



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

12 September 2019*

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 882/2004 — Article 27 — Official controls of feed and food — Financing — Fees or charges payable for official controls — Whether it is possible for Member States to exempt certain categories of operator — Minimum rates for fees)

In Joined Cases C-199/18, C-200/18 and C-343/18,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decisions of 14 December 2017, received at the Court on 19 March 2018, in the proceedings

Pollo del Campo S.c.a.,

Avi Coop Società Cooperativa Agricola (C-199/18),

C.A.F.A.R. — Società Agricola Cooperativa,

Società Agricola Guidi di Roncofreddo di Guidi Giancarlo e Nicolini Fausta (C-200/18)

v

Regione Emilia-Romagna,

Azienda Unità Sanitaria Locale 104 di Modena,

A.U.S.L. Romagna (C-199/18 and C-200/18),

and

SAIGI Società Cooperativa Agricola a r.l.,

MA.GE.MA. Società Agricola Cooperativa

v

Regione Emilia-Romagna,

A.U.S.L. Romagna (C-343/18),

* Language of the case: Italian.

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Chamber, D. Šváby (Rapporteur) and S. Rodin, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Pollo del Campo S.c.a. and Avi Coop Società Cooperativa Agricola, by M. Giustiniani, A. Gamberini, and M. Aldegheri, avvocati,
- C.A.F.A.R. — Società Agricola Cooperativa, by M. Aldegheri, avvocatessa, and subsequently by A. Clarizia, avvocato,
- Società Agricola Guidi di Roncofreddo di Guidi Giancarlo e Nicolini Fausta, by M. Giustiniani, A. Gamberini, and M. Aldegheri, avvocati,
- A.U.S.L. Romagna, by A. Lolli, avvocato,
- Regione Emilia-Romagna, by G. Puliatti and F. Senofonte, avvocati,
- the European Commission, by F. Moro 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 These requests for a preliminary ruling concern the interpretation of Article 27 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 requests have been made in the course of three sets of proceedings between Pollo del Campo S.c.a. and Avi Coop Società Cooperativa Agricola (Case C-199/18), C.A.F.A.R. — Società Agricola Cooperativa and Società Agricola Guidi di Roncofreddo di Guidi Giancarlo e Nicolini Fausta (Case C-200/18), and SAIGI Società Cooperativa Agricola a r.l. and MA.GE.MA. Società Agricola Cooperativa (Case C-343/18) and the Regione Emilia-Romagna (Region of Emilia-Romagna, Italy), the Azienda Unità Sanitaria Locale 104 di Modena (Local health authority 104 of Modena, Italy) and the A.U.S.L. Romagna (Local health authority of Romagna, Italy), regarding a decision by that Region which requires the applicants in the main proceedings to pay a fee which is intended to cover the costs occasioned by official veterinary controls.

Legal framework

EU Law

Directive 89/662

- 3 Article 1 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 1989 L 395, p. 13), as amended by Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 (OJ 2004 L 157, p. 33, and corrigendum OJ 2004 L 195, p. 12) ('Directive 89/662'), provides that Member States are to ensure that the veterinary checks to be carried out on products of animal origin covered by the acts referred to in Annex A which are intended for trade are no longer carried out at frontiers but are carried out in accordance with Directive 89/662.
- 4 Chapter I of Annex A to Directive 89/662 mentions Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ 2003 L 18, p. 11), and 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).

Directive 93/119/EC

- 5 Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing (OJ 1993 L 340, p. 21) established common minimum standards for the protection of animals at the time of slaughter or killing in order to ensure rational development of production and to facilitate the completion of the internal market in animals and animal products.

Directive 96/23/EC

- 6 Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ 1996 L 125, p. 10) lays down measures to monitor the substances and groups of residues listed in Annex I to that directive.
- 7 For that purpose, Article 3 of that directive, which is in Chapter II, entitled 'Monitoring plans for the detection of residues or substances', provides:

'The production process of animals and primary products of animal origin shall be monitored in accordance with this Chapter for the purpose of detecting the presence of the residues and substances listed in Annex I [to the directive] in live animals, their excrement and body fluids and in tissue, animal products, animal feed and drinking water.'

