



## Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

22 February 2024\*

(Reference for a preliminary ruling – Public health – Health rules applicable to animal by-products and derived products not intended for human consumption – Regulation (EC) No 1069/2009 – Approval – Article 24(1)(i) – Concept of ‘storage of animal by-products’ – Interruption of a transport operation for up to eight hours)

In Case C-85/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Higher Administrative Court of the Land Sachsen-Anhalt, Germany), made by decision of 24 January 2023, received at the Court on 15 February 2023, in the proceedings

**Landkreis Jerichower Land**

v

**A.,**

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, J. Passer (Rapporteur) and M.L. Arastey Sahún, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- A., by J. Hagmann, Rechtsanwalt,
- the Greek Government, by E. Leftheriotou and A.-E. Vasilopoulou, acting as Agents,
- the European Commission, by B. Hofstätter and G. Koleva, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

\* Language of the case: German.

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 24(1)(i) of Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ 2009 L 300, p. 1).
- 2 The request has been made in the context of a dispute between the Landkreis Jerichower Land (district of Jerichower Land, Germany) and A., a company incorporated under German law, concerning the prohibition on the latter storing transport containers containing animal by-products in one of its warehouses.

### **Legal context**

#### ***European Union law***

- 3 Recitals 1, 2, 5, 6, 11 and 36 of Regulation No 1069/2009 state:
    - ‘(1) Animal by-products not intended for human consumption are a potential source of risks to public and animal health. Past crises related to outbreaks of foot-and-mouth disease, the spread of transmissible spongiform encephalopathies such as bovine spongiform encephalopathy (BSE) and the occurrence of dioxins in feedingstuffs have shown the consequences of the improper use of certain animal by-products for public and animal health, the safety of the food and feed chain and consumer confidence. In addition, such crises may also have a wider adverse impact on society as a whole, by their impact on the socioeconomic situation of the farmers and of the industrial sectors concerned and on consumer confidence in the safety of products of animal origin. Disease outbreaks could also have negative consequences for the environment, not only due to the disposal problems posed, but also as regards biodiversity.
    - (2) Animal by-products arise mainly during the slaughter of animals for human consumption, during the production of products of animal origin such as dairy products, and in the course of the disposal of dead animals and during disease control measures. Regardless of their source, they pose a potential risk to public and animal health and the environment. This risk needs to be adequately controlled, either by directing such products towards safe means of disposal or by using them for different purposes, provided that strict conditions are applied which minimise the health risks involved.
- ...
- (5) Community health rules for collection, transport, handling, treatment, transformation, processing, storage, placing on the market, distribution, use or disposal of animal by-products should be laid down in a coherent and comprehensive framework.

(6) Those general rules should be proportionate to the risk to public and animal health which animal by-products pose when they are dealt with by operators at different stages of the chain from collection to their use or disposal. The rules should also take into account the risks for the environment posed during those operations. The Community framework should include health rules on the placing on the market, including intra-Community trade and import, of animal by-products, where appropriate.

...

(11) ... The chief objectives of the rules on animal by-products, namely the control of risks to public and animal health and the protection of the safety of the food and feed chain, should be clearly laid down. The provisions of this Regulation should permit the achievement of those objectives.

...

(36) Other legislation which has entered into force following the adoption of Regulation (EC) No 178/2002 of the European Parliament and of 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 L 31, p. 1)], namely Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs [(OJ 2004 L 139, p. 1, and corrigendum OJ 2004 L 226, p. 3)], Regulation (EC) No 853/2004 [of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55, and corrigendum OJ 2004 L 226, p. 22)], and Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene [(OJ 2005 L 35, p. 1)], and to which Regulation (EC) No 1774/2002 [of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1)] is complementary, places the primary duty of complying with Community legislation, aimed at protecting public and animal health, on the food and feed business operators. In line with that legislation, operators carrying out activities under this Regulation should also be primarily responsible for ensuring compliance with this Regulation. That obligation should be further clarified and specified as regards the means by which traceability is ensured, such as separate collection and channelling of animal by-products. ...'

4 Under Article 1 of Regulation No 1069/2009, entitled 'Subject matter':

'This Regulation lays down public health and animal health rules for animal by-products and derived products, in order to prevent and minimise risks to public and animal health arising from those products, and in particular to protect the safety of the food and feed chain.'

5 Article 3 of that regulation reads as follows:

'For the purposes of this Regulation the following definitions shall apply:

1. "animal by-products" means entire bodies or parts of animals, products of animal origin or other products obtained from animals, which are not intended for human consumption, including oocytes, embryos and semen;

2. “derived products” means products obtained from one or more treatments, transformations or steps of processing of animal by-products;

...

11. “operator” means the natural or legal persons having an animal by-product or derived product under their actual control, including carriers, traders and users;

...

