

JUDGMENT OF THE COURT (Second Chamber)

9 September 1999 *

In Case C-374/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Bayerischer Verwaltungsgerichtshof, Germany, for a preliminary ruling in the proceedings pending before that court between

Anton Feyrer

and

Landkreis Rottal-Inn,

Intervener:

Landesrechtsanwaltschaft Bayern als Vertreter des öffentlichen Interesses,

on the interpretation of Article 2(3) of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), as amended by Council Directive 93/118/EC of 22 December 1993 (OJ 1993 L 340, p. 15), and of points 1 and 4(b) of Chapter I of the Annex thereto,

* Language of the case: German.

THE COURT (Second Chamber),

composed of: G. Hirsch, President of the Chamber, G.F. Mancini and R. Schintgen (Rapporteur), Judges,

Advocate General: P. Léger,

Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Mr Feyrer, by Werner Leinfelder, Rechtsanwalt, Augsburg,
- the Landkreis Rottal-Inn, by Thomas Schönfeld, Rechtsanwalt, Munich,
- the Landesanwaltschaft Bayern als Vertreter des öffentlichen Interesses, by Martin Bauer, Oberlandesanwalt in that department,
- the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, acting as Agent,
- the Dutch Government, by Adriaan Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,
- the Finnish Government, by Holger Rotkirch, Ambassador, Head of the Legal Affairs Department at the Ministry of Foreign Affairs, and Tuula Pynnä, Legal Adviser at the same Ministry, acting as Agents,
- the Commission of the European Communities, by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent, assisted by Ingo Brinker, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Feyrer, represented by Werner Leinfelder; the Landkreis Rottal-Inn, represented by Thomas Schönfeld; the Landesanstalt für Lebensmittellieferanten Bayern als Vertreter des öffentlichen Interesses, represented by Jochen Mehler, Oberlandesanwalt in that department; the German Government, represented by Wolf-Dieter Plessing, Ministerialrat at the Federal Finance Ministry, acting as Agent; and the Commission, represented by Klaus-Dieter Borchardt, assisted by Rolf Karpenstein, Rechtsanwalt, Hamburg, at the hearing on 16 December 1998,

after hearing the Opinion of the Advocate General at the sitting on 18 March 1999,

gives the following

Judgment

- 1 By order of 20 October 1997, received at the Court on 3 November 1997, the Bayerischer Verwaltungsgerichtshof (Bavarian Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of Article 2(3) of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), as amended by Council Directive 93/118/EC of 22 December 1993 (OJ 1993 L 340, corrigendum in OJ 1994 L 280, p. 91, p.15; hereinafter 'the Directive'), and of points 1 and 4(b) of Chapter I of the Annex thereto.

- 2 Those questions were raised in proceedings between Mr Feyrer and the Landkreis Rottal-Inn (hereinafter 'the Landkreis') concerning the level of fees which the latter charged Mr Feyrer in respect of health inspections and controls of meat carried out in 1995 by Landkreis staff on the premises of Mr Feyrer's butcher's business.

The relevant Community legislation

- 3 Pursuant to the first indent of Article 1(1) of the Directive, Member States are to ensure the collection of a Community fee for the costs occasioned by health inspections and controls of the meat referred to in the various Community directives.
- 4 Article 1(2) provides:

'The fees referred to in paragraph 1 shall be fixed so as to cover the costs incurred by the competent authority for

- salary costs, including social-security costs,
- administrative costs, which may include the expenditure required for in-service training of inspectors

for carrying out the controls and inspections referred to in paragraph 1.'

5 Article 2 of the Directive provides:

'1. The Member States shall ensure, for the purpose of financing the controls carried out pursuant to the Directives referred to in Article 1 by the competent authorities and for that purpose only, the collection

— for the types of meat referred to in Directives 64/433/EEC, 71/118/EEC and 72/462/EEC, with effect from 1 January 1994, of the Community fees following the procedures laid down in the Annex,

— ...

...

3. Member States shall be authorised to collect an amount exceeding the level or levels of the Community fees, provided that the total fee collected by each Member State is not greater than the actual figure for inspection costs.