Regulation (EC) No 178/2002

- 8 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) provides, in Article 3, entitled ‘Other definitions’:

‘For the purposes of this Regulation:

1. “food law” means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; it covers any stage of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals;

...

3. “food business operator” means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control;

...

6. “feed business operator” means the natural or legal persons responsible for ensuring that the requirements of food law are met within the feed business under their control’.

Regulation No 853/2004

- 9 Annex III to Regulation No 853/2004 comprises a set of specific requirements. In particular, section 2 of Annex III contains requirements for meat from poultry and lagomorphs which cover, inter alia, the activities of slaughtering and the cutting of meat.

Regulation No 882/2004

- 10 Recitals 4, 6 and 32 of Regulation No 882/2004 state:

‘(4) Community feed and food law is based on the principle that feed and food business operators at all stages of production, processing and distribution within the businesses under their control are responsible for ensuring that feed and food satisfy the requirements of feed and food law which are relevant to their activities.

...

- (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.

...

- (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. With regard to fees applicable for import controls, it is appropriate to establish directly the rates for main import items with a view to ensuring their uniform application and to avoiding trade distortions.’

- 11 Article 1, concerning subject matter and scope, is contained in Title I of Regulation No 882/2004, entitled ‘Subject matter, scope and definitions’, and provides, in paragraph 1 thereof:

‘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 ...’

- 12 Article 2(1) of that regulation defines ‘official control’ as ‘any form of control that the competent authority or the [Community] performs for the verification of compliance with feed and food law, animal health and animal welfare rules’.

- 13 Title II of that regulation, which is entitled ‘Official controls by Member States’, contains Chapter I, regarding ‘General obligations’. That chapter includes Article 3, concerning ‘General obligations with regard to the organisation of official controls’, which provides that:

‘1. Member States shall ensure that official controls are carried out regularly, on a risk basis and with appropriate frequency, so as to achieve the objectives of this Regulation ...

...

3. Official controls shall be carried out at any of the stages of production, processing and distribution of feed or food and of animals and animal products. They shall include controls on feed and food businesses, on the use of feed and food, on the storage of feed and food, on any process, material, substance, activity or operation including transport applied to feed or food and on live animals, required to achieve the objectives of this Regulation.

...’

- 14 Chapter VI of Title II, entitled ‘Financing of official controls’, contains Article 26, which sets out a ‘General principle’ in the following terms:

‘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.’

- 15 Article 27 of Regulation No 882/2004, entitled ‘Fees or charges’, is worded as follows:

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

2. However, as regards the activities referred to in Annex IV, section A, and Annex V, section A, Member States shall ensure the collection of a fee.

3. Without prejudice to paragraphs 4 and 6, fees collected as regards the specific activities mentioned in Annex IV, section A, and Annex V, section A, shall not be lower than the minimum rates specified in Annex IV, section B, and Annex V, section B. However, for a transitional period until 1 January

2008, as regards the activities referred to in Annex IV, section A, Member States may continue to use the rates currently applied 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)].

...

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

...

(b) may be fixed at a flat-rate on the basis of the costs borne by the competent authorities over a given period of time or, where applicable, at the amounts fixed in Annex IV, section B or in Annex V, section B.

5. In setting the fees Member States shall take into consideration:

- (a) the type of business concerned and relevant risk factors;
- (b) the interests of businesses with a low throughput;
- (c) traditional methods used for production, processing and distribution;
- (d) the needs of businesses located in regions subject to particular geographical constraints.

6. When, in view of own-check and tracing systems implemented by the feed or food business as well as of the level of compliance found during official controls, for a certain type of feed or food or activities, official controls are carried out with a reduced frequency or to take account of the criteria referred to in paragraph 5(b) to (d), Member States may set the official control fee below the minimum rates referred to in paragraph 4(b), provided that the Member State concerned provides the Commission with a report specifying:

- (a) the type of feed or food or activity concerned;
- (b) the controls performed in the feed and food business concerned; and
- (c) the method for calculating the reduction of the fee.

