must be borne in mind that according to the Court’s settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions in that regard. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgment in *Axa Belgium*, C-494/14, EU:C:2015:692, paragraph 31 and the case-law cited).
- 37 In this case the objective of Regulation No 882/2004 as is apparent from Article 1 of that regulation, is, inter alia, to prevent, eliminate or reduce risks to humans and animals to acceptable levels through the performance of official controls. Article 3 of that regulation provides that Member States are to ensure that those controls are carried out regularly.

- 38 Furthermore, it follows from recitals 11 and 32 of Regulation No 882/2004 that the competent authorities of the Member States, in order to carry out their duties properly, should have a sufficient number of suitably qualified and experienced staff and should be able to levy the fees or charges to cover the costs incurred through official controls.
- 39 In that regard, it should be observed that, whereas Article 26 of Regulation No 882/2004 provides for both the use of general taxation and the establishment of fees or charges to finance the provision of 'the necessary staff and other resources for official controls', Article 27 of that regulation refers only to fees and charges and, in paragraph (1) thereof, authorises the Member States to levy such fees and charges only to 'cover the costs occasioned by official controls'. It follows from the foregoing that the fees may be intended to cover only the costs which the Member States actually incur in performing controls in food establishments and their purpose is not to impose the cost of the initial training of those staff members on undertakings in the relevant sector.
- 40 Therefore, Annex VI to Regulation No 882/2004, to which Article 27 of that regulation refers, must be interpreted as referring exclusively to the salaries and costs of persons who are actually involved in performing the official controls.
- 41 Furthermore, it should be recalled that those controls, as noted in paragraph 29 of the present judgment, are normally carried out by the official veterinarians who may be assisted only by official auxiliaries or, in certain cases, by the slaughterhouse staff. It is not apparent from any provision of Regulation No 854/2004 that persons who follow the compulsory basic training for official auxiliaries may, during that training, participate in the performance of official controls.
- 42 Consequently, the answer to the question referred is that Article 27(4)(a) and Annex VI, points (1) and (2), of Regulation No 882/2004 must be interpreted as precluding Member States, when they prescribe the fees charged to food sector establishments, from including the costs connected to the compulsory basic training of official auxiliaries.

Costs

- 43 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

Article 27(4)(a) and Annex VI, points (1) and (2), of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules must be interpreted as precluding Member States, when they prescribe the fees charged to food sector establishments, from including the costs connected to the compulsory basic training of official auxiliaries.

[Signatures]