

The Netherlands Government disputes the validity of the objections of a financial and administrative nature raised by the Commission and points out that the Commission bases its arguments on out-of-date (and superseded) reporting and data.

— Misapplication of the law:

Council Decision 90/424/EEC on expenditure in the veterinary field<sup>(2)</sup> makes no provision for the application of a general reduction. When classic swine fever occurs in a Member State, that Member State is eligible under Article 3(2) of Decision 90/424 for a financial contribution from the Community for the eradication of the disease. The right to a contribution of 50 % arises in respect of measures referred to in Article 3(5) of Decision 90/424/EEC. The conditions referred to in Article 3(2) of Decision 90/424/EEC were complied with in controlling the swine fever epidemic. In so far as the Commission is of the opinion that technical and administrative shortcomings were discovered subsequently in the Netherlands, the Netherlands takes the view that, since they were inevitable, such shortcomings should not lead to a reduction. Perhaps the reduction was intended to have a remedial effect and was used by the Commission as an instrument for putting the level of compensation paid in the Netherlands on a par with that paid in other countries. If that is the case, the Commission has failed to take account of the need to recognize the specific circumstances in each Member State, such as the structure of pig farming, the density of the pig population in the affected area, as well as of economic and cyclical variations in price levels between and with respect to other EU Member States during previous outbreaks of classical swine fever, and has overlooked the fact that the situation in the other Member States was completely different from that in the Netherlands as regards the extent and duration of the crisis.

In so far as the Commission intended to impose a penalty on the Netherlands, that is wrong because there is in any case no legal basis for it.

— Breach of the principle of proportionality

The Netherlands Government is of the opinion that there is a major imbalance between, on the one hand, the deficiencies found (or described as such) by the Commission in the implementation of the measures taken to control classical swine fever and, on the other hand, the financial correction applied by the Commission. The Commission wrongly uses the data collected by it on the basis of a small and, in the opinion of the Netherlands Government, unrepresentative spot check as the basis for conclusions about the handling of the whole operation to control classical swine fever in 1997. The Netherlands Government is further of the opinion that comparison with the guidelines operated for the imposition of reductions in the EAGGF context supports the view of the Netherlands that the 25 % reduction is disproportionate.

— Breach of principle of legal certainty

In the absence of a relevant Community definition, the meaning of the term 'adequate compensation' as referred to in the seventh indent of Article 3(2) of Decision 90/424/EEC is left to the discretion of the Member States. They must determine, in the light of the relevant legislation (in this case Directive 80/217/EEC and Decision 90/424/EEC), what is adequate compensation. The Commission now assigns a meaning all of its own to the term 'adequate compensation', which cannot be inferred from existing Community legislation. The Commission has thus acted in breach of the principle of legal certainty which requires that legal rules be clear and their application foreseeable for those affected by them.

— Breach of the requirement to state reasons.

<sup>(1)</sup> OJ 2000 L 129, p. 33.

<sup>(2)</sup> OJ 1990 L 224, p. 19.

**Reference for a preliminary ruling by the Nederlandse Raad van State by order of 8 August 2000 in the case of Oliehandel Koewit B.V. and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer**

(Case C-307/00)

(2000/C 335/46)

Reference has been made to the Court of Justice of the European Communities by order of 8 August 2000 by the Nederlandse Raad van State (Council of State), Netherlands, which was received at the Court Registry on 16 August 2000, for a preliminary ruling in the case of Oliehandel Koewit B.V. and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer on the following questions:

1. Do Directive 96/59/EC<sup>(1)</sup> of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) and Directive 87/101/EEC<sup>(2)</sup> of 22 December 1986 amending Directive 75/439/EEC on the disposal of waste oils mean that Regulation (EEC) No 259/93<sup>(3)</sup> of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (hereinafter: 'Regulation No 259/93') must be interpreted as meaning that the shipment of waste oil with a PCB content of over 50 ppm must always be regarded as a shipment of waste for disposal within the meaning of Title II, Chapter A, of Regulation No 259/93, read in conjunction with Article 1(e) of Directive 75/442/EEC<sup>(4)</sup> of 15 July 1975 on waste (hereinafter: 'the Framework Directive')?