...'

¹⁶ Annex IV to Regulation No 882/2004 is entitled 'Activities and minimum rates for fees or charges related to official controls in relation to Community establishments'. Section A of Annex IV provides:

'1. The activities covered by Directives 89/662/EEC, [Council Directive] 90/425/EEC [of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29)], 93/119/EC and 96/23/EC for which Member States are currently collecting fees under Directive 85/73/EEC.

2. The approval of feed establishments.'

- 17 Pursuant to section B of Annex IV to Regulation No 882/2004, Member States are to collect for controls relating to the list of products set out in that section at least the minimum rates for fees or charges which are listed in that section. The minimum rates for fees or charges applicable to slaughter inspections, inter alia, are determined in that section, as are minimum rates for fees or charges applicable to cutting plants controls.
- 18 Annex V to that regulation concerns the ‘activities and minimum rates for fees or charges related to the official controls of goods and live animals introduced into the Community’ and provides:
- ‘The activities covered by [Council Directive] 97/78/EC [of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ 1997 L 24, p. 9)] and [Council Directive] 91/496/EEC [of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ 1991 L 268, p. 56)] for which Member States are currently collecting fees under Directive 85/73/EEC.’
- 19 Pursuant to section B of Annex V, Member States are to collect for official controls relating to the list of products set out in that section the minimum rates for fees or charges which are listed in that section.

Italian law

- 20 Article 1 of decreto legislativo n. 194 – Disciplina delle modalità di rifinanziamento dei controlli sanitari ufficiali in attuazione del regolamento (CE) n. 882/2004 (Legislative Decree No 194 laying down rules for the financing of official health controls in accordance with Regulation No 882/2004) (‘Legislative Decree No 194/2008’) of 19 November 2008 (GURI No 289 of 11 December 2008) defines the ‘Scope’ of that legislative decree as follows:
- ‘1. This Decree lays down the rules governing the financing of the official health controls, as regulated by Title II of Regulation [No 882/2004], performed by the competent authorities to ensure verification of compliance with feed and food law, animal health and animal welfare rules.
2. For the financing of the controls referred to in paragraph 1, the fees laid down in the Annexes to this Decree shall apply, in accordance with the detailed rules in Article 2.
3. The fees laid down in this Decree, which shall replace all other fees set for the health controls referred to in paragraph 1, shall be payable by operators in the sectors concerned by the controls referred to in paragraph 1 ...’
- 21 Legislative Decree No 194/2008 sets out, in sections 1 and 2 of Annex A, the amounts of the fees applicable to slaughter facilities and to cutting plant controls, which correspond to those contained in section B of Annex IV to Regulation No 882/2004.
- 22 In order to apply the provisions of Regulation No 882/2004 and to avoid differences in treatment in Italy, legge n. 96 – Disposizioni per l’adempimento di obblighi derivanti dall’appartenenza dell’Italia alle Comunità europee – Legge comunitaria 2009 (Law No 96 laying down rules for the fulfilment of the obligations arising from Italy’s membership of the European Communities – Community law 2009) of 4 June 2010 (GURI, Ordinary Supplement No 146 of 25 June 2010) amended Article 1 of Legislative Decree No 194/2008 by introducing paragraph 3a, which provides:
- ‘Agricultural operators are excluded from the scope of the present decree when they are engaged in the activities listed in Article 2135 of the Civil Code.’

23 Article 2135 of the Codice civile (Civil Code) provides:

‘An “agricultural operator” is a person who is engaged in one of the following activities: cultivation of land, forestry, rearing of livestock and related activities.

“Cultivation of land”, “forestry”, and “rearing of livestock” cover activities aimed at maintaining and developing a life cycle or a necessary stage in that cycle, be it of a plant or animal, using or able to use the farm, the forest or fresh, brackish or marine waters.

“Related activities” are the activities carried out by that agricultural operator for the purposes of the handling, conservation, processing, marketing and sale of products obtained primarily from the cultivation of land, forestry or the rearing of livestock, and activities aimed at providing goods or services mainly through the use of the undertaking’s equipment or resources normally used in the agricultural activity, including the generation of revenue from the land and from rural and woodland heritage, or the provision of accommodation and catering services as defined by law.’