4. The Community fees shall replace all other health inspection charges or fees levied by the national, regional or local authorities of the Member States for the inspections and controls referred to in Article 1 and the certification thereof....

...'

- 6 Chapter I of the Annex to the Directive, entitled ‘Meat covered by Directives 64/433/EEC and 71/118/EEC’ provides that, without prejudice to the application of points 4 and 5, Member States are to collect for inspection costs relating to slaughter the standard amounts fixed in point 1 and a share of the fees for administrative costs and the examination for the presence of residues (point 1).
- 7 Point 4 of Chapter I of the Annex provides:

‘In order to cover increased costs, Member States may,

- (a) increase the standard amounts for fees pursuant to points 1 and 2(a) for individual establishments;

This would be subject, for example, to one or more of the following conditions (apart from the condition laid down in 5(a)):

- higher inspection costs due to a particular lack of uniformity in the animals for slaughter from the point of view of age, size, weight and state of health,

- longer waiting and otherwise non-productive periods for inspection staff owing to inadequate advance planning by the establishment of animal deliveries or technical inadequacies or failures, for example in older establishments,

- frequent delays in the slaughtering process, e.g. as a result of insufficient slaughter staff and hence under-employment of inspection staff,

- higher costs due to special travelling times,

- more time taken up on inspections due to frequently changing slaughter periods beyond the control of inspection staff,

- frequent interruptions in the slaughtering process to meet cleaning and disinfecting requirements;

- inspections of animals which, at the request of the owner, are slaughtered outside normal slaughtering hours.

The amount of the increases in the central standard rate for fees shall depend on the level of the costs to be covered;

(b) or collect a special fee covering actual costs.’

8 Article 2 of Directive 93/118 repealed, with effect from 1 January 1994, Council Decision 88/408/EEC of 15 June 1988 on the levels of the fees to be charged for health inspections and controls of fresh meat pursuant to Directive 85/73

(OJ 1988 L 194, p. 24), which the Council had adopted pursuant to Article 2(1) of Directive 85/73.

- 9 Article 2(1) of that decision had fixed standard amounts for fees for the various animal species concerned. However, Article 2(2), first subparagraph, had provided that ‘Member States where salary costs, the structures of establishments, and the ratio between veterinarians and inspectors differ from those of the Community average adopted for the calculation of the standard amounts laid down in paragraph 1 may depart from them through increases or reductions up or down to the real figure for inspection costs’.
- 10 The second subparagraph of Article 2(2) of Decision 88/408 provided that, where a Member State wished to avail itself of that derogation, it had to do so on the basis of the principles set out in the Annex to the Decision. The first paragraph of point 2 of the Annex provided that, in order to cover increased costs, Member States could increase the central standard rate for fees pursuant to Article 2(2) of that Decision. The examples listed in the second subparagraph of point 2 of circumstances in which Member States could take such action were substantially the same as those listed in point 4(a) of the Annex to the Directive.
- 11 Under Article 3(1) of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive not later than 31 December 1993 as regards the requirements in the Annex and in Article 5, and not later than 31 December 1994 as regards the other provisions.

The relevant national legislation

- 12 In Germany, various fees and charges are payable to meet the cost of administrative measures carried out pursuant to the Fleischhygienegesetz (Law on Meat Hygiene; hereinafter the 'FlHG'). The measures concerned are determined by *Land* legislation, the relevant law in the present case being the Bayerisches Gesetz zur Ausführung des Fleischhygienegesetzes (Bavarian Law implementing the Law on Meat Hygiene; hereinafter 'the AGFlHG') of 24 August 1990 (*Gesetz- und Verordnungsblatt I*, p. 336). The AGFlHG authorises the *Landkreise* to determine by regulation the measures in respect of which fees are payable in their area. On that basis, the Landkreis adopted the Satzung über die Erhebung von Gebühren und Auslagen für Amtshandlungen im Vollzug fleischhygienischer Vorschriften (By-law on the charging of fees and disbursements in respect of official acts performed in the implementation of the legislation on meat hygiene) of 20 August 1997 (Abl. des Landkreises Rottal-Inn 1997, p. 123; hereinafter 'the By-law'), which entered into force with retroactive effect on 1 January 1994.
- 13 Paragraph 24 of the FlHG, in the version of 18 December 1992 (BGBl. I, p. 2022), which applied at the time material to the main proceedings, provides:
- '(1) For official acts performed pursuant to the present Law and the provisions adopted for its implementation, fees and disbursements shall be charged to cover costs.
- (2) The matters giving rise to recovery of costs under subparagraph 1 shall be determined by the law of the *Land*. Fees shall be calculated pursuant to Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) and to the legal measures adopted on the basis of that Directive by the organs of the European Community....'

