OPINION OF ADVOCATE GENERAL LÉGER

delivered on 21 March 2002 [1]

1. There has been Community harmonisation of the inspections and controls which must be carried out in respect of fresh meat from pigs and bovine animals and also of the conditions governing the financing of those inspections and controls. Under the harmonisation of the conditions governing financing, it was laid down that a standard fee must be paid for the inspections and controls. The Bundesverwaltungsgericht (Federal Administrative Court, Germany) is seeking a ruling on whether, in Case C-284/00, costs in respect of examinations of pigmeat for trichinae carried out from 1992 to 1994 and, in Case C-288/00, the cost of bacteriological examinations carried out in 1991 were covered by the standard fee or whether they could give rise to special fees, in addition to the standard fee.

I — Relevant provisions

A — *Community law*

2. The relevant Community legislation consists of the rules concerning the inspection of fresh meat and those relating to the financing of the inspections.

1. Legislation concerning the inspection of fresh meat

(a) Directive 64/433/EEC

3. The rules concerning the inspection of fresh meat, for the period from 1991 to 31 December 1992, are laid down in Council Directive 64/433/EEC, [2] as amended in particular by Council Directive 83/90/EEC [3] and lastly by Council Directive 89/662/EEC [4] ('Directive 64/433').

4. The purpose of Directive 64/433 was to standardise the health requirements to be

1 — Original language: French.

2 — Directive of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-1964, p. 185).

3 — Directive of 7 February 1983 (OJ 1983 L 59, p. 10).

4 — Directive 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).

complied with in respect of intra-Community trade in meat, especially meat from bovine animals and swine. Its aim was thus to put an end to the disparities which existed between the requirements in force in the Member States which were liable to curtail such trade. [5]

5. Directive 64/433 provides that Member States which send fresh meat [6] from their territory must ensure that the meat fulfils certain conditions intended to ensure that it is fit for human consumption.

6. Thus, Article 3(1)(A)(d) of Directive 64/433 states that carcases or parts of carcases must have undergone a post-mortem inspection, conducted by an official veterinarian, in the course of which laboratory tests may be carried out, if required. The content of the post-mortem inspection is described in detail in Chapter VII of Annex I to Directive 64/433.

7. According to Article 4(1)(a) of Directive 64/433, fresh meat, other than meat which has undergone cold treatment under the conditions described by Council Directive 77/96/EEC, [7] must have undergone an examination for trichinae and, under Article 5 of Directive 64/433, meat which has been found to have trichinae may not be sent to another Member State.

8. In order to guarantee uniform conditions of health protection for consumers and to ensure the free movement of products subject to common organisation of the market, Council Directive 88/409/EEC [8] extended the requirements of Directive 64/433 to fresh meat produced by Member States to be sold on their domestic market.

(b) Directive 64/433, as amended by Directive 91/497/EEC

9. The purpose of Council Directive 91/497/EEC [9] is to extend the requirements

5 — First to fourth recitals in the preamble to Directive 83/90.

6 — In accordance with Article 2 of Directive 64/433, 'fresh meat' means meat, including meat vacuum-wrapped or wrapped in a controlled atmosphere, which has not undergone any treatment other than cold treatment to ensure preservation.

7 — Directive of 21 December 1976 on the examination for trichinae (trichinella spiralis) upon importation from third countries of fresh meat derived from domestic swine (OJ 1977 L 26, p. 67). Annex I to that directive describes the various methods of examination for trichinae and Annex IV describes the procedures for cold treatment.

8 — Council Directive 88/409/EEC of 15 June 1988 laying down the health rules applying to meat intended for the domestic market and the levels of the fees to be charged, pursuant to Directive 85/73, in respect of the inspection of such meat (OJ 1988 L 194, p. 28).

9 — Directive of 29 July 1991 amending and consolidating Directive 64/433 (OJ 1991 L 268, p. 69).

of Directive 64/433 to all meat production, in order to take account of the abolition under Directive 89/662 of veterinary checks at frontiers between Member States. [10]

10. Directive 64/433, as amended by Directive 91/497, [11] whose provisions applied with effect from 1 January 1993, essentially reproduces the provisions of Directive 64/433 concerning post-mortem inspections and the content of such inspections. [12]

11. Following the example of Directive 64/433, Directive 64/433 as amended lays down that fresh pigmeat which has not been tested for trichinosis in accordance with Annex I to Directive 77/96 must undergo cold treatment in accordance with the procedures laid down in Annex IV to that directive. [13]

12. Also, Article 5(1)(a) of Directive 64/433 as amended indicates that meat from animals that are affected by trichinosis must be declared unfit for human consumption.