The disputes in the main proceedings and the questions referred for a preliminary ruling

24 The applicants in the main proceedings are agricultural undertakings engaged in the business of rearing, slaughtering and marketing poultry.

25 By a decision of 12 December 2011, the Regional Executive of Emilia-Romagna decided to require agricultural operators engaged inter alia in the activities listed in sections 1 and 2 of Annex A to Legislative Decree No 194/2008, namely slaughterhouses and cutting plants, to pay the fees laid down in that legislative decree.

26 The applicants in the main proceedings brought an action before the Tribunale amministrativo regionale per l’Emilia-Romagna (Regional Administrative Court, Emilia-Romagna, Italy) against that decision and the subsequent payment orders issued against them. That court dismissed the action, holding, in essence, that Regulation No 882/2004 did not authorise the Member States to provide for derogations from the obligation to pay veterinary fees.

27 The applicants in the main proceedings subsequently brought an action before the Consiglio di Stato (Council of State, Italy) seeking variation of that judgment. They submit, in essence, in the first place, that EU legislation does not require that all operators in the agricultural sector, in particular ‘agricultural operators’, within the meaning of Article 2135 of the Civil Code, should be liable to pay fees relating to official health controls. They state that EU legislation merely requires that Member States ensure that a fee is collected for certain activities such as the inspection of slaughterhouses and controls on the operation of cutting plants. The Member States are free to organise the financing of those controls in the manner they deem to be most appropriate.

28 In the second place, the applicants in the main proceedings claim that the exemption from payment of fees should also extend to agricultural operators engaged in activities connected with the rearing of livestock, such as the handling, conservation, processing, marketing and sale of products obtained primarily from the rearing of livestock.

29 In that context, the referring court considers that it is necessary to ascertain what obligations are imposed on the Member States by Regulation No 882/2004. In particular, the Consiglio di Stato (Council of State) raises the question, first, of whether that regulation allows Member States to provide for exemptions from the obligation to pay a fee relating to official health controls.

- 30 It raises the question, secondly, as to the precise definition of the category of agricultural operators which may be exempt from payment of that fee, in the light of a judgment delivered on 10 November 2016 by the Corte di cassazione (Court of Cassation, Italy), which regarded agricultural cooperatives and consortia as ‘agricultural operators’ within the meaning of Article 2135 of the Civil Code when they use, to carry out the activities referred to in that article, the products of their members or when they supply to their members goods and services for the purposes of maintaining and developing a life cycle.
- 31 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) By providing that Member States must ensure fees are collected in respect of the activities listed in Annex IV, Section A, and Annex V, Section A, must Article 27 of Regulation [No 882/2004] be interpreted as placing an obligation to pay on all agricultural operators, even those which “carry out the activities of slaughtering and cutting of meat instrumental to and connected with the activity of rearing livestock”?
- (2) Can a [Member] State make certain categories of undertaking exempt from payment of the veterinary fees in the case where it has set up a system for the collection of fees that, overall, guarantees coverage of the costs of the official controls, or may it apply charges that are lower than those provided for by Regulation No 882/2004?’

Consideration of the questions referred

The first question

- 32 By its first question, the referring court asks, in essence, whether Article 27 of Regulation No 882/2004 must be interpreted as providing that Member States are obliged to require that fees relating to official controls in respect of the activities listed in Annex IV, section A, and Annex V, section A, to that regulation are also to be paid by food and feed business operators engaged in the slaughtering and cutting of meat as ancillary activities to their main activity of livestock rearing.
- 33 As a preliminary point, it is clear from Article 2(1) and Article 3 of Regulation No 882/2004, read in the light of recitals 4 and 6 of that regulation, that it is for the Member States to perform the official controls to verify that food and feed business operators comply with feed and food law at all stages of the production, processing and distribution of feed or food and of animals and animal products.
- 34 Thus, in accordance with the wording of Article 26 of Regulation No 882/2004, Member States must 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. In that regard, the Court has interpreted that article, read in the light of recital 32 of that regulation, as meaning that Member States have a broad discretion to make available adequate financial resources to provide the necessary staff and other resources for official controls (see, to that effect, judgment of 26 July 2017, *Superfoz — Supermercados*, C-519/16, EU:C:2017:601, paragraph 34 and the case-law cited).
- 35 However, that discretion is circumscribed by the harmonised rules laid down in Article 27 of Regulation No 882/2004 where Member States decide to impose the fees or charges referred to in that article on operators (judgment of 26 July 2017, *Superfoz — Supermercados*, C-519/16, EU:C:2017:601, paragraph 34).

