JUDGMENT OF THE COURT (Second Chamber)
10 November 1992 *

In Case C-156/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Schleswig Holstein for a preliminary ruling in the proceedings pending before that court between

Hansa Fleisch Ernst Mundt GmbH&Co. KG

and

Landrat des Kreises Schleswig-Flensburg

on the interpretation of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) 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/EEC (OJ 1988 L 194, p. 24),

THE COURT (Second Chamber),

composed of: J. L. Murray, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Hansa Fleisch Ernst Mundt GmbH&Co. KG, by Ingeborg Adrian-Mundt, Rechtsanwalt, Schleswig,

* Language of the case: German.

— Landrat des Kreises Schleswig-Flensburg, by Ulrich Seyffert, of its Legal Office,

— the German Government, by Ernst Röder, Ministerialrat, Ministry of the Economy, and Joachim Karl, Regierungsdirektor in the same ministry, acting as Agents,

— the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Hansa Fleisch Ernst Mundt GmbH&Co. KG, the German Government and the Commission of the European Communities at the hearing on 25 June 1992,

after hearing the Opinion of the Advocate General at the sitting on 25 June 1992,

gives the following

Judgment

1 By order of 15 March 1991, which was received at the Court Registry on 13 June 1991, the Verwaltungsgericht (Administrative Court) Schleswig Holstein, referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) 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/EEC (OJ 1988 L 194, p. 24).

2 Those questions were raised in proceedings between Hansa Fleisch Ernst Mundt GmbH&Co. KG ('Hansa Fleisch') and Landrat des Kreises Schleswig-Flensburg ('the Landrat') concerning the fees payable by Hansa Fleisch to the Landrat for the health inspections carried out at its premises.

3 Hansa Fleisch operates a slaughterhouse, a cutting plant and a meat-refrigeration unit in Schleswig Holstein. The meat from animals slaughtered at Hansa Fleisch's premises is inspected by staff of the Veterinary and Food Inspection Department under the authority of the Landrat.

4 Pursuant to Article 1(1) of Directive 85/73, fees are to be collected in respect of the costs occasioned by health inspections. Article 2(1) of Directive 85/73 required the Council to fix standard levels for those fees before 1 January 1986, that date marking the end of the period granted to the Member States, other than the Hellenic Republic, for the transposition of Directive 85/73 into national law.

5 The standard levels for the fees were fixed by Decision 88/408. Article 2(1) of that decision lays down one or more levels of fees for each animal species. However, Article 2(2) of the decision provides that 'Member States where salary costs, the structures of establishments and the ratio between veterinarians and inspectors differ from those of the Community average adopted for the calculation of the standard amounts ... may depart from them through increases or reductions up or down to the real figure for inspection costs'. By virtue of Article 11 of Decision 88/408, that decision was to be implemented by the Member States no later than 31 December 1990.

6 In Germany, the collection of fees for health inspections and controls of animals for slaughter is based on Paragraph 24 of the Fleischhygienegesetz (Law on meat hygiene, BGBl. I, 1987, new publication, p. 649), which was inserted in that Law

by the Law of 13 April 1986 (BGBl. I, p. 398). Pursuant to Paragraph 24(2) of the Fleischhygienegesetz, it is the responsibility of the *Länder* to specify which measures give rise to the collection of fees and to fix the amount of the fees. The same provision states, however, that the fees must be calculated in accordance with Directive 85/73.

7 In the case of Schleswig Holstein, the amount of the fee payable for the health inspections and controls provided for in Directive 85/73 is fixed by the Regulation of 3 April 1987 amending the regulation on administrative fees relating to veterinary administration (*Gesetz-und Verordnungsblatt für Schleswig Holstein 1987*, p. 173). The fee fixed by that regulation exceeds the standard levels provided for in Article 2(1) of Decision 88/408.

8 The Landrat took the 1987 Schleswig Holstein regulation as the basis for the fees which it invoiced to Hansa Fleisch for inspections carried out at the latter's premises. Hansa Fleisch lodged complaints against the demands for fees issued as from 23 May 1989. Those complaints were rejected by the Landrat, whereupon Hansa Fleisch instituted proceedings before the Verwaltungsgericht, Schleswig Holstein. Before that court, it claimed that the demands for fees by the Landrat were unlawful, *inter alia* because the fees invoiced exceeded those provided for in Article 2(1) of Decision 88/408.

9 Considering that the dispute before it raised questions of interpretation of Community law, the national court decided to stay the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

1) Does Council Directive 85/73/EEC, in conjunction with Council Decision 88/408/EEC, lend itself to direct application so that in reliance thereon a Community national may successfully claim before a court of a Member State, the Federal Republic of Germany, that at the latest from the date of the entry into force of Council Decision 88/408/EEC the Member State is no longer empow-

ered to charge fees within the meaning of Article 1 of that decision that exceed the standard fee levels indicated in Article 2 (1) thereof?

2) Does the Court's reply to the first question depend on whether the period prescribed in Article 11 of Council Decision 88/408/EEC has already expired?

3) Does the Court's reply to the first question depend on whether Article 2 (2) of Council Decision 88/408/EEC is to be interpreted as meaning that the provision concerning exemptions may be relied upon by a Member State as a whole but not by the individual constituent parts of a Member State, for instance the Bundesländer [Federal States] of the Federal Republic of Germany?