13. “establishment” or “plant” means any place where any operation involving the handling of animal by-products or derived products is carried out, other than a fishing vessel;

...’

6 Paragraphs 1 and 2 of Article 4 of that regulation, itself entitled ‘Starting point in the manufacturing chain and obligations’, provide as follows:

‘1. As soon as operators generate animal by-products or derived products falling within the scope of this Regulation, they shall identify them and ensure that they are dealt with in accordance with this Regulation (starting point).

2. Operators shall ensure at all stages of collection, transport, handling, treatment, transformation, processing, storage, placing on the market, distribution, use and disposal within the businesses under their control that animal by-products and derived products satisfy the requirements of this Regulation which are relevant to their activities.’

7 Article 7 of Regulation No 1069/2009, entitled ‘Categorisation of animal by-products and derived products’, provides, in paragraph 1:

‘Animal by-products shall be categorised into specific categories which reflect the level of risk to public and animal health arising from those animal by-products, in accordance with the lists laid down in Articles 8, 9 and 10.’

8 Article 10 of that regulation, relating to ‘Category 3 material’, reads as follows:

‘Category 3 material shall comprise the following animal by-products:

- (a) carcasses and parts of animals slaughtered or, in the case of game, bodies or parts of animals killed, and which are fit for human consumption in accordance with Community legislation, but are not intended for human consumption for commercial reasons;
- (b) carcasses and the following parts originating either from animals that have been slaughtered in a slaughterhouse and were considered fit for slaughter for human consumption following an ante-mortem inspection or bodies and the following parts of animals from game killed for human consumption in accordance with Community legislation:
  - (i) carcasses or bodies and parts of animals which are rejected as unfit for human consumption in accordance with Community legislation, but which did not show any signs of disease communicable to humans or animals;
  - (ii) heads of poultry;

- (iii) hides and skins, including trimmings and splitting thereof, horns and feet, including the phalanges and the carpus and metacarpus bones, tarsus and metatarsus bones, of:
  - animals, other than ruminants requiring TSE [transmissible spongiform encephalopathies] testing, and
  - ruminants which have been tested with a negative result in accordance with Article 6(1) of Regulation (EC) No 999/2001 [of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ 2001 L 147, p. 1)];
- (iv) pig bristles;
- (v) feathers;

...'

- 9 Article 14 of Regulation No 1069/2009, entitled 'Disposal and use of Category 3 material', provides:

'Category 3 material shall be:

...

- (d) processed, except in the case of Category 3 material which has changed through decomposition or spoilage so as to present an unacceptable risk to public or animal health, through that product, and used:
  - (i) for the manufacturing of feed for farmed animals other than fur animals, to be placed on the market in accordance with Article 31, except in the case of material referred to in Article 10(n), (o) and (p);

...'

- 10 Title II of that regulation, relating to 'obligations of operators', contains Articles 21 to 43 of the regulation.

- 11 Article 21 of that regulation, headed 'Collection and identification as regards category and transport', provides, in paragraph 1:

'Operators shall collect, identify and transport animal by-products without undue delay under conditions which prevent risks arising to public and animal health.'

- 12 Article 24 of the same regulation, headed 'Approval of establishments or plants', provides, in paragraph 1:

'Operators shall ensure that establishments or plants under their control are approved by the competent authority, where such establishments or plants carry out one or more of the following activities:

...

- (i) storage of animal by-products;

...’

13 According to the first paragraph of Article 54 of Regulation No 1069/2009:

‘Regulation [No 1774/2002] shall be repealed with effect from 4 March 2011.’

14 Article 55 of Regulation No 1069/2009, entitled ‘Transitional measure’, reads as follows:

‘Establishments, plants and users approved or registered in accordance with Regulation [No 1774/2002] before 4 March 2011 shall be deemed to be approved or registered, as required, in accordance with this Regulation.’

### ***German law***

15 Paragraph 1 of the Tierische Nebenprodukte-Beseitigungsgesetz (Law on the disposal of animal by-products) of 25 January 2004 (BGBl. 2004 I, p. 82), in the version applicable to the facts in the main proceedings (‘the TierNebG’), provides:

‘This law is intended to implement Regulation [No 1069/2009] and any directly applicable legal acts of the Community or the European Union adopted under that regulation.’

16 Under Paragraph 12(1) and (2) of the TierNebG:

‘1. The competent authority ... shall monitor compliance with the provisions of the directly applicable legal acts referred to in Paragraph 1, the provisions of this law and any regulations adopted under it and enforceable orders issued in accordance with the directly applicable legal acts referred to in Paragraph 1, this law or any regulation adopted under it.

