Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

21 March 2024*

(Reference for a preliminary ruling – Agriculture – Approximation of health legislation – Animal health policy – Veterinary checks – Products of animal origin imported from China – Import ban – Decision 2002/994/EC – Exemption for certain products – Part I of the annex – Fishery products – Definition – Fish oil – Products intended for animal feed – Validity)

In Case C-7/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Belgium), made by decision of 22 December 2022, received at the Court on 10 January 2023, in the proceedings

Marvesa Rotterdam NV

v

Federaal Agentschap voor de veiligheid van de voedselketen (FAVV),

THE COURT (Seventh Chamber),

composed of N. Wahl (Rapporteur), acting as President of the Seventh Chamber, J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Marvesa Rotterdam NV, by S. Feyen, advocaat, C. Louski, avocate, and J. Mosselmans, advocaat,

– the Federaal Agentschap voor de veiligheid van de voedselketen (FAVV), by R. Depla, advocaat,

– the Belgian Government, by S. Baeyens, P. Cottin and C. Pochet, acting as Agents,

– the European Commission, by B. Hofstötter and M. ter Haar, acting as Agents,

* Language of the case: Dutch.

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation and validity of Part I of the annex to Commission Decision 2002/994/EC of 20 December 2002 concerning certain protective measures with regard to the products of animal origin imported from China (OJ 2002 L 348, p. 154), as amended by Commission Implementing Decision (EU) 2015/1068 of 1 July 2015 (OJ 2015 L 174, p. 30) ('Decision 2002/994').

2 The request has been made in proceedings between Marvesa Rotterdam NV ('Marvesa') and the Federaal Agentschap voor de veiligheid van de voedselketen (FAVV) (Federal Agency for the Safety of the Food Chain (FASFC), Belgium) concerning the legality of two decisions of the latter refusing the import of fish oil from China intended for animal feed.

Legal context

Directive 97/78/EC

3 Article 2(2)(a) of 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 1998 L 24, p. 9), as amended by Article 58 of the Corrigendum to 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 191, p. 1) ('Directive 97/78'), defined the term 'products' in the following manner:

'In addition:

(a) "products" means the products of animal origin referred to in [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)] and [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)], in 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)], in 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 in Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption [(OJ 2004 L 139, p. 206)], it also includes the plant products referred to in Article 19'.

4 Article 22(1) of Directive 97/78 provided:

'If, in the territory of a third country, a disease referred to in Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community [(OJ 1982 L 378, p. 58)], a zoonosis or other disease or any other phenomenon or circumstance liable to present a serious threat to animal or public health manifests itself or spreads, or if any other serious animal health or public health reason so warrants, in particular in the light of the findings of its veterinary experts or in the checks carried out in a border inspection post, the [European] Commission shall, acting on its own initiative or at the request of a Member State, adopt one of the following measures without delay, depending on the gravity of the situation:

– suspend imports from all or part of the third country concerned, and where appropriate from the third country of transit,

– set special conditions in respect of products coming from all or part of the third country concerned,

– draw up, on the basis of actual findings, requirements for appropriate checks, which may include specifically looking for risks to public or animal health and, depending on the result of those checks, increase the frequency of the physical checks.'

5 Directive 97/78 was repealed and replaced Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ 2017 L 95, p. 1).

Decision 2002/994

6 Recitals 1 and 4 of Decision 2002/994 state:

'(1) Under Directive [97/78], the necessary measures must be adopted as regards the import of certain products from third countries where any cause likely to constitute a serious risk to animal or human health appears or is spreading.