- 36 In that regard, it is clear from the wording of Article 27 of Regulation No 882/2004 that, whereas paragraph 1 of that article provides that Member States may collect fees or charges to cover the costs occasioned by official controls, paragraph 2 of the same article provides that Member States must ensure that a fee is collected, not a charge, to cover the costs occasioned by the activities referred to in Annex IV, section A, and Annex V, section A, to that regulation.
- 37 Accordingly, it follows from the clear wording of Article 27(2) of Regulation No 882/2004, first, that Member States are obliged to collect a fee to cover the costs occasioned by the activities referred to in those annexes and, secondly, that the EU legislature has not expressly identified in that paragraph the person liable for payment of that fee.
- 38 Thus, in the first place, with regard to the activities referred to in Annex IV, section A, to Regulation No 882/2004, it should be noted that that annex, without listing the activities concerned itself, refers to activities covered by Directives 89/662, 93/119 and 96/23 for which Member States already collect fees under Directive 85/73.
- 39 In that regard, first, Directive 89/662 provides that the veterinary checks to be carried out on products of animal origin intended for human consumption covered by Annex A to that directive are to be carried out at all stages of the production, processing, storage, marketing and transfer of those products.
- 40 Annex A to that directive refers, first, to Directive 2002/99, which lays down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption and, secondly, to Regulation No 853/2004, which lays down specific hygiene rules on the hygiene of foodstuffs and which specifies, in particular in Annex III to that regulation, rules regarding the slaughter and the cutting of poultry.
- 41 Secondly, as is clear from Article 1(1) of Directive 93/119, that directive applies to slaughter activities.
- 42 Thirdly, Directive 96/23 lays down measures to monitor the substances listed in Annex I to that directive and organises the monitoring of the production process of animals, primary products of animal origin and animal feed at all stages of the production, processing and marketing of those products.
- 43 It follows from those directives that they require Member States to carry out controls relating to all stages of the production process and the processing of animals, of animal products and the production process for animal feed. Accordingly, since the slaughtering and cutting of meat fall under the stages of the production and processing of animals, those activities are covered by Annex IV, section A, to Regulation No 882/2004. Consequently, in accordance with Article 27(2) of that regulation, those activities must be subject to the payment of a compulsory fee in order to finance the official controls.
- 44 In the second place, it should be noted that Article 27(2) of that regulation does not identify the person liable for payment of that fee.
- 45 However, it is clear from Article 27(8) of Regulation No 882/2004, read in conjunction with recitals 4, 6 and 32 of that regulation, that the intention of the EU legislature was to require the payment of that fee by food and feed business operators.
- 46 In that regard, although Regulation No 882/2004 does not define ‘food business operators’ or ‘feed business operators’, Article 2 of that regulation refers to Regulation No 178/2002, which contains the basic rules of feed and food law and which defines those terms in Article 3(3) and (6).