2. The competent authority may issue, on a case-by-case basis, the injunctions necessary to ensure compliance with the provisions of the directly applicable legal acts referred to in Paragraph 1 of this law and the regulations adopted under it. This provision shall also apply after the registration referred to in Article 23 of Regulation [No 1069/2009] or after the grant of approval under Article 24 of Regulation [No 1069/2009].’

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

17 On 10 November 2004, A. obtained approval for its Category 3 animal by-products processing plant located in the town of A, pursuant to Article 17 of Regulation No 1774/2002, which required Category 3 processing plants to obtain such approval.

18 In the course of 2016, during an inspection carried out at a warehouse operated by A. in the town of B, officers from the district of Jerichower Land found that transport containers containing carcass waste and animal meat remnants falling within Category 3 as referred to in Article 10 of Regulation No 1069/2009 were being placed in a trailer equipped with refrigeration equipment. They also found that some of the carcasses were in a state of decomposition, that the floor of the warehouse was covered with liquids containing maggots from the containers, and that there were mouse and rat droppings in the corners of the warehouse.

- 19 The officers from the district of Jerichower Land found that the transport and storage of those Category 3 materials were taking place as follows. First of all, the containers were collected from the producers and transported in five vehicles to the warehouse in the town of B. Then, at that warehouse, the containers were transferred directly to the refrigerated trailer, without their contents being processed. As a rule, the containers remained in the trailer for two hours, although in certain special cases this could be as long as eight hours. Once all the transport containers had been collected, they were transported by a lorry equipped with the refrigerated trailer to the processing plant operated by A. in the town of A. The containers, which were not watertight, were mostly conventional waste containers (240 litres) and waste containers known as ‘Eurobox’ containers (600 litres).
- 20 By a decision of 4 January 2017, taken on the basis of Paragraph 12(2) of the TierNebG, the district of Jerichower Land prohibited A. from storing animal by-products in its warehouse in the town of B, on the grounds that that company did not have an approval for that purpose within the meaning of Article 24(1)(i) of Regulation No 1069/2009.
- 21 After an unsuccessful appeal against that decision, A. brought an action before the Verwaltungsgericht (Administrative Court, Germany). That court annulled the decision on the grounds that the short-term interruption of a transport operation, without that interruption being linked to an emptying operation or a change of containers, could not be classified as storage of animal by-products within the meaning of Article 24(1)(i) of Regulation No 1069/2009.
- 22 The district of Jerichower Land appealed against the judgment of the Verwaltungsgericht (Administrative Court) to the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Higher Administrative Court of the Land Sachsen-Anhalt, Germany), which is the referring court.
- 23 According to that court, the outcome of the dispute in the main proceedings depends on the interpretation of the concept of ‘storage’ referred to in Article 24(1)(i) of Regulation No 1069/2009, since the decision of 4 January 2017, by which that district prohibited A. from storing animal by-products in its warehouse in the town of B, was based on the fact that containers containing animal by-products, transported by heavy goods vehicles, were deposited, for a few hours, in that warehouse.
- 24 In those circumstances, the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Higher Administrative Court of the Land Sachsen-Anhalt) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 24(1)(i) of Regulation [No 1069/2009] be interpreted as meaning that the term “storage” covers an interruption of transport operations during which containers of Category 3 animal by-products are transferred to another vehicle and kept in that vehicle for a number of hours (up to eight) before being transported onwards to a processing plant, without the material being treated or transferred to other containers?’

### **Consideration of the question referred**

- 25 By its sole question referred for a preliminary ruling, the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Higher Administrative Court of the Land Sachsen-Anhalt) seeks to ascertain whether Article 24(1)(i) of Regulation No 1069/2009 is to be interpreted as meaning that the concept of ‘storage’ to which it refers includes the interruption of a transport operation, lasting

from a few hours to eight hours, during which transport containers containing Category 3 animal by-products are transferred from one transport vehicle to another, before being transported to a processing plant, without those animal by-products being treated or transferred to other transport containers during that interruption.