…

(4) Following the detection of chloramphenicol in certain aquaculture and fishery products imported from China, the Commission adopted Decision 2001/699/EC, of [1] 9 September 2001 concerning certain protective measures with regard to certain fishery and aquaculture products intended for human consumption and originating in China and Vietnam [(OJ 2001 L 251, p. 11)], modified by [Commission] Decision 2002/770/EC [of 2 October 2002 amending Decision 2001/699/EC and repealing Decision 2002/250/EC to

revoke the protective measures with regard to the fishery and aquaculture products imported from Vietnam (OJ 2002 L 265, p. 16)]. Furthermore, and following the shortcomings identified during an inspection visit to China as regards veterinary medicines regulation and the residue control system in live animals and animal products, the Commission adopted Decision 2002/69/EC of 30 January 2002 concerning certain protective measures with regard to the products of animal origin imported from China [(OJ 2002 L 30, p. 50)], as last amended by Commission Decision 2002/933/EC [of 28 November 2002 amending Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China (OJ 2002 L 324, p. 71)].'

7 Article 1 of Decision 2002/994 is worded as follows:

'This Decision shall apply to all products of animal origin imported from China and intended for human consumption or animal feed use.'

8 Article 2 of that decision provides:

'1. Member states shall prohibit the imports of products referred to in Article 1.

2. By derogation from paragraph 1, Member States shall authorise the imports of products listed in the Annex to this Decision in accordance with the specific animal and public health conditions applicable to the products concerned, and with Article 3 in the case of products listed in Part II of the Annex.'

9 According to Part I of the annex to that decision:

'List of products of animal origin intended for human consumption or animal feed use authorised to be imported into the [European] Union without the attestation provided by Article 3:

– fishery products, except:

  – those obtained from aquaculture,

  – peeled and/or processed shrimps,

  – crayfish of the species *Procambrus clarkii* caught in natural fresh waters by fishing operations;

– gelatine;

– petfood as regulated under 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)];

– substances to be used as or in food supplements as regulated under Directive 2002/46/EC of the European Parliament and of the Council [of 16 December 2008 on food additives (OJ 2008 L 354, p. 16)];

…’

Regulation (EC) No 853/2004

10 Article 2 of 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), provides:

‘The following definitions shall apply for the purposes of this Regulation:

1. the definitions laid down in 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)];

…’

11 Point 3.1 of Annex I to Regulation No 853/2004 provides:

‘“Fishery products” means all seawater or freshwater animals (except for live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods, and all mammals, reptiles and frogs) whether wild or farmed and including all edible forms, parts and products of such animals.’

Regulation No 854/2004

12 Article 2(2)(d) of Regulation No 854/2004 stated:

‘The definitions laid down in the following Regulations shall also apply as appropriate:

…

(d) Regulation [No 853/2004].’

13 Regulation No 854/2004 was repealed and replaced by Regulation 2017/625.

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

14 Marvesa, a company established in the Netherlands, imports, as part of its business of wholesaling and distributing fish oil intended for animal feed, fish oil from China.

15 On 5 and 25 January 2018, the Chinese border authorities issued health certificates for the transport to Belgium of an initial consignment of 258 470 kilograms (kg) and a second consignment of 261 674 kg of fish oil intended for animal feed from China.

16 On 23 February 2018, the competent Belgian border inspection post refused the import into the European Union of the containers transporting those fish oil consignments.

17 Following exchanges between the FASFC and Marvesa concerning that import refusal and after having heard that company, the FASFC confirmed, by two final decisions of 20 and 24 April 2018, the refusal of import into Belgium of the said fish oil consignments.

18 The FASFC indicated in those two decisions that the fish oil in question was a 'prohibited product', bearing the words 'not authorised to enter from China (2002/994/EC safeguard measures)'.

19 Marvesa is challenging the two decisions before the Raad van State (Council of State, Belgium), which is the referring court. It maintains that those decisions infringe Articles 1 and 2 of Decision 2002/994, arguing to that end that fish oil intended for animal feed falls within the definition of 'fishery products', within the meaning of Part I of the annex to the latter decision, such that the import of that product is authorised, in accordance with Article 2(2) of that decision.