- 2.a) If the first question must be answered in the affirmative and therefore the shipment of waste oil with a PCB content of over 50 ppm must always be regarded as a shipment of waste for disposal, can an objection be raised to the shipment pursuant to Article 4(3)(b)(i) of Regulation No 259/93 solely on account of the need to achieve self-sufficiency at national level without showing that self-sufficiency at national level is necessary to achieve self-sufficiency at Community level?
- 2.b) If so, is Regulation No 259/53, in so far as it permits such a prohibition on exports solely on the basis of the principle of self-sufficiency at national level, compatible with Article 29 of the Treaty establishing the European Community?

(<sup>1</sup>) OJ 1996 L 243, p. 31.  
 (<sup>2</sup>) OJ 1987, L 42, p. 43.  
 (<sup>3</sup>) OJ 1993 L 30, p. 1.  
 (<sup>4</sup>) OJ 1975 L 194, p. 39.

**Reference for a preliminary ruling by the Nederlandse Raad van State by order of 8 August 2000 in the case of N.V. Slibverwerking Noord-Brabant and Glückauf Sondershausen Entwicklungs- und Sicherungsgesellschaft mbH and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer**

**(Case C-308/00)**

(2000/C 335/47)

Reference has been made to the Court of Justice of the European Communities by order of 8 August 2000 by the Nederlandse Raad van State (Council of State), Netherlands, which was received at the Court Registry on 16 August 2000, for a preliminary ruling in the case of N.V. Slibverwerking Noord-Brabant and Glückauf Sondershausen Entwicklungs- und Sicherungsgesellschaft mbH and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer on the following questions:

- 1.a) Must the operation, recycling/reclamation of other inorganic materials, referred to under R5 of Annex II B to Directive 75/442/EEC<sup>(1)</sup> on waste (hereinafter: 'the Framework Directive') be interpreted as also covering 're-use' within the meaning of Article 3(b)(i) of the Framework Directive?
- 1.b) How must R5 be interpreted, in view of the answer to the above question? For the operation referred to therein to exist is it necessary that the substance be submitted to a treatment, can be used several times or can be taken back?

2. If it follows from the answer to the abovementioned questions that an operation such as the processing of fly ash does not fall within the scope of R5, are the lists of operations in Annexes II A and II B of the Framework Directive exhaustive or is one of these lists exhaustive, and if so which one?
- 3.a) On the basis of which criteria must it be decided whether an operation must be regarded as disposal or recovery within the meaning of Article 1 of the Framework Directive?
- 3.b) If an operation can be classified both as a disposal operation and a recovery operation, must priority be given to the list in Annex II A or II B when classifying that operation or does neither of the two lists take precedence over the other?
4. Must the view of the competent authority of the Member State of dispatch or of the Member State of destination be regarded as decisive as regards whether an operation must be classified as disposal or recovery?
- 5.a) If the shipment of the fly ash must be regarded as a shipment of waste for disposal, can an objection to the shipment be raised pursuant to Article 4(3)(b)(i) of Regulation (EEC) No 259/93<sup>(2)</sup> of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community solely on account of the need to achieve self-sufficiency at national level without showing that self-sufficiency at national level is necessary to achieve self-sufficiency at Community level?
- 5.b) If so, is Regulation No 259/53, in so far as it permits such a prohibition on exports solely on the basis of the principle of self-sufficiency at national level, compatible with Article 29 of the Treaty establishing the European Community?

(<sup>1</sup>) OJ 1975, L 194, p. 39.  
 (<sup>2</sup>) OJ 1993 L 30, p. 1.

**Reference for a preliminary ruling by the Nederlandse Raad van State by order of 8 August 2000 in the case of PPG Industries Fiber Glass B.V. and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer**

**(Case C-309/00)**

(2000/C 335/48)

Reference has been made to the Court of Justice of the European Communities by order of 8 August 2000 by the