10 — Sixth recital in the preamble to Directive 91/497.

11 — Hereinafter 'Directive 64/433 as amended'.

12 — See Article 3(1)(A)(d) and Chapter VIII of Annex I to Directive 64/433 as amended.

13 — Article 6 of Directive 64/433 as amended.

2. Legislation concerning the financing of inspections

(a) Directive 85/73/EEC and Decision 88/408/EEC

13. Community harmonisation of inspection fees was carried out in two stages, firstly by Council Directive 85/73/EEC, [14] then by Council Decision 88/408/EEC. [15]

14. Directive 85/73 is intended to prevent the restrictions of competition resulting from differences in the financing of health inspections in the Member States. [16] It provides that the Member States are to charge a fee for those inspections when animals are slaughtered and that any direct or indirect refund of that fee is prohibited. It states that the Council is to decide on the standard level or levels of the fees, on the detailed rules and principles for the implementation of the directive, and on possible exceptions. The Member States are auth-

14 — Directive of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), the applicable version of which from 1 January 1991 is as amended by Directive 88/409 ('Directive 85/73').

15 — Decision 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).

16 — Fifth recital in its preamble.

orised to collect an amount exceeding the standard levels fixed by the Council provided that the total fee collected for each Member State remains lower than or equal to the real figure for inspection costs.

15. Article 2(1) of Decision 88/408, which was adopted in implementation of Directive 85/73, fixes the standard amounts, by species, of the fees to be charged for all inspections provided for by Directive 64/433. [17]

16. Article 2(2) of Decision 88/408 states that the Member States may depart from the set standard amounts through increases or reductions to the real figure for inspection costs, if their salary costs or certain other factors differ from the Community average adopted for the calculation of those amounts. The annex to the decision provides that the amended amounts may apply generally or to individual establishments.

17. Article 5(1) of Decision 88/408 states that the amount referred to in Article 2 is to replace all other health charges or fees for the inspection and control of fresh meat as provided for by Directive 64/433.

17 — For young bovine animals and for pigs, the fee is fixed at ECU 2.5 and ECU 1.30 per animal respectively.

18. Pursuant to Directive 88/409, the fees laid down in Article 2 of Decision 88/408 also apply to inspections of fresh meat produced by the Member States for their domestic market.

(b) Directive 85/73, as amended by Directive 93/118/EC

19. The aim of Council Directive 93/118/EC [18] is, in particular, to amend Directive 85/73 taking into account the new provisions concerning controls. [19] In Article 2, it repeals Decision 88/408 with effect from 1 January 1994.

20. In line with Directive 85/73 and Decision 88/408, Directive 85/73, as amended by Directive 93/118, [20] provides that the Member States are to collect a standard Community fee covering all of the harmonised control measures and that any direct or indirect refund of the fee is prohibited. [21] The Member States may exceptionally reduce the standard amounts under the same conditions as those described in Decision 88/408. [22]

18 — Directive of 22 December 1993 amending Directive 85/73 (OJ 1993 L 340, p. 15).

19 — Fifth recital in its preamble.

20 — Hereinafter 'Directive 85/73 as amended'.

21 — Article 1 of Directive 85/73 as amended.

22 — Point 5 of Chapter I of the Annex to Directive 85/73 as amended.

21. However, the power of the Member States to collect amounts exceeding the levels of the Community fees within the limit of the actual inspection costs is no longer subject to the condition that their salary costs or certain factors differ from the Community average. [23] In its annex, Directive 85/73 as amended provides that, in order to cover higher costs, Member States may either increase the standard amounts for fees for individual establishments or collect a special fee covering actual costs. [24]

22. Like Decision 88/408, Directive 85/73 as amended provides that the Community fees are to replace all other health inspection charges or fees for the harmonised fresh-meat inspection measures. [25]

B — *German law*

1. Federal law

23. Paragraph 24 of the version of the Fleischhygienegesetz (Law on Meat Hygiene) applicable in 1991 and 1992 [26] provides that the situations in which a fee is payable are to be determined according to the laws of the *Länder* and that the fees are to be calculated in accordance with Directive 85/73. With effect from 1 January 1993, the reference to Directive 85/73 was supplemented by the words 'and the legal measures adopted on the basis of that directive by the institutions of the European Communities'.