14 Paragraph 3 of the AGFlHG provides:

‘(1) The *Landkreise* and the independent and dependent communes shall bear the costs connected with performance of the tasks assigned to them by regulation adopted under Paragraph 1(2)(2) of this Law, whether or not such authorities operate import inspection facilities.

(2) In the cases referred to in subparagraph (1) the *Landkreise* and the independent and dependent communes shall determine by *Satzung* (by-law) uniformly for their territory the matters giving rise to recovery of costs for official acts within the meaning of Paragraph 24(1) of the FlHG and also, uniformly for their territory and separately from the fees for slaughterhouse use, the fees to cover costs in accordance with Paragraph 24(2) of the FlHG.

...’

15 Pursuant to Paragraph 1 of the By-law, entitled ‘Matters in respect of which fees are payable’:

‘(1) Fees shall be charged in accordance with this By-law for official acts performed pursuant to the *Fleischhygienegesetz*... and the *Fleischhygiene-Verordnung*. The fees laid down shall include disbursements.

(2) Fees shall be payable in respect of

1. the conduct of official inspections
2. supervision in the cutting plant
3. supervision in the meat processing plant
4. supervision in refrigeration and freezing units.

Fees shall also be payable in respect of

1. supervision of an approved refrigeration process
2. the issue of a certificate of fitness for consumption.

(3) No separate fee shall be payable for final decisions regarding approval and certification.'

¹⁶ Paragraph 2 of the Satzung fixes the levels of the fees.

Facts and the dispute in the main proceedings

¹⁷ Mr Feyrer, who runs a butcher's business — attending to his own slaughtering operations — within the jurisdiction of the Landkreis, received a demand for

payment of fees in respect of health inspections and controls of meat carried out in 1995 by Landkreis staff. The fees, calculated on the basis of the *Satzung*, were higher than the standard fees fixed in point 1 of Chapter I of the Annex to the Directive. Although Mr Feyrer did not deny that those fees represent the actual figure for inspection costs incurred by the Landkreis, he claimed that they are contrary to Community law and should be reduced to the standard levels fixed by the Directive.

- 18 The Landkreis contended that the Directive authorised collection of fees to meet the cost of inspections where the standard amounts are lower than the actual figure for inspection costs incurred by the authorities concerned. In particular, it maintained that the Directive was not intended to secure the widest possible standardisation of inspection fees collected in the European Community but rather to prevent distortion of competition as a result of fees being set at too low a level.

- 19 The case was referred on appeal to the Bayerischer Verwaltungsgerichtshof which took the view that the issues raised turned on the interpretation of Community law and therefore decided to stay proceedings and to refer the following three questions to the Court for a preliminary ruling:
 - ‘1. Can an individual oppose the collection of fees higher than the standard amounts listed in point 1 of the annex relating to Article 2(1) of Council Directive 85/73/EEC as amended by Council Directive 93/118/EC where the Member State has not transposed Directive 93/118/EC into national law within the prescribed period?

 2. Can a Member State collect fees higher than the standard amounts in reliance on point 4(b) of the annex relating to Article 2(1) of Council Directive 85/73/EEC as amended by Directive 93/118/EC provided that the fees levied do not exceed the actual costs, no further conditions being imposed?

3. Is the authorisation given to Member States under Article 2(3) of Council Directive 85/73/EEC as amended by Directive 93/118/EC to collect an amount exceeding the Community fees dependent on the total fee collected in the Member State as a whole and the actual figure for inspection costs incurred in the Member State as a whole or is it sufficient, when the Member State has delegated authorisation to collect the fees to the local authorities, that the total fee collected by the local authority is not greater than the actual figure for inspection costs incurred by that authority?