20 According to Marvesa, the term 'fishery products' includes both fishery products intended for human consumption and those intended for animal feed. Consequently, that term includes fish oil intended for animal feed. Marvesa relies in that regard on the definition of the term 'fishery products' appearing in other acts of EU law which it considers relevant, on the wording of the annex to Decision 2002/994 and on the context and objective of that decision. It also observes that interpreting that term as including only products intended for human consumption would give rise to an 'unprecedented' situation, in which fish oil intended for animal feed would subject to stricter rules than fish oil intended for human consumption.

21 The FASFC, for its part, maintains that the term 'fishery products', within the meaning of Part I of the annex to Decision 2002/994, refers only to fishery products intended for human consumption. It indicates, among other arguments, that EU law distinguishes between products intended for human consumption and products intended for animal feed. It also recalls the assessment of the Commission, set out in the minutes of the meeting of 9 April 2018 of the 'Expert Group on veterinary import controls', according to which the EU rules currently applicable do not authorise the import of fish oil of Chinese origin intended for animal feed.

22 The referring court considers that the legality of the two decisions at issue depends on the interpretation of the term 'fishery products' used in the annex to Decision 2002/994 and that the FASFC's interpretation could result in different treatment of imports of fish oil depending on whether it is intended for human consumption or for animal consumption.

23 It is in those circumstances that the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Part I of the Annex to [Decision 2002/994] to be interpreted as meaning that the term "fishery products" covers both products intended for human consumption and products intended for animal consumption, and that, therefore, fish oil intended for animal feed use can be regarded as a "fishery product" within the meaning of the abovementioned annex?

(2) If the answer to the first question is in the negative, does Part I of the Annex to [Decision 2002/994] infringe Article 22(1) of [Directive 97/78], where appropriate read in conjunction with Article 1 of Protocol (No 2) [annexed] to the [FEU Treaty] on the application of the principles of subsidiarity and proportionality, in that fishery products for

human consumption originating from China are exempt from the import ban laid down in Article 2 of [that decision], whereas fishery products for animal consumption originating from China are subject to that import ban?'

Consideration of the questions referred

The first question

24 By its first question, the referring court asks, in essence, whether Part I of the annex to Decision 2002/994 must be interpreted as meaning that the term 'fishery products' includes products intended for human consumption as well as products intended for animal feed and, consequently, whether fish oil intended for animal feed is a 'fishery product' within the meaning of that annex.

25 As a preliminary point, it should be recalled that, by invoking a serious reason relating to animal health or the protection of human health, the Commission could, under Article 22(1) of Directive 97/78, adopt measures concerning imports from a third country such as suspending imports, setting special conditions, imposing appropriate checks or increasing the frequency of the physical checks.

26 It is apparent from recital 4 of Decision 2002/994 that measures of that nature were adopted after the presence of chloramphenicol had been detected in aquaculture and fishery products imported from China and after an inspection visit to that country had revealed shortcomings as regards veterinary medicines regulation and the residue control system in live animals and animal products. Thus, by Decision 2001/699 and Decision 2002/69, the Commission first prohibited the import of shrimps and prawns from or originating in China and Vietnam and then the import of all products of animal origin imported from China and intended for human consumption or for animal feed, with the exception of certain clearly identified products of animal origin, such as fishery products which are caught, frozen and packaged in their final packaging at sea and are directly landed on the territory of the European Union.

27 Following the review of those measures and in view of the positive results of the checks carried out by the Member States and the information provided by the Chinese authorities, the Commission, taking the view that it was necessary to update and consolidate the provisions of Decision 2002/69 and to repeal Decisions 2001/699 and 2002/69, adopted Decision 2002/994.

28 In accordance with Article 1 and Article 2(1) of Decision 2002/994, Member States are to prohibit the imports of products of animal origin imported from China and intended for human consumption or animal feed use. However, by virtue of Article 2(2) of that decision, Member States are to authorise, by derogation from the prohibition laid down in that Article 2(1), the imports of products listed in the annex to the said decision.