- 26 In this regard, it should be recalled that Regulation No 1069/2009 classifies animal by-products into three specific categories (numbered 1, 2 and 3) according to the level of risk they pose to public and animal health. In particular, material which the EU legislature considered low risk is in Category 3 while the material in Categories 1 and 2 poses a high risk to public and animal health, with Category 1 material posing the highest risk (see, to that effect, judgment of 2 September 2021, *Toropet*, C-836/19, EU:C:2021:668, paragraph 41).
- 27 Article 24(1) of that regulation, which requires operators of establishments or plants carrying out one of the activities referred to therein, which includes, in point (i) thereof, the storage of animal by-products, to hold an approval, does not apply to the activity of transporting animal by-products (see, to that effect, judgment of 23 May 2019, *ReFood*, C-634/17, EU:C:2019:443, paragraph 42).
- 28 Since the defendant in the main proceedings does not have such an approval for the warehouse which it operates in the town of B, the question referred by the referring court concerns whether the interruption of a transport operation such as that at issue in the main proceedings must be regarded as forming part of that transport, with the result that it is exempt from the approval requirement, or as falling within the concept of ‘storage’ within the meaning of Article 24(1)(i) of Regulation No 1069/2009.
- 29 In this regard, it should be noted that that regulation does not define that concept and that the wording of Article 24(1)(i) of the regulation does not in itself permit a clear interpretation of the concept.
- 30 According to the Court’s settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 104 and the case-law cited).
- 31 As regards the context of Article 24 of Regulation No 1069/2009, it should be observed that, in accordance with Article 4(1) and (2) thereof, operators generating animal by-products or derived products falling within the scope of that regulation have a duty to ensure that animal by-products satisfy the rules under that regulation at all stages of collection, transport, handling, treatment, transformation, processing, storage, placing on the market, distribution, use and disposal of those animal by-products (see, to that effect, judgment of 2 September 2021, *Toropet*, C-836/19, EU:C:2021:668, paragraph 55).
- 32 Furthermore, it should be highlighted that, according to recital 36, Regulation No 1069/2009 provides that the operators are primarily responsible for ensuring compliance with that regulation in order to protect public and animal health. In that respect, operators have a duty to comply with the requirements of that regulation which are relevant to their activities when treating animal by-products (judgment of 2 September 2021, *Toropet*, C-836/19, EU:C:2021:668, paragraph 56).



- 33 Moreover, Article 21(1) of Regulation 1069/2009 requires operators to transport animal by-products ‘without undue delay’ under conditions that avoid risks to public and animal health. Although that regulation does not in principle rule out the possibility of interrupting transport, it does therefore prohibit excessive delays in transport.
- 34 In the present case, and subject to the verifications which are the responsibility of the referring court, it is apparent from the order for reference, first of all, that the activities at issue in the main proceedings take place during the interruption of a transport operation and that they do not form part of the transport carried out by road in or on a mobile vehicle, but are carried out in a warehouse. In addition, Category 3 materials are regularly found, in an organised and planned manner, on the premises of the defendant in the main proceedings by virtue of a deliberate decision on its part, and not because of an unforeseen interruption in the transport process or an interruption intended to comply with the driver’s statutory rest period. Finally, the circumstances described in the order for reference indicate that not only is there frequent dumping in the warehouse, but also that the defendant in the main proceedings has not put in place procedures to prevent contamination and ensure regular cleaning of the premises, which is likely to result in a risk to the safety of the food and feed chain.
- 35 As regards the main objectives pursued by the rules on animal by-products, it is clear from Article 1 and recitals 2, 5, 6 and 11 of Regulation No 1069/2009 that those objectives are adequately to control risks to public and animal health, to protect the safety of the food and feed chain and to establish a coherent and comprehensive framework of health rules that are proportionate to the health risk which animal by-products pose when they are dealt with by operators at different stages of the chain from their collection to their use or disposal (judgment of 2 September 2021, *Toropet*, C-836/19, EU:C:2021:668, paragraph 52).
- 36 It follows that the EU legislature intended to control the risks to public and animal health adequately and proportionately throughout the operations involving animal by-products (see, to that effect, judgment of 2 September 2021, *Toropet*, C-836/19, EU:C:2021:668, paragraph 53).
- 37 Thus, the concept of ‘storage’, within the meaning of Article 24(1)(i) of Regulation No 1069/2009, must be considered to encompass an interruption in the transport of animal by-products and their transshipment from one transport vehicle to another, as well as their possible unloading with a view to temporary storage, in order to be subsequently transported to other establishments for further processing. It follows that the operator of a warehouse in which such operations are carried out must have an approval under Article 24 of that regulation.
- 38 Consequently, the answer to the question referred for a preliminary ruling is that Article 24(1)(i) of Regulation No 1069/2009 is to be interpreted as meaning that the concept of ‘storage’ to which it refers includes the interruption of a transport operation, lasting from a few hours to eight hours, during which transport containers containing Category 3 animal by-products are transferred from one transport vehicle to another, before being transported to a processing plant, without those animal by-products being treated or transferred to other transport containers during that interruption.

## Costs

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

**Article 24(1)(i) of Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)**

**must be interpreted as meaning that the concept of ‘storage’ to which it refers includes the interruption of a transport operation, lasting from a few hours to eight hours, during which transport containers containing Category 3 animal by-products are transferred from one transport vehicle to another, before being transported to a processing plant, without those animal by-products being treated or transferred to other transport containers during that interruption.**

[Signatures]