Question 1

- 20 By its first question, the national court asks whether an individual may oppose the collection of fees which are higher than the standard amounts fixed in point 1 of Chapter I of the Annex to the Directive.
- 21 The Court has consistently held (see, *inter alia*, Case C-76/97 *Tögel* [1998] ECR I-5357, paragraph 42) that whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied on by individuals against the State where the State fails to transpose the directive into national law within the prescribed period or where it fails to do so correctly.
- 22 On this point, it should be noted at the outset that the national court expressly stated in the order for reference that, at the time material to the main proceedings, the Directive had not yet been transposed into German law and that neither Paragraph 24(2) of the FlGH, as it stood at that time, nor Paragraph 3(2) of the AGFlHG could be regarded as constituting such transposition.

- 23 It must therefore be determined whether the relevant provisions of the Directive appear, so far as their content is concerned, to be unconditional and sufficiently precise, so that they may be relied on by individuals against the State.
- 24 The Court has already held, in relation to Decision 88/408 (which the Directive replaced) that the fact that a decision allows the Member States to which it is addressed to derogate from clear and precise provisions contained therein does not in itself deprive those provisions of direct effect and that, in particular, such provisions may have direct effect where recourse to the possibilities of derogation thus provided for is subject to judicial review (Case C-156/91 *Hansa Fleisch* [1992] ECR I-5567, paragraph 15).
- 25 Accordingly, the Court held that the option, available to Member States under Article 2(2) of Decision 88/408 but subject to the conditions referred to in the Annex thereto, of derogating from the standard levels of the fees laid down by Article 2(1), did not deprive that provision of direct effect (*Hansa Fleisch*, cited above, paragraphs 16 and 17).
- 26 In the case of the Directive, it should be noted that point 4 of Chapter I of the Annex thereto authorises Member States to cover increased costs by allowing them — in respect of a given establishment and subject to certain conditions identical in substance to those laid down in the Annex to Decision 88/408 — not only to increase the standard amounts fixed (point 4(a)), but also to collect a special fee covering actual costs (point 4(b)). Moreover, Article 2(3) of the Directive gives Member States general authorisation to collect an amount exceeding the levels of the standard fees, provided that the total fee collected is not greater than the actual figure for inspection costs.

- 27 Thus, whereas the option made available to Member States under point 4(a) of Chapter I of the Annex to the Directive of increasing the standard levels of fees offers them the possibility of derogating from Community levels in respect of particular establishments and subject to certain conditions open to judicial review, the option made available under point 4(b) of collecting a special fee covering actual costs is one which they may exercise generally and at their own discretion, provided only that the fee does not exceed the actual costs incurred.
- 28 It follows from the fact that the option available to Member States of collecting amounts covering actual costs, where these are higher than the standard amounts fixed in point 1 of Chapter I of the Annex to the Directive, is not subject to conditions open to judicial review that Article 2(1) of the Directive does not impose on the Member States an unconditional obligation which may be relied upon by individuals before the national courts.
- 29 The answer to the first question must therefore be that, where a Member State has not transposed the Directive into national law within the period prescribed, individuals cannot oppose the collection of fees higher than the levels of the standard amounts fixed in point 1 of Chapter I of the Annex to the Directive, where those fees do not exceed the actual costs.

Question 2

- 30 By its second question, the national court asks whether a Member State may exercise the option available under point 4(b) of Chapter I of the Annex to the Directive of collecting a special fee exceeding the level of the standard fees fixed in point 1 of Chapter I, provided only that the special fee does not exceed the actual costs incurred, no further condition being imposed.

- 31 On that point, it need merely be observed that, as stated in paragraph 27 above, the option made available to Member States under point 4(b) of Chapter I of the Annex to the Directive of collecting a special fee covering actual costs is one which they may exercise generally and at their own discretion, provided only that the fee does not exceed the actual costs incurred.
- 32 The answer to the second question must therefore be that a Member State may exercise the option available under point 4(b) of Chapter I of the Annex to the Directive of collecting a special fee exceeding the level of the standard fees fixed in point 1 of Chapter I, provided only that the special fee does not exceed the actual costs incurred, no further condition being imposed.