2. The law of the *Land* and the districts

24. The Nordrheinwestfälisches Fleisch- und Geflügelfleischhygienekostengesetz (Law of the *Land* of North Rhine-Westphalia on meat and poultrymeat hygiene costs) of 16 December 1992, [27] which entered into force with retroactive effect from 1 January 1991 as regards the by-laws concerning official acts performed pursuant to the FlHG, empowers districts to regulate the levying of fees under, *inter alia,* Paragraph 24 of the FlHG.

25. The Verordnung zur Ausführung des nordrheinwestfälischen Fleisch- und Geflügelfleischhygienekostengesetzes (Regulation implementing the North Rhine-

23 — Article 2(3) of Directive 85/73 as amended.

24 — Points 4(a) and (b) of Chapter I of the Annex to Directive 85/73 as amended.

25 — Article 2(4) of Directive 85/73 as amended.

26 — BGBl. I, p. 649 ('the FlHG').

27 — GV. NRW, p. 775.

Westphalia Law mentioned above) of 6 May 1999,[28] as amended by a regulation of 27 September 1999,[29] also entered into force with retroactive effect from 1 January 1991 so far as concerns the provisions relevant to the main proceedings. It lays down the matters giving rise to fees for which Directive 85/73, in its relevant version, prescribes a Community fee and those for which the directive is said not to envisage a fee. The latter category includes examinations for trichinae and bacteriological examinations.

26. On the basis of the two pieces of legislation mentioned above, the Kreis Wesel (the District of Wesel), which has competence in Case C-284/00, adopted the Satzung über die Erhebung von Gebühren und Auslagen für Amtshandlungen nach dem Fleischhygienegesetz (By-laws on the levying of fees and disbursements for official acts performed pursuant to the FlHG) of 16 August 1999.[30] These by-laws entered into force with retroactive effect from 1 January 1991 and fix the amount of the special fee payable in respect of examinations for trichinae in pigmeat for 1992 to 1994, in addition to the standard fee for post-mortem inspections.

27. On the same basis, the Kreis Neuss (the District of Neuss), which has competence in Case C-288/00, adopted the Satzung über die Erhebung von Gebühren für Amtshandlungen nach dem Fleischhygienerecht (By-laws on the levying of fees for official acts performed under the law on meat hygiene) of 10 June 1999,[31] which also entered into force with retroactive effect from 1 January 1991. For 1991, these by-laws fix the special fee payable in respect of bacteriological examinations at DEM 45 per animal, in addition to the standard fee for post-mortem inspections.

II — Facts and procedure

A — *Case C-284/00*

28. Stratmann GmbH und Co. KG ('Stratmann') is an undertaking which runs a slaughtering business. Between 1992 and 1994, the Landrätin (Chief Administrative Officer) of Kreis Wesel ('the Landrätin') issued Stratmann with several notices for the recovery of fees in respect of ante- and post-mortem inspections carried out on cattle, sheep, goats and pigs and in respect of the examination of pigmeat for trichinae.

29. Stratmann brought an action against those various payment notices. After being wholly successful before the Verwaltungs-

28 — GV. NRW, p. 156.
29 — GV. NRW, p. 563.
30 — Abl. des Kreises Wesel, No 21.
31 — Published on 16 June 1999.

gericht Düsseldorf (Administrative Court, Düsseldorf, Germany), then partly successful before the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the *Land* of North Rhine-Westphalia, Germany), Stratmann brought an application for review on a point of law before the Bundesverwaltungsgericht (Federal Administrative Court). This action was now concerned only with the question whether the Landrätin was entitled to levy a special fee in respect of the examination of pigmeat for trichinae.