- 47 In accordance with those provisions, a food business operator or a feed business operator is a natural or legal person responsible for ensuring that requirements of food law are met within the food business or feed business under that person's control.
- 48 In accordance with Article 3(1) of Regulation No 178/2002, food law consists of all laws, regulations and administrative provisions governing food in general, and food safety in particular, stemming from EU or national law, and covers any stage of production, processing and distribution of food and feed.
- 49 It follows that any natural or legal person who, in the course of his business, is required to comply with that food law, must be classified as a 'food business operator' or a 'feed business operator'.
- 50 In that context, the fact that the slaughtering and cutting of meat are carried out as ancillary activities to main activity of rearing is irrelevant.
- 51 Therefore, it is for the referring court to ascertain, in the first place, whether the agricultural operator is engaged in the activities covered by Annex IV, section A, to Regulation No 882/2004, such as the slaughtering and cutting of meat. If so, it is for the referring court to ascertain, in the second place, whether that agricultural operator is subject to requirements of food law in such a way that it is classified as a 'food business operator' or a 'feed business operator' within the meaning of Article 3(3) and (6) of Regulation No 178/2002 and is subject to official controls to verify that it is complying with that legislation.
- 52 In the light of the foregoing considerations, the answer to the first question is that Article 27 of Regulation No 882/2004 must be interpreted as providing that Member States are obliged to require that fees relating to official controls in respect of the activities listed in Annex IV, section A, and Annex V, section A, to that regulation are also to be paid by food and feed business operators engaged in the slaughtering and cutting of meat as ancillary activities to their main activity of livestock rearing.

The second question

- 53 By its second question, the referring court asks, in essence, whether Article 27 of Regulation No 882/2004 must be interpreted as allowing a Member State to apply fees which are lower than the minimum rates specified in Annex IV, section B, and Annex V, section B, to Regulation No 882/2004.
- 54 First of all, it is clear from the wording of the first sentence of the first subparagraph of Article 27(3) of Regulation No 882/2004 that fees collected as regards the activities mentioned in Annex IV, section A, and Annex V, section A, to Regulation No 882/2004 must not be lower than the minimum rates specified in Annex IV, section B, and Annex V, section B, to that regulation.
- 55 Secondly, it is clear from section B of Annexes IV and V that Member States must collect for controls relating to the list of products contained in those annexes the minimum rates for fees set out in that list.
- 56 Neither Article 27(3) of, nor section B of Annexes IV and V to, Regulation No 882/2004 provide for the option of derogating in a general and discretionary manner from those minimum rates where the Member State has chosen to finance the official controls using a system of flat-rate fees in accordance with Article 27(4)(b) of that regulation.
- 57 In that regard, the Court has held that those minimum rates are basic rates from which the Member States, in principle, may not derogate (judgment of 7 July 2011, *Rakvere Piim and Maag Piimatööstus*, C-523/09, EU:C:2011:460, paragraphs 22 and 27).

- 58 Finally, that interpretation is supported by Article 27(6) of Regulation No 882/2004, which governs the only derogation under which a Member State is authorised to set an official control fee below the minimum rates referred to in section B of Annexes IV and V to that regulation for certain undertakings. In the light of the information provided by the referring court, the legislation at issue in the cases in the main proceedings cannot, by its very nature, be covered by the derogation set out in Article 27(6) since it does not apply to the situation of a particular undertaking and is general in nature.
- 59 It follows that Article 27(3) of Regulation No 882/2004 and section B of Annexes IV and V to that regulation leave no discretion to the Member States allowing them to derogate, in a general and discretionary manner, from the minimum rates set out those provisions (see, to that effect, judgment of 7 July 2011, *Rakvere Piim and Maag Piimatööstus*, C-523/09, EU:C:2011:460, paragraph 28).
- 60 It follows from all the foregoing considerations that Article 27 of Regulation No 882/2004 must be interpreted as not allowing a Member State to apply rates for fees which are lower than the minimum rates specified in Annex IV, section B, and Annex V, section B, to Regulation No 882/2004.

Costs

- 61 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:

1. **Article 27 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 providing that Member States are obliged to require that fees relating to official controls in respect of the activities listed in Annex IV, section A, and Annex V, section A, to that regulation are also to be paid by food and feed business operators engaged in the slaughtering and cutting of meat as ancillary activities to their main activity of livestock rearing.**
2. **Article 27 of Regulation No 882/2004 must be interpreted as not allowing a Member State to apply rates for fees which are lower than the minimum rates specified in Annex IV, section B, and Annex V, section B, to Regulation No 882/2004.**

[Signatures]