OPINION OF ADVOCATE GENERAL LÉGER delivered on 12 May 2005 [1]

1. By the present application, the Commission of the European Communities asks the Court to declare that the Kingdom of Sweden has failed to fulfil its obligations under Article 5 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. [2]

2. The Commission complains that Sweden maintains a system of prior notification of imports by importers of certain products of animal origin from other Member States.

I — The legal context

A — *Community law*

3. Directive 89/662 is one of the measures designed to establish progressively the internal market in the sector of products of animal origin. [3]

4. In order to ensure the free movement of agricultural products which, according to the second recital in the preamble to Directive 89/662, is 'a fundamental feature of the

1 — Original language: French.

2 — OJ 1989 L 395, p. 13.

3 — This directive concerns the products of animal origin covered by the harmonisation directives listed in Annex A to the directive and those referred to in Annex B (products not subject to Community harmonisation). In order to incorporate in particular the new provisions of the 2004 'health package', Annex A was replaced by the text in Article 6(2) of Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC (OJ 2004 L 157, p. 33).

common organisation of markets', the said directive aims to dismantle veterinary barriers to the development of intra-Community trade in products of animal origin.

5. In particular, the ultimate aim of Directive 89/662 is to confine veterinary checks of such products to the place of dispatch. [4]

6. According to the fifth recital in the preamble to the directive, 'with a view to the completion of the internal market, pending the attainment of this objective, the emphasis should be placed on the checks to be carried out at the place of dispatch and in organising those that could be carried out at the place of destination; ... such a solution would entail the suspension of veterinary checks at the Community's internal frontiers'.

7. With this in view, Article 1 of Directive 89/662 requires the Member States to ensure that 'the veterinary checks to be carried out on products of animal origin ... are no longer carried out, without prejudice to Article 6, [5] at frontiers but are carried out in accordance with this directive'.

8. Under Article 2(1) of the said directive, 'veterinary check' means 'any physical check and/or administrative formality which applies to the products referred to in Article 1 and which is intended for the protection, direct or otherwise, of public or animal health'.

9. Chapter I of Directive 89/662 relates to 'checks at origin'. In particular, the first subparagraph of Article 3(1) provides that 'Member States shall ensure that the only products intended for trade are those referred to in Article 1 which have been obtained, checked, marketed and labelled in accordance with Community rules for the destination in question and which are accompanied to the final consignee mentioned therein by a health certificate, animal health certificate or by any other document provided for by Community veterinary rules'.

10. In addition, under Article 4(1) of Directive 89/622, 'Member States of dispatch shall take the necessary measures to ensure that operators comply with veterinary requirements at all stages of the production, storage, marketing and transport of the products referred to in Article 1'. In particular, Member States of dispatch are to ensure that 'the products obtained in accordance with the directives referred to in Annex A are checked in the same way, from a veterinary viewpoint, whether they are intended for intra-Community trade or for the national market'.

4 — See the fourth recital.

5 — Article 6 of Directive 89/662 lists the measures which must be taken by the Member States during checks carried out at the places where products from a third country may be brought into Community territory.

11. Furthermore, pursuant to Article 4(2) of the said directive, 'Member States of dispatch shall take the appropriate administrative, legal or penal measures to penalise any infringement of veterinary legislation by natural or legal persons ...'.

12. Chapter II of the same directive relates to 'checks on arrival at the destination'. Article 5(1) of Chapter II provides:

'Member States of destination shall implement the following measures:

(a) the competent authority may, at the places of destination of goods, check by means of non-discriminatory veterinary spot-checks that the requirements of Article 3 have been complied with; it may take samples at the same time.

Furthermore, where the competent authority of the Member State of transit or of the Member State of destination has information leading it to suspect an infringement, checks may also be carried out during the transport of goods in its territory, including checks on compliance as regards the means of transport.'

13. Finally, Article 5(3) of Directive 89/662 provides that '[o]perators who have products delivered to them from another Member State or who completely divide up a batch of such products ... must, if so requested by the competent authority, report the arrival of products from another Member State, to the extent necessary to carry out the checks referred to in paragraph 1'.