Question 3

- 33 By its third question, the national court asks essentially whether, in cases where a Member State has delegated to local authorities the collection of fees relating to health inspections and controls of fresh meat, Article 2(3) of the Directive authorises it to collect an amount in excess of Community fee levels so long as it does not exceed the actual figure for inspection costs incurred in the Member State as a whole or the actual figure for inspection costs incurred by the competent local authority.
- 34 The first point to note here is that, as the Court has held, each Member State is free to allocate powers internally and to implement Community acts which are not directly applicable by means of measures adopted by regional or local authorities, provided that that allocation of powers enables the Community legal

measures in question to be implemented correctly (*Hansa Fleisch*, cited above, paragraph 23).

35 Next, it should be recalled that the Court held in *Hansa Fleisch* that no provision of Decision 88/408 precluded Member States from entrusting to regional or local authorities the powers to derogate from the standard levels of fees, under the conditions and within the limits laid down by Article 2(2) of that decision (paragraph 24).

36 That is the position also with respect to the Directive, which replaced Decision 88/408. Furthermore, in so far as Article 2(4) of the Directive mirrors the provision in the Decision that Community fees are to replace all other health inspection charges or fees levied by the national, regional or local authorities of the Member States for the inspections and controls referred to in Article 1, the wording of the Directive confirms that such fees may be collected both at national level and at regional or local level.

37 Lastly, as regards the maximum level of actual inspection costs up to which Member States may derogate from the standard amounts of Community fees where it has delegated to local authorities the collection of those fees, it should be noted, first, that by virtue of Article 1(2) of the Directive, those fees are in principle fixed so as to cover the costs incurred by the competent authority in carrying out the health inspections and controls concerned.

38 Second, according to the wording of Article 2(3) of the Directive, Member States are authorised to collect an amount exceeding the levels of the Community fees, provided that the total fee is not greater than the actual figure for inspection costs.

- 39 It follows that where, as in the case in the main proceedings, a Member State has delegated to local authorities the collection of fees covered by the Directive, it may derogate from the standard levels fixed therein up to an amount representing the costs actually incurred by those authorities.
- 40 That conclusion is not invalidated by considerations based on the aim of the Directive. By authorising, in addition to the collection of fees at the standard level, collection of fees at a higher level covering inspection costs actually incurred, the Directive does not seek to establish uniform fees throughout the Community but rather, as the sixth and seventh recitals in its preamble indicate, to prevent distortions of competition arising from the fact that, as regards the financing of health inspections and controls introduced by Community law, the rules applied vary from Member State to Member State.
- 41 The answer to the third question must therefore be that, in cases where a Member State has delegated to local authorities the collection of fees relating to health inspections and controls of fresh meat, Article 2(3) of the Directive authorises it to collect an amount higher than Community fee levels so long as it does not exceed the actual costs of inspection incurred by the competent local authority.

Costs

- 42 The costs incurred by the German, Dutch and Finnish Governments and the Commission, which have submitted observations to the Court, are not

recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Bayerischer Verwaltungsgerichtshof by order of 20 October 1997, hereby rules:

1. Where a Member State has not transposed Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat, as amended by Council Directive 93/118/EC of 22 December 1993, into national law within the period prescribed, individuals cannot oppose the collection of fees higher than the levels of the standard amounts fixed in point 1 of Chapter I of the Annex to the Directive, where those fees do not exceed the actual costs.
2. A Member State may exercise the option available under point 4(b) of Chapter I of the Annex to Directive 85/73, as amended by Directive 93/118, of collecting a special fee exceeding the level of the standard fees fixed in point 1 of Chapter I, provided only that the special fee does not exceed the actual costs incurred, no further conditions being imposed.

3. In cases where a Member State has delegated to local authorities the collection of fees relating to health inspections and controls of fresh meat, Article 2(3) of Directive 85/73, as amended by Directive 93/118, authorises it to collect an amount higher than Community fee levels so long as it does not exceed the actual costs of inspection incurred by the competent local authority.

Hirsch

Mancini

Schintgen

Delivered in open court in Luxembourg on 9 September 1999.

R. Grass

G. Hirsch

Registrar

President of the Second Chamber