10 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first and second questions

11 It is apparent from the order for reference that the national court's first two questions essentially seek to determine, first, whether Article 2(1) of Decision 88/408 has direct effect and, secondly, if it does, whether it can be relied on by an individual as against a Member State before the expiry of the period specified in Article 11 of Decision 88/408 in order to resist the collection of fees of an amount greater than that provided for in Article 2(1).

12 It must be borne in mind that, as the Court held in its judgment in Case 9/70 *Grad* v *Finanzamt Traunstein* [1970] ECR 825, paragraph 5, it would be incompatible

with the binding effect attributed to decisions by Article 189 to exclude in principle the possibility that persons affected may invoke the obligation imposed by the decision.

13 In that judgment the Court also held that a decision addressed to a Member State could be relied on as against that Member State where the provision in question imposed on its addressee an obligation which was unconditional and sufficiently clear and precise (paragraph 9).

14 The German Government and the Landrat contend that the Member States' obligation to fix the fee at the levels provided for in Article 2(1) of Decision 88/408 was not an unconditional obligation, in view of the possibility granted to the Member States by Article 2(2) of the decision of derogating from the standard levels of fees.

15 However, the fact that a decision allows the Member States to which it is addressed to derogate from clear and precise provisions of it does not in itself deprive those provisions of direct effect. In particular, such provisions may have direct effect where recourse to the possibilities of derogation thus provided for is subject to judicial review (see, to the same effect, the judgment in Case 41/74 *Van Duyn* v *Home Office* [1974] ECR 1337, paragraph 7).

16 That is precisely the situation in the present case as regards the possibility of derogating from the standard levels of the fees laid down by Article 2(1) of Decision 88/408. As may be seen from Article 2(2) and the annex to Decision 88/408, the amount of the fee may be increased to that of the actual inspection costs where the latter exceed the levels of fees fixed by Article 2(1) of the decision. The possibility

of increasing the fee is thus made subject to conditions the fulfilment of which may be the subject of review by the Court.

17 Consequently, the fact that Article 2(2) of Decision 88/408 allows the Member States the possibility of setting higher fees by way of derogation from the standard levels of fees provided for by Article 2(1) of that decision cannot deprive that provision of direct effect.

18 It must be noted, however, that Article 11 of Decision 88/408 grants the Member States a specific period for implementing the decision.

19 Where a decision addressed to the Member States contains precise and unconditional provisions which must be implemented within a specified period, the provisions may be relied on by individuals as against a Member State only if that State fails to implement the decision before the expiry of the period prescribed or implements it in time, but incorrectly.

20 The possibility granted to individuals of relying on a decision as against the Member States to which it is addressed is based on the binding nature of the decision vis-à-vis its addressees. Consequently, where the decision grants the Member States a specified period in which to comply with the obligations resulting from it, the decision may not be relied on by individuals as against the Member States before the expiry of the period in question.

21 The answer to the first and second questions must therefore be that Article 2(1) of 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/EEC may be relied on by a private individual as against a Member State in

order to oppose the collection of fees in excess of the amount provided for by that provision where the conditions to which Article 2(2) of the decision subjects the possibility of increasing the level of fees laid down by Article 2(1) are not satisfied. However, Article 2(1) of Decision 88/408 may be relied on only in order to oppose demands for the payment of fees issued after the expiry of the period laid down by Article 11 of the decision.

The third question

22 As indicated in paragraph 17 above, the possibility of derogating from the standard levels of fees fixed in Article 2(1) of Decision 88/408 under the conditions and within the limits laid down in Article 2(2) of that decision cannot deprive Article 2(1) of direct effect.

23 It must next be made clear that each Member State is free to allocate powers internally and to implement Community acts which are not directly applicable by means of measures adopted by regional or local authorities, provided that that allocation of powers enables the Community legal measures in question to be implemented correctly.

24 In the present case, no provision of Decision 88/408 precludes the Member States from entrusting to regional or local authorities the powers to derogate from the standard levels of fees, under the conditions and within the limits laid down by Article 2(2) of that decision.

25 Furthermore, it is apparent from Article 7 of and the annex to the decision that any derogations from the standard levels of fees may be applicable to all the establishments in a Member State or to only one of them.

26 It must therefore be stated in reply to the third question that Article 2(2) of Decision 88/408 is to be interpreted as allowing a Member State to delegate to regional or local authorities the exercise of the power conferred on it by that provision.

Costs

27 The costs incurred by the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the questions referred to it by the Verwaltungsgericht Schleswig Holstein, by order of 15 March 1991, hereby rules:

1. **Article 2(1) of 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/EEC may be relied on by a private individual as against a Member State in order to resist the collection of fees in excess of the amount provided for by that provision where the conditions to which Article 2(2) of the decision subjects the possibility of increasing the level of fees laid down by Article 2(1) are not satisfied. However, Article 2(1) of Decision 88/408 may be relied on only in order to oppose demands for the payment of fees issued after the expiry of the period laid down by Article 11 of the decision.**

2. **Article 2(2) of Decision 88/408 must be interpreted as allowing a Member State to delegate to regional or local authorities the exercise of the power conferred on it by that provision.**

Murray Mancini Schockweiler

Delivered in open court in Luxembourg on 10 November 1992.

J.-G. Giraud
Registrar

J. L. Murray
President of the Second Chamber