14. It must also be noted that, in connection with the accession of the Kingdom of Sweden to the European Union, additional guarantees concerning salmonella were laid down for deliveries of certain animals and certain products of animal origin intended for that Member State. [6]

B — National law

15. Article 8 of Decree SLV FS 1998:39 of the National Food Administration, of 15

6 — The Republic of Finland was also given additional guarantees. See the Act concerning the Conditions of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the Adjustments to the Treaties on which the European Union is based (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1): Annex I — List referred to in Article 29 of the Act of Accession — V. Agriculture — E. Veterinary and zootechnical legislation (OJ 1994 C 241, p. 132); see, in particular, Chapter 3, 'Public health'.

December 1998, on veterinary checks of food products of animal origin in intra-Community trade ('the Swedish Decree') provides that the importer or his agent ('the importer') must, not later than 24 hours before the estimated time of arrival of certain products, give notice of them to the appropriate supervisory authority of the place where the first consignee of the goods is located.

16. The products in question are listed in Annex 3 to the said decree. It is common ground that all the products covered by the Swedish rules fall within the ambit of Directive 89/662. [7]

17. The 'first consignee' of the goods, within the meaning of Article 8 of the Swedish Decree, is defined in Article 2 of the decree as being 'the first person in Sweden who receives the products and processes them in a place which receives food products'. Article 2 also provides that 'the first consignee may be the processing plant, the wholesale or retail establishment, the packaging undertaking, the shop for mass caterers, the refrigeration or freezing plant or any other place where the goods are stored. If a batch of goods is divided during transport, each consignee of one of the parts of the batch is deemed to be the first consignee thereof'. [8]

II — The pre-litigation procedure

18. After receiving a complaint concerning those Swedish measures, the Commission, taking the view that the duty of prior notification laid down by Article 8 of the Swedish Decree was contrary to Article 5 of Directive 89/662, sent the Kingdom of Sweden a letter of formal notice on 9 July 1999.

19. The Kingdom of Sweden replied by letter of 8 September 1999, stating in particular that the duty of prior notification had been adopted solely with the aim of facilitating the spot-checks of the batches of products which the competent authority of the State of destination had to carry out in accordance with Directive 89/662.

7 — Either directly or, in the case of minced meat and meat preparations, by reference made by Article 10 of Council Directive 94/65/EC of 14 December 1994 laying down the requirements for the production and placing on the market of minced meat and meat preparations (OJ 1994 L 368, p. 10). This directive was repealed by Directive 2004/41.

8 — See the defence, p. 3.

20. After examining the Swedish Government's observations, the Commission found that there was no need to modify its point of view. It therefore decided to send the Swedish Government on 21 December 2001 a reasoned opinion requesting the government to take within two months the necessary measure to comply with Article 5 of Directive 89/662.

21. The Swedish Government replied to the reasoned opinion by letter of 26 February 2002. It pointed out in particular that Articles 3 and 4 of Directive 89/662 require the Member State of dispatch to ensure that only products which comply with the Community rules are intended for trade and added that the common rules to be observed by the said Member State include the guarantees concerning salmonella which were given to the Kingdom of Sweden when it acceded to the European Union.

22. On this point the Swedish Government asserted that the aim of Article 8 of the disputed Swedish Decree is to enable the competent authority to check batches by sampling or to check batches from establishments that do not generally observe the guarantees concerning salmonella. In order for such inspections to be carried out, the supervisory authority must know in advance that the importer intends to import into Sweden products covered by the decree.

23. The Commission was not satisfied with this reply and it brought the present action on the basis of Article 226 EC by application lodged at the Court Registry on 12 March 2003.

III — The action

24. In its application the Commission originally claimed that the Court should 'declare that [the Kingdom of] Sweden has failed to fulfil its obligations under Article 5 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, by maintaining a system of prior notification *and health checks* applying to importers of certain food products of animal origin from other Member States'. [9]

25. However, in its reply, the Commission stated that it wished to amend the form of

9 — Emphasis added.

order sought in the present case and to withdraw the complaint concerning health checks applying to importers of the products concerned. [10]

26. Consequently, in the present action, the Commission's only complaint is that the Kingdom of Sweden maintained a 'system of compulsory prior notification for importers of certain food products of animal origin from other Member States', [11] contrary to Article 5 of Directive 89/662.

27. I would also mention that the Republic of Finland was given leave to intervene in the present case in support of the form of order sought by the defendant, by virtue of an order of the President of the Court of 23 July 2003.

IV — Assessment

28. It is clear from the Court's settled case-law that health inspections at the frontier, whether carried out systematically or not, by a Member State on the occasion of the importation of animals or products of animal origin from other Member States constitute measures having an effect equivalent to quantitative restrictions on imports within the meaning of Article 28 EC.

29. The Court has in fact held that 'as a result in particular of the delays inherent in the inspections and the additional transport costs which the importer may incur thereby, the inspections in question are likely to make imports more difficult or more costly'. [12]

30. As we know, however, the prohibition of measures having an effect equivalent to quantitative restrictions on imports applies only subject to the justifications provided for by Community law, in particular Article 30 EC.

31. It must, however, be noted, that it has also consistently been held that 'where Community directives provide for the harmonisation of the measures necessary to ensure the protection of animal and human

10 — See point 9.
11 — Ibid.
12 — See, inter alia, Case 35/76 *Simmenthal* [1976] ECR 1871, paragraph 14. See also, to the same effect, Case C-426/92 *Deutsches Milch-Kontor* [1994] ECR I-2757, paragraph 20.

health and establish Community procedures to check that they are observed, recourse to Article [30 EC] is no longer justified *and the appropriate checks must be carried out and the measures of protection adopted within the framework outlined by the harmonising directive*'. [13]

32. The Court has already had occasion to apply this principle in a case concerning German rules whereby all imports of fresh poultrymeat into Germany were subject to a procedure which, in particular, required the importer to declare the goods in due time to the competent national frontier office. [14]

33. In that particular case the Court had to assess the compatibility of the inspection system established by the national legislation with the harmonised inspection system based on Council Directive 71/118/EEC of 15 February 1971 on health problems affecting trade in fresh poultrymeat [15] and Council Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States. [16]

34. The Court held that '*in the light of the harmonised system of health inspections* set up by Community legislation and based ... on full inspection of the goods in the exporting State, which replaces inspection in the State of destination, *considerations based on the need to protect health cannot justify additional specific constraints* placed on carriers when they cross a frontier'. [17]

35. The Court therefore found that, 'by systematically requiring carriers of fresh poultrymeat to make a prior declaration of such goods in order to ensure systematic veterinary inspection, the Federal Republic of Germany failed to fulfil its obligations under Article 30 of the EEC Treaty, under Directive

13 — Emphasis added. See Case 5/77 *Tedeschi* [1977] ECR 1555, paragraph 35. See also, to the same effect, Case 148/78 *Ratti* [1979] ECR 1629, paragraph 4, and Case 251/78 *Denkavit Futtermittel* [1979] ECR 3369, paragraph 14. Generally, according to the Court, reliance on Article 30 EC is no longer possible where Community directives provide for the harmonisation of the measures necessary to achieve the specific objective which would be furthered by reliance on that provision; see, inter alia, Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 18, and Case C-102/96 *Commission* v *Germany* [1998] ECR I-6871, paragraph 21.

14 — Case C-186/88 *Commission* v *Germany* [1989] ECR 3997.

15 — OJ, English Special Edition 1971 (I), p. 106. This directive is one of those which aim to harmonise the health conditions for the production and placing on the market of certain products of animal origin.

16 — OJ 1983 L 359, p. 8.

17 — Paragraph 16 (emphasis added).

71/118 ... and under Council Directive 83/643 ...'. [18]

36. That judgment, which relates to national legislation comparable in this respect to the Swedish Decree at issue in the present case, confirms the principle that 'additional specific constraints', such as a systematic obligation to make a prior declaration of imports of certain products of animal origin, going beyond the framework of the harmonised Community system of health and/or veterinary inspections applicable in intra-Community trade in the products in question cannot be imposed on importers of products of animal origin.

37. I think the Court's reasoning in that case can to a large extent guide the assessment which must be made of the Swedish system of prior notification of imports into Sweden of certain products of animal origin from other Member States, in so far as Directive 89/662 pushes even further forward the harmonisation of the rules concerning veterinary inspections in intra-Community trade with a view to the completion of the internal market.

