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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 November 1998

in Case C-102/96: Commission of the European Communities v. Federal Republic of Germany ⁽¹⁾*(Failure of a Member State to fulfil its obligations — Directives 64/433/EEC, 91/497/EEC and 89/662/EEC — Requirement for special marking and heat treatment of meat from boars)*

(1999/C 20/01)

*(Language of the case: German)**(Provisional translation; the definitive translation will be published in the European Court Reports)*

In Case C-102/96: Commission of the European Communities (Agent: Klaus-Dieter Borchardt) v. Federal Republic of Germany (Agents: Ernst Röder and Bernd Klope) — application for a declaration that, by imposing the obligation of marking the carcasses of uncastrated male pigs and subjecting them to heat treatment whenever the meat, regardless of carcase weight, has an androstenone content of more than 0,5 µg/g, as shown by Professor Claus's modified enzyme immunoassay, and by regarding the meat as giving off a pronounced sexual odour and consequently unfit for human consumption if the threshold of 0,5 µg/g of androstenone is exceeded, the

Federal Republic of Germany has failed to fulfil its obligations under Article 5(1)(o) and Article 6(1)(b) 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 reenacted by Council Directive 91/497/EEC of 29 July 1991 (OJ L 268, 24.9.1991, p. 69), in conjunction with Articles 5(1), 7 and 8 of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ L 395, 30.12.1989, p. 13) and under Article 30 of the EC Treaty — the Court (Sixth Chamber), composed of: G. Hirsch, President of the Second Chamber, acting as President of the Sixth Chamber, G. F. Mancini, J. L. Murray (Rapporteur), H. Ragnemalm and K. M. Ioannou, Judges; A. La Pergola, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 12 November 1998, in which it:

1. Declares that, by imposing the obligation of marking the carcasses of uncastrated male pigs and subjecting them to heat treatment whenever the meat, regardless of carcase weight, has an androstenone content of more than 0,5 µg/g, as shown by Professor Claus's modified enzyme immunoassay, and by regarding the meat as giving off a pronounced sexual odour and consequently unfit for human consumption if the threshold of 0,5 µg/g of androstenone is exceeded, the Federal Republic of Germany has failed to fulfil its obligations under Articles 5(1)(o) and 6(1)(b) of Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat, as reenacted by Council Directive 91/497/EEC of 29 July 1991, and under Articles 5(1), 7 and 8 of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in

intra-Community trade with a view to the completion of the internal market;

2. *Orders the Federal Republic of Germany to pay the costs.*

(¹) OJ C 158, 1.6.1996.

JUDGMENT OF THE COURT

of 17 November 1998

in Case C-391/95 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): *Van Uden Maritime BV, trading as Van Uden Africa Line, v. Kommanditgesellschaft in Firma Deco-Line and Another* (¹)

(Brussels Convention — Arbitration clause — Interim payment — Meaning of ‘provisional measures’)

(1999/C 20/02)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-391/95: reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) for a preliminary ruling in the proceedings pending before that court between Van Uden Maritime BV, trading as Van Uden Africa Line, and Kommanditgesellschaft in Firma Deco-Line and Another — on the interpretation of Article 1, second paragraph, point 4, Article 3, Article 5, point 1, and Article 24 of the Convention of 27 September 1968, cited above (OJ L 304, 30.10.1978, p. 17), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ L 304, 30.10.1978, p. 1, and — amended text — p. 77), and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ L 388, 31.12.1982, p. 1) — the Court, composed of: G. C. Rodríguez Iglesias, President, P. J. G. Kapteyn, J.-P. Puissochet, G. Hirsch, P. Jann (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm (Rapporteur), L. Sevón and M.

Wathelet, Judges; P. Léger, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 17 November 1998, in which it has ruled:

1. *On a proper construction of Article 5, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, and by the Convention of 25 October 1982 on the accession of the Hellenic Republic, the court which has jurisdiction by virtue of that provision also has jurisdiction to order provisional or protective measures, without that jurisdiction being subject to any further conditions.*
2. *Where the parties have validly excluded the jurisdiction of the courts in a dispute arising under a contract and have referred that dispute to arbitration, no provisional or protective measures may be ordered on the basis of Article 5, point 1, of the Convention of 27 September 1968.*
3. *Where the subject-matter of an application for provisional measures relates to a question falling within the scope ratione materiae of the Convention of 27 September 1968, that Convention is applicable and Article 24 thereof may confer jurisdiction on the court hearing that application even where proceedings have already been, or may be, commenced on the substance of the case and even where those proceedings are to be conducted before arbitrators.*
4. *On a proper construction, the granting of provisional or protective measures on the basis of Article 24 of the Convention of 27 September 1968 is conditional on, inter alia, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought.*
5. *Interim payment of a contractual consideration does not constitute a provisional measure within the meaning of Article 24 of the Convention of 27 September 1968 unless, first, repayment to the defendant of the sum awarded is guaranteed if the plaintiff is unsuccessful as regards the substance of his claim and, second, the measure sought relates only to specific assets of the defendant located or to be located within the confines of the territorial jurisdiction of the court to which application is made.*

(¹) OJ C 46, 17.2.1996.