30. Since the Bundesverwaltungsgericht considered that it could not be concluded with certainty from the applicable Community legislation that the standard fee, possibly increased, also covered costs occasioned by examinations for trichinae, it decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does the standard fee applicable under

(a) Council Directive 85/73/EEC of 29 January 1985 in conjunction with Council Decision 88/408/EEC of 15 June 1988; and

(b) Council Directive 85/73/EEC, as amended by Council Directive 93/118/EC of 22 December 1993,

for the inspection of fresh meat intended for the domestic market in accordance with Council Directive 64/433/EEC of 26 June 1964 (which is applicable pursuant to Council Directive 88/409/EEC of 15 June 1988),

(a) as amended by Directive 89/662/EEC of 11 December 1989; and

(b) as amended by Directive 91/497/EEC of 29 July 1991,

also cover the costs of carrying out examinations of fresh pigmeat for trichinae?'

B — *Case C-288/00*

31. In January 1991, Fleischversorgung Neuss GmbH und Co. KG ('Fleischversorgung Neuss') had calves slaughtered in the abattoirs of Kreis Neuss. By notice of 1 February 1991, the Landrat (Chief Administrative Officer) of Kreis Neuss ('the

Landrat') demanded from Fleischversorgung Neuss special fees totalling DEM 1 350 for 30 bacteriological examinations, in addition to the fees payable in respect of ante- and post-mortem inspections.

32. After the appellate court dismissed the action brought by Fleischversorgung Neuss against the payment notice relating to those special fees, the company brought an application for review on a point of law before the Bundesverwaltungsgericht.

33. Presented with the question whether the Landrat was entitled to charge special fees for bacteriological examinations, the Bundesverwaltungsgericht decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Does the standard fee applicable under Council Directive 85/73/EEC of 29 January 1985, in conjunction with Council Decision 88/408/EEC of 15 June 1988, for the inspection of fresh meat intended for the domestic market in accordance with Council Directive 64/433/EEC of 26 June 1964, as amended by Directive 89/662/EEC of 11 December 1989 and applicable pursuant to Council Directive 88/409/EEC of 15 June 1988, also cover the costs of carrying out a bacteriological examination required in an individual case?'

III — Answer to questions referred for a preliminary ruling

34. In Case C-284/00, the national court is asking whether the costs of examinations for trichinae are covered by the standard fee payable under the following provisions applied in conjunction with one another:

— Directive 85/73 and Decision 88/408, and subsequently Directive 85/73 as amended;

— Directive 64/433, and subsequently Directive 64/433 as amended.

In Case C-288/00, the national court is asking whether the costs of bacteriological examinations are covered by the standard fee payable under the following provisions applied in conjunction with one another:

— Directive 85/73 and Decision 88/408;

— Directive 64/433.

35. The national court is seeking to ascertain by means of these questions whether the costs of examining fresh pigmeat for trichinae and of bacteriological examinations are covered by the standard Community fee although those measures are not carried out systematically.

36. In order to answer the questions I propose, in accordance with the interpretation methods of the Court, [32] to examine in turn the wording, the broad logic and the objectives of the Community legislation.

A — *The wording of the relevant Community provisions*

1. Provisions relating to inspections and controls

37. It is not envisaged that bacteriological examinations, in Directive 64/433, and examinations for trichinae, in Directive 64/433 and subsequently in Directive 64/433 as amended, are to be carried out systematically. Nevertheless, the former are obligatory if there is a doubt about the quality of the meat from the point of view of health which cannot be settled by other examination methods, and the latter are obligatory if the meat in question has not undergone cold treatment.

38. Thus, with regard to bacteriological examinations, it is apparent from Article 3(1)(A)(d) of Directive 64/433 that the visual examination to be carried out as part of the post-mortem inspection may be supplemented 'if necessary by appropriate laboratory tests' to establish that any traumatic lesions incurred shortly before slaughter or localised malformations or changes which are found do not render the carcase and offal 'unfit for human consumption or dangerous to human health'. This possibility of resorting to laboratory tests is taken up by paragraph 39 in Chapter VII of Annex I to the directive, which relates to post-mortem health inspections.

39. Admittedly, bacteriological examinations are not mentioned specifically in the aforementioned provisions. However, in my view, it is indisputable that such examinations fall within appropriate laboratory tests intended to establish that the meat is not unfit for human consumption or dangerous to human health. The circumstance put forward by the Landrat, that the bacteriological examinations are costly and

32 — See, for example, Case C-191/99 *Kvaerner* [2001] ECR I-4447, paragraph 30.

take place over several days, does not appear to me to be a sufficient reason for excluding them from the laboratory tests referred to in those provisions.