29 While fishery products are among the products of animal origin listed in that annex, Decision 2002/994 and, in particular, Part I of the said annex do not define the term 'fishery products' nor do they specify whether that term includes both products intended for human consumption and those intended for animal feed.

30 Consequently, in order to determine the meaning and scope of Part I of the annex to Decision 2002/994 and of the term 'fishery products' which appears in that annex, account must be taken, in accordance with settled case-law, not only of its wording but also of its context and the objectives pursued by the rules of which it is part (judgment of 27 October 2022, *Orthomol*, C-418/21, EU:C:2022:831, paragraph 24 and the case-law cited).

31 In the first place, it is true that, in accordance with the wording of Article 1 of Decision 2002/994 and of Part I of the annex to that decision, both that decision and that annex apply to all products of animal origin imported from China and intended for human consumption or animal feed use.

32 However, such a circumstance does not mean that all the products identified and listed in that annex are necessarily intended for human consumption and for animal feed.

33 First, Article 1 of Decision 2002/994 and Part I of the annex to that decision refer alternatively to products intended for human consumption or for animal feed. Second, certain products referred to by that annex may, by their nature, be intended solely for human consumption or solely for animal feed. That is true, in particular, of the pet food referred to therein.

34 It follows that, contrary to what Marvesa maintains, it cannot be inferred from the scope of Decision 2002/994 that the term 'fishery products' referred to in the annex to that decision necessarily encompasses fishery products intended for human consumption and those intended for animal feed.

35 In the second place, in terms of the context and legal framework of Decision 2002/994, it should be recalled that, given the requirements of unity and consistency in the EU legal order, the terms used by the measures adopted in the same sector must be given the same meaning (judgment of 19 November 2020, *5th AVENUE Products Trading*, C-775/19, EU:C:2020:948, paragraph 42).

36 In that regard, it is important to emphasise that, in the legislation on products of animal origin, the legislature draws a distinction between products intended for human consumption and products intended for animal feed. Those two product categories fall within legal frameworks which differ in that they were conceived with the specificities of each product category in mind.

37 Moreover, Directive 97/78 – on which Decision 2002/994 is based – defined, in Article 2(2)(a) thereof, the term 'products' by reference to other acts of EU law. It made reference, in particular, to Regulation No 854/2004, which referred, in Article 2(2)(d) thereof, to Regulation No 853/2004, which defines the term 'fishery products' in point 3.1 of Annex I thereto.

38 Regulation No 853/2004 and Regulation No 854/2004, however, by definition apply only to products intended for human consumption.

39 Regulation No 854/2004 was aimed at products of animal origin intended for human consumption.

40 Regulation No 853/2004, meanwhile, lays down the hygiene rules applicable to food of animal origin. Regulation No 178/2002 – whose definitions are, by virtue of Article 2(1) of Regulation No 853/2004, applicable for the purposes of the latter regulation – defines, in Article 2 thereof, the term 'food' as 'any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans'.

41 It follows that, in the legislation on products of animal origin – which includes Decision 2002/994 – the term 'fishery products' refers only to products intended for human consumption.

42 Therefore, in the absence of any indication to the contrary in Decision 2002/994, the term 'fishery products' must, for the sake of consistency, have the same meaning under that decision as it does in that more general context.

43 In the third place, such an approach is affirmed by the objective pursued by Decision 2002/994.

44 As the Commission recalled in recital 1 of that decision, Directive 97/78 allows the necessary measures to be adopted as regards the import of certain products from third countries, where any cause likely to constitute a serious risk to animal or human health appears or is spreading.

45 Such measures depend, first, on the nature and intended use of the products at which they are aimed and, second, on the specific risks to human or animal health posed by those products.

46 So far as concerns, in particular, the import ban at issue in the main proceedings, the protection measures introduced by Decision 2002/994 and the possible relaxation of those measures by the decision to authorise the import of certain products of animal origin depend, as the Commission has stated, on the information and guarantees provided by the Chinese authorities and, depending on the case, on the results of on-the-spot checks carried out by EU experts.