38. I consider that Directive 89/662 exhaustively harmonised the veterinary inspections which can take place in the Member State of destination of the products of animal origin covered by the directive.

39. In support of this conclusion, I would point out that the fifth recital in the preamble to the directive bears witness to the Community legislature's aim of 'organising checks that could be carried out at the place of destination'. Furthermore, the provisions of Chapter II of the directive relating to 'checks on arrival at the destination' contain an exact and complete description of the obligations of the Member States of destination and lay down strict limits to their discretion in implementing those provisions. It must also be observed that the Court, in describing the essential features of Directive 89/662, stated that 'detailed provisions were laid down to regulate the checks to be carried out in the country of destination'. [19]

40. Consequently, in setting up a system of compulsory prior notification by importers of products of animal origin covered by Directive 89/662, the Kingdom of Sweden was required to act within the framework of the harmonised Community system of veterinary checks in intra-Community trade, which was created by that directive.

18 — It should be noted that, although the operative part of this judgment refers to 'carriers' of fresh poultrymeat, I think this generic term must be understood as necessarily including importers of such products for the simple reason that the national provisions disputed by the Commission in that case required 'the importer' to declare the goods to an appropriate national frontier office (see the account of the national provisions in Case 190/87 *Moormann* [1988] ECR 4689, paragraph 3, and Case C-186/88 *Commission* v *Germany*, cited above, paragraph 2).

19 — Case C-102/96 *Commission* v *Germany*, cited above, paragraph 5.

41. On this point it is common ground that the disputed Swedish Decree introduces an obligation of prior notification of imports of certain products of animal origin from other Member States, that it is a systematic obligation and is incumbent on importers alone.

42. I also observe that the harmonised system of veterinary checks created by Directive 89/662 provides for an obligation to report the arrival of products of animal origin from other Member States. Therefore it is necessary to determine whether the *detailed rules* of the Swedish system of compulsory prior notification of imports are compatible with those of the provision in question, namely Article 5(3)(c) of the directive.

43. To do this, it is first necessary to construe Directive 89/662 by examining its wording and its aims.

44. *With regard to the wording*, I shall focus on Article 5(3)(c) because the disputed Swedish system manifestly aims to implement that particular provision of the directive.

45. Let me repeat that, under Article 5(3)(c), operators who have products delivered to them from another Member State or who completely divide up a batch of such products 'must, *if so requested by the competent authority*, report the arrival of products from another Member State, *to the extent necessary to carry out the checks referred to in paragraph 1*'. [20]

46. First, we find that this provision expressly states that the obligation to report the arrival of products from another Member State arises 'if so requested by the competent authority'. [21] This phrase immediately suggests that the obligation in question was not regarded by the Community legislature as being systematic in nature.

47. Therefore, on reading this provision, I am already inclined to the view that operators who have products delivered to them from another Member State or who completely divide up a batch of such products

20 — Emphasis added.

21 — The competent authority is defined in Article 2(4) of Directive 89/662 as 'the central authority of a Member State competent to carry out veterinary checks or any authority to which it has delegated that competence'.

can only be *specifically* required, namely at the request of the competent authority, to report the arrival of products from another Member State.

48. Secondly, we observe that the reporting obligation which may be imposed on the abovementioned operators must be fulfilled 'to the extent necessary to carry out the checks referred to in paragraph 1'.

49. In this connection, I would remind the Court that the 'checks referred to in paragraph 1' consist mainly in non-discriminatory veterinary spot-checks by the competent authority at the places of destination of the goods.

50. The reference to a criterion of necessity applying to the obligation of reporting also seems to me to confirm that the Community legislature did not intend to impose on the operators in question a duty of systematic declaration of imports of products of animal origin from other Member States.

51. In short, the competent authority of the Member State of destination may require the consignees of the products in question to report their arrival only if that appears *necessary* for the purpose of carrying out subsequent non-discriminatory veterinary spot-checks. [22]

52. At this stage of the discussion, therefore, it seems to me that the wording of Article 5 (3)(c) of Directive 89/662 authorises only ad hoc performance of the obligation to report the arrival of products from another Member State.

53. In addition, it is necessary to refute one of the main arguments of the Kingdom of Sweden, namely that the obligation of prior notification of imports is essential in order that the competent authority can subsequently carry out effective spot-checks in accordance with Directive 89/662.

54. Although it may be conceded that such an obligation is useful for the planning and organisation of physical spot-checks in so far as it is a source of information for the competent authority of the State of destina-

22 — It is interesting to note that 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) also adopts this concept, adding to it a criterion of 'strict necessity' for reporting the arrival of goods. Article 3(6) of this regulation is worded as follows: 'the competent authority of the Member State of destination may check compliance of feed and food with feed and food law by means of non-discriminatory checks. To the extent strictly necessary for the organisation of the official controls, Member States may ask operators who have goods delivered to them from another Member State to report the arrival of such goods' (emphasis added).

tion, I do not advocate the idea that the introduction of an obligation for systematic prior notification is essential for carrying out the spot-checks provided for by Directive 89/662.

55. First, in my opinion, the words used by the Community legislature in Article 5(3)(c) of the directive contradict the reasoning of the Kingdom of Sweden because, as we have seen, they preclude a systematic duty of notification. Second, I consider that the effectiveness of spot-checks is sufficiently ensured if the competent authority of the Member State of destination carries out an adequate risk assessment. [23]

56. It must also be observed that in Article 5 (3) of Directive 89/662 the Community legislature provided for measures which must contribute to ensuring the effectiveness of veterinary spot-checks. This applies to, for example, the obligation, on the part of operators who have products delivered to them from another Member State or who completely divide up a batch of such products, to keep a register in which such deliveries are recorded. The same applies to their obligation to keep 'for a period of not less than six months to be specified by the competent authority, the health certificates or documents referred to in Article 3 for presentation to the competent authority, should the latter so request'. [24]

57. The Swedish Government interprets Article 5(3)(c) of Directive 89/662 very differently in so far as it considers that the Community legislature did not decide on the time and the frequency of notification, which were therefore left to be determined by the Member States.

58. I do not entirely agree with this interpretation of Article 5(3)(c). It is true that it does not specifically provide for the time or the frequency of notification. However, it seems clear to me that, as I have already shown, the wording of Article 5 precludes a systematic duty of notification, which tends to impose strict limits on the Member States' discretion regarding the frequency of notification.

59. On the other hand, as to when notification must be given, it must be recognised that the wording of Article 5(3)(c) is hardly explicit. It is impossible to determine, merely from reading it, whether the arrival of

23 — This idea is present in Article 3(1) of Regulation No 882/2004, which provides in particular that official inspections of foodstuffs are to be carried out 'on a risk basis'. The risk may be assessed by reference to criteria such as, for example, identified risks associated with certain animals or certain food businesses.

24 — See Article 5(3)(b) and (d) of Directive 89/662.

products from another Member State must be reported *before or after* they enter the Member State of destination.

60. On this point it must be observed that, by comparison, Article 5(2)(a) of 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 [25] introduces an obligation 'to report *in advance* the arrival of animals and products from another Member State and, in particular, the nature of the consignment and the anticipated arrival date'. [26]

61. As the wording of Article 5(3)(c) is not specific with regard to the time when the arrival of products from other Member States is to be reported, I think this article must be interpreted as meaning that it does not preclude an obligation to report imports *prior to their arrival*, but it does rule out the *systematic* imposition of such an obligation on importers of certain products of animal origin from other Member States.

62. *Regarding the aims of Directive 89/662*, apart from the fact that, in my opinion, they confirm the interpretation which I have just formulated and which is based on the wording of Article 5(3)(c) of the directive, the aims show that the directive must be interpreted as meaning that it precludes the imposition of a duty of notification on importers alone.

63. In this connection I wish to observe that, in order to ensure the free movement of agricultural products which is, according to the second recital in the preamble to Directive 89/662, 'a fundamental feature of the common organisation of markets', the directive aims to dismantle veterinary barriers to the development of intra-Community trade in products of animal origin.

64. To be precise, the ultimate aim of the directive is to confine veterinary checks of such products to the place of dispatch. [27]

65. According to the fifth recital in the preamble to the directive, 'with a view to the completion of the internal market,

25 — OJ 1990 L 224, p. 29.

26 — Emphasis added.

27 — See the fourth recital.

pending the