40. With regard to examinations for trichinae, it should be noted that Directive 64/433, in its initial version adopted in 1964, did not affect measures of the Member States relating to detection of the presence of trichinae in fresh pigmeat. [33] As I have indicated, [34] Directive 64/433 and Directive 64/433 as amended provide that this examination is obligatory for all fresh pigmeat which has not undergone cold treatment under the conditions laid down by Directive 77/96 and that the presence of trichinae prohibits the affected meat from being sent to another Member State or requires it to be declared unfit for consumption.

41. In the light of those provisions, I consider that the Community legislature clearly wished to add the examination of fresh pigmeat for trichinae to the harmonised inspection measures.

42. In so far as bacteriological examinations and examinations for trichinae are therefore required by the Community rules on inspections of fresh meat, their cost, as we shall see, is covered by the standard fee in accordance with the wording of the provisions relating to the financing of those inspections.

2. Provisions relating to the financing of inspections and controls

43. The provisions on the financing of inspections and controls clearly do not provide that the Community fee would cover only the costs of measures which must be carried out systematically. On the contrary, the provisions expressly refer to all the harmonised measures, without distinction.

44. Thus, the first indent of Article 1(1) of Directive 85/73 provides that 'the Member States shall ensure that... fees are collected when [animals of the bovine species and swine] are slaughtered for the costs occasioned by health inspections and controls'.

Article 1 of Decision 88/408 states that 'this Decision fixes the levels of the fees to be collected by the Member States for health inspections and controls of fresh

33 — Article 6(2).
34 — Points 7 and 10 of this Opinion.

meat as *provided for*[35] in [Directive] 64/433/EEC...'.

45. Similarly, the first indent of Article 1(1) of Directive 85/73 as amended[36] provides that the Member States are to ensure 'the collection of a Community fee for the costs occasioned by health inspections and controls on the meat referred to in [Directive] 64/433/EEC...'. Chapter I of the annex thereto states that, without prejudice to the application of points 4 and 5, Member States will collect the standard fees 'for inspection costs relating to slaughter'.

46. Furthermore, in accordance with the Court's case-law stating that the interpretation of a provision of Community law involves a comparison of the different language versions,[37] it should be noted that the versions of the aforementioned provisions in the majority of the other official languages use wording which fully accords with the French version from the semantic point of view.

35 — Emphasis added.

36 — Unlike the Commission (paragraph 12 of its observations) I consider, in view of Article 2 and the first sentence of Article 3(1) of Directive 93/118, that Directive 85/73 as amended applies with effect from 1 January 1994. That position was also adopted by the Court in its judgment in Case C-27/95 *Bakers of Nailsea* [1997] ECR I-1847, at paragraphs 10 and 50, which concerned the costs of veterinary inspections carried out and invoiced between 1 January 1993 and 4 March 1994.

37 — Case 283/81 *Cilfit* [1982] ECR 3415, paragraph 18.

47. It can therefore be deduced that the restrictive interpretation, put forward by the Landrat and the Landrätin, that the standard Community fee covers only costs relating to controls to be carried out systematically finds no support at all in the wording of the legislation in force.

48. In the absence of any requirement or restriction to contrary effect, I consider that the Community legislature wished the standard fee to cover all the controls laid down by Directive 64/433, and subsequently by Directive 64/433 as amended, and therefore to cover costs relating to the examination of fresh pigmeat for trichinae and to bacteriological examinations. This analysis appears to me to be confirmed by the broad logic of the relevant provisions.

B — *The broad logic of the relevant Community provisions*

49. First, the broad logic of the provisions relating to inspections and controls confirms, in my view, the proposition that the examinations for trichinae and bacteriological examinations cannot be separated from the other measures.

50. As we have seen, [38] the Community legislature set up a harmonised health inspection system, based on a complete check of fresh meat in the Member State from which it is despatched, replacing that of the Member State to which it is sent. Within this framework, the Community legislature entrusted the official veterinarian of the Member State of origin with the Community responsibility of ensuring that the meat is fit for human consumption [39] and, therefore, of guaranteeing the protection of public health. [40]

51. Given the quantity of meat to be examined, the variation in its condition and the cost of controls, it is clear that the Community legislature could not draw up an exhaustive list of inspection measures to be carried out in respect of all fresh meat. The post-mortem inspection, as defined, [41] therefore includes, first, various types of operations [42] of which only the minimum content is described and which the official veterinarian must carry out to the extent that he considers necessary and, second, systematic examinations, such as the examination for trichinae which may be waived under certain strictly defined conditions.

52. However, all those measures are laid down for the same purpose, namely the protection of public health, so that they present the same interest and must be considered an integral part of the harmonised inspections and controls, irrespective of whether or not they are carried out systematically.

53. Second, in my view it is apparent from the broad logic both of Directive 85/73 and Decision 88/408, and of Directive 85/73 as amended, that the standard Community fee necessarily covers bacteriological examinations and examinations for trichinae.

54. The harmonisation of the conditions governing the financing of inspections and controls is essentially based on the establishment of a standard fee, whose amount is fixed per animal. As I have stated, [43] the fee must cover all those inspections and controls, without distinction. The Community legislature also provided that, within the limit of actual inspection costs, this fee can be increased. [44] Finally, according to Article 5(1) of Decision 88/408 and Article 2(4) of Directive 85/73 as amended, the fee is to replace all other health inspection charges or fees levied by the national, regional or local authorities of the Member State for the inspection and control of fresh meat. The only exceptions to this prohibition of any other charge or fee

38 — Points 4 to 12 of this Opinion.

39 — As laid down in paragraph 38 in Chapter VII of Annex I to Directive 64/433 and paragraph 39 in Chapter VIII of Annex I to Directive 64/433 as amended.

40 — Case C-105/95 *Daut* [1997] ECR I-1877, paragraph 20.

41 — See Chapter VII of Annex I to Directive 64/433 and Chapter VIII of Annex I to Directive 64/433 as amended.

42 — Visual inspection, palpation of organs, incisions, investigation of anomalies in consistency, colour, smell and taste, and, where necessary, laboratory tests.

43 — Points 42 to 48 of this Opinion.

44 — Article 2(2) of Directive 85/73 and Article 2(2) of Decision 88/408. Article 2(3) of Directive 85/73 as amended.

that are laid down relate, in Decision 88/408, to registration costs for slaughterhouses [45] and, in Directive 85/73 as amended, to registration costs for approved establishments and the possibility of levying a fee for combating epizootic diseases. [46]

55. In my view, it follows from all those provisions that the collection of the standard fee as laid down in Decision 88/408 and Directive 85/73 as amended excludes any possibility of levying, in addition, a special fee for a control or inspection covered by Directive 64/433 or Directive 64/433 as amended, such as examinations for trichinae or bacteriological examinations.

56. It is also clear from the foregoing that a Member State which considered that the standard fee did not cover the entire costs incurred in respect of all the harmonised inspections and controls could only, under Directive 85/73 and Decision 88/408, increase the amount of that fee for a group of establishments or a given establishment and, under Directive 85/73 as amended, make such an increase or collect a special fee covering actual costs. The same limitation applied to local or regional authorities to which a Member State delegated its powers, as such an authority cannot have greater powers than the delegating body.

57. So far as concerns costs incurred in respect of examinations for trichinae, my analysis appears to be borne out by the declaration included in the minutes of the Council when Decision 88/408 was adopted. [47] That declaration specifies the criteria which were used to calculate the standard fee levels. Thus, it is stated that the accepted average time for inspecting a pig is two minutes and that this may be increased by the time needed, in particular, in order to examine for trichinae. The declaration confirms that the examination for trichinae is covered by the standard fee. [48]

45 — The final sentence of Article 5(1) of Decision 88/408.

46 — Article 2(4) of Directive 85/73 as amended.

47 — Cited by the Bundesverwaltungsgericht in its order for reference in Case C-284/00 (p. 9 of the English version).

48 — According to the case-law of the Court, while an interpretative declaration cannot properly be relied upon to justify an interpretation which departs from the very wording of the provision concerned (Case 429/85 *Commission* v *Italy* [1988] ECR 843, paragraph 9) or where its content is not referred to in the wording of the provision in question (Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18), such a declaration can nevertheless be taken into consideration where it serves to clarify a general concept the interpretation of which is requested (Case C-368/96 *Generics (UK) and Others* [1998] ECR I-7967, paragraph 27). More recently, to confirm its interpretation of a provision of a directive on direct insurance, the Court referred to a declaration on the interpretation of that provision, made by the insurance committee set up pursuant to a later directive (*Kvaerner*, cited above, paragraph 54).

58. It is true that this harmonised system of financing has the consequence that part of the cost of examinations for trichinae and bacteriological examinations is borne by owners of animals which have not required such checks. However, it appears to me that it is the very essence of a fee fixed at a standard rate that a fee is imposed on owners of animals which, in certain cases, exceeds the actual cost of the inspections and controls required by their animal and, in other cases, is less than that cost.

59. In this regard, I need only refer to the description of the post-mortem health inspection, as set out in Chapter VII of Annex I to Directive 64/433 and in Chapter VIII of Annex I to Directive 64/433 as amended. As we have already seen, the post-mortem inspection includes a number of examinations which the veterinarian must carry out only in cases of doubt. The conditions for carrying out the inspections and controls therefore vary, in practice, from one animal to another. In my view, therefore, contrary to that of the Landrätin and the Landrat, the fact that it is possible to identify the animals which have undergone an examination for trichinae or have required bacteriological examinations does not mean that it is unfair to take account of the costs of such measures in the amount of the standard fee, in the same way as an average inspection time and other measures carried out in the case of doubt, and that, with regard to those particular measures, the wording and broad logic of the applicable provisions are departed from.

60. On concluding this analysis of the harmonised financing system, I consider that it remains necessary to clarify why special fees levied in respect of the cost of examinations for trichinae and bacteriological examinations, in addition to the standard fee, cannot be taken to be an increase in that fee authorised by Community law.

61. First, it is not disputed that the increase provided for in Directive 85/73 and Decision 88/408, like the increase referred to in point (4)(a) of Chapter I of the Annex to Directive 85/73 as amended, can allow only the setting of a 'general' fee, calculated and applied in respect of a given establishment or group of establishments. [49] Such an increase cannot therefore result in special fees demanded for particular inspection measures, such as those at issue in the main proceedings.

62. Second, as regards the option of collecting 'a special fee covering actual costs', provided for in point (4)(b) of Chapter I of the Annex to Directive 85/73 as amended, the Court ruled in *Feyrer* [50] that while the Member States may exercise the option generally and at their own discretion, this is conditional upon the fee not exceeding the

49 — With regard to Decision 88/408, see the Opinion of Advocate General Jacobs in Case C-156/91 *Hansa Fleisch Ernst Mundt* [1992] ECR I-5567, paragraph 30. See also point 2 of the Annex to Decision 88/408.

50 — Case C-374/97 [1999] ECR I-5153, paragraphs 27, 31 and 32.

actual costs incurred. In my view, compliance with that condition requires account to be taken of all the actual costs incurred by the Member State concerned in respect of the harmonised inspections and controls and therefore precludes simultaneous levying of the standard Community fee and a special fee for a particular measure.

63. To accept the contrary would be tantamount to rendering redundant the provisions of Decision 88/408 and Directive 85/73 as amended by which the Community legislature required a standard fee covering all the harmonised inspections and controls, as each State could add the special fee or fees of its choice for one or more controls.

64. It follows that the broad logic both of the provisions concerning inspections and controls and of the rules relating to the financing of inspections and controls confirms their literal interpretation, under which the costs of examinations for trichinae and bacteriological examinations are covered by the standard fee and cannot give rise to special fees over and above that fee.

65. Finally, in my view this conclusion corresponds to the objectives of the relevant Community legislation.

C — *The objectives of the Community legislation*

66. Like the Commission, I consider that only an affirmative answer to the questions submitted accords with the objectives pursued by the Community legislature through the harmonisation of inspections of fresh meat and of the financing of those inspections.

67. As regards the provisions concerning inspections and controls, it is apparent from the preambles to Directive 64/433 and Directive 64/433 as amended that the purpose of that legislation is to standardise the health guarantees offered to consumers. [51] The Community legislature thus wished to ensure the unity of the Community market and the free movement of fresh meat within the Community, while guaranteeing the protection of public health. [52]

51 — First to fourth recitals in the preamble to Directive 83/90. Fourth to sixth recitals in the preamble to Directive 91/497.

52 — *Daut*, cited above, paragraph 20.

68. As we have already seen, all the measures referred to in Directive 64/433 and Directive 64/433 as amended form part of the measures harmonised at Community level and this harmonisation related both to the circumstances in which they must be carried out and the methods of doing so.

69. Consequently, to accept that the examinations for trichinae and bacteriological examinations may be separated from the other harmonised inspections and controls and be subject to varying treatment in the Member States, even if this treatment concerns only their financing, appears to me fundamentally to run counter to the objective pursued by the Community legislature of standardising health inspections and controls.

70. In my view it would also be contrary to completion of the internal market. In an area such as that of fresh-meat consumption, where consumer confidence is very important, it is essential that everybody is entirely satisfied that the products offered to them on the market have been subject to the same inspections and controls, whichever Member State they come from. Given the importance, for the health quality of pigmeat, of the check as to the absence of trichinae and, for fresh meat in general, the absence of bacteriological infection, the arguments of the Landrätin and the Landrat seeking to demonstrate that examinations for trichinae and bacteriological examinations are not part of the harmonised inspections and controls, even if those arguments are put forward only in proceedings concerning the financing of the inspections and controls, appear to me to be such as to compromise consumer confidence in the quality of the Community control system.

71. I consider that the same answer must be given as regards the provisions relating to the financing of inspections and controls.

72. It is apparent from the preambles to Directive 85/73 [53] and Directive 85/73 as amended [54] that the Council wished to put an end to the differences in the Member States concerning the financing of inspections and controls, because those differences were liable to affect conditions of competition between lines of production which were, for the most part, covered by common organisations of the markets.

53 — Fifth and sixth recitals in the preamble to Directive 85/73.

54 — Fourth and sixth recitals in the preamble to Directive 93/118.

73. As we have seen, the Council laid down the levels of the standard Community fees to be levied for all the inspections and controls provided for in Directive 64/433 and Directive 64/433 as amended, and the conditions in which there could be exceptions by way of an increase or decrease. Finally, it provided that any direct or indirect refund of those fees was prohibited.

74. In those circumstances, any operation intended to take inspections and controls laid down in Directive 64/433 and Directive 64/433 as amended outside this harmonised financing system and to make them subject to a regime under domestic law, in which the constraints of the Community regime would not apply, undermines as a matter of principle the abolition of distortions of competition.

75. Contrary to what the Landrat suggests in his observations,[55] the fact that the special fees in question are added to the standard fee does not cast doubt on this analysis. As we have seen, a Member State may under certain conditions reduce the standard Community amounts, within the limit of actual inspection costs, generally or for a given establishment or group of establishments. To accept that a particular inspection measure, provided for in Directive 64/433 or Directive 64/433 as amended, may give rise to a special fee and no longer be covered by the standard fee allows a Member State to decrease more easily the standard fee payable by all owners of slaughtered animals. If that were to occur, the Member State concerned would give an advantage to the marketing of its national production on the Community market. It is therefore wrong, in my view, to claim that the levying of a special fee for a particular inspection measure, in addition to the standard Community fee, would not be contrary to the objective pursued by harmonisation of the way in which inspections and controls are financed.

55 — Page 4.

IV — Conclusion

76. In view of all of the foregoing matters, I propose that the Court answer the questions referred by the Bundesverwaltungsgericht as follows:

(1) In Case C-284/00, the costs of examinations for trichinae are covered by the standard fee payable under the following provisions applied in conjunction with one another:

— Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat and 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, and subsequently Directive 85/73, as amended by Council Directive 93/118/EC of 22 December 1993 amending Directive 85/73,

— Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat, as amended in particular by Council Directive 83/90/EEC and, lastly, by 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, and subsequently Directive 64/433, as amended by Council Directive 91/497/EEC of 29 July 1991.

(2) In Case C-288/00, the costs of bacteriological examinations are covered by the standard fee payable under the following provisions applied in conjunction with one another:

— Directive 85/73 and Decision 88/408,

— Directive 64/433, as amended in particular by Directive 83/90 and, lastly, by Directive 89/662.