47 Such information and checks are specific to the product whose import ban is being reviewed and to the risk to human or animal health posed by the product thus assessed.

48 Consequently, information and checks relating to fish oil intended for human consumption are not relevant for assessing the risks posed by fish oil intended for animal feed.

49 In the case at hand, since the term 'fishery products' refers only to products intended for human consumption, the information and checks on which the Commission based its assessment of the risk posed by those products were designed to assess the risks to human health and not the risks to animal health.

50 It follows that the term 'fishery products', within the meaning of Decision 2002/994, refers only to products intended for human consumption.

51 In the light of all the foregoing considerations, the answer to the first question is that Part I of the annex to Decision 2002/994 must be interpreted as meaning that the term 'fishery products' includes products intended for human consumption, and not products intended for animal feed, and that, consequently, fish oil intended for animal feed is not a 'fishery product' within the meaning of that annex.

The second question

52 By its second question, the referring court asks the Court to assess, in the event of a negative answer to the first question, the validity of Part I of the annex to Decision 2002/994 in the light of Article 22(1) of Directive 97/78, read, where appropriate, in conjunction with Article 1 of Protocol No 2 annexed to the FEU Treaty on the application of the principles of subsidiarity and proportionality.

53 It is apparent from the request for a preliminary ruling that Marvesa argued, before the referring court, that there was no justification for different treatment of fish oil intended for human consumption and fish oil intended for animal feed and that such a difference in treatment raises doubts as to the validity of Decision 2002/994 in the light of its legal basis and of the principle of proportionality.

54 As the Court has already noted in paragraph 25 of the present judgment, under Article 22(1) of Directive 97/78, the Commission could, by invoking a serious reason relating to animal health or the protection of human health, adopt measures concerning imports from a third country such as suspending imports, setting special conditions, imposing appropriate checks or increasing the frequency of the physical checks.

55 That provision thus requires that the measures adopted by the Commission have as their objective the protection of human or animal health and that they be adapted to the 'gravity of the situation'. In order to do so, the Commission must, therefore, base such measures on an assessment specific to each product concerned by those measures.

56 Consequently, the said provision presupposes the adoption of differentiated measures, specific to each product concerned and to the risk which it poses to human or animal health.

57 In the case at hand, however, as the Court has already emphasised in the answer to the first question, products intended for human consumption and products intended for foodstuffs other than human ones are different. The assessment of the risk posed by each of those product categories must therefore differ in order that, for each of those categories, the risk to animal or human health, the gravity of the situation and the necessary remedial measures can be identified and determined.

58 Thus, given the differences between products intended for human consumption and products intended for animal feed, the difference in treatment made by Decision 2002/994 between fish oil intended for human consumption and fish oil intended for animal feed is not contrary to Article 22(1) of Directive 97/78.

59 In that context, the ban on imports of fish oil intended for animal feed does not infringe the principle of proportionality, either. The fact that the import of that product is banned while the import of fish oil intended for human consumption is authorised does not in itself mean that such a prohibition goes beyond what is necessary to protect human and animal health.

60 Having regard to all the foregoing considerations, it must be concluded that the examination of the second question has revealed nothing capable of affecting the validity of Part I of the annex to Decision 2002/994.

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 (Seventh Chamber) hereby rules:

1. **Part I of the annex to Commission Decision 2002/994/EC of 20 December 2002 concerning certain protective measures with regard to the products of animal origin imported from China, as amended by Commission Implementing Decision (EU) 2015/1068 of 1 July 2015,**

   must be interpreted as meaning that the term 'fishery products' includes products intended for human consumption, and not products intended for animal feed, and that, consequently, fish oil intended for animal feed is not a 'fishery product' within the meaning of that annex.

2. **The examination of the second question has revealed nothing capable of affecting the validity of Part I of the annex to Decision 2002/994, as amended by Implementing Decision 2015/1068.**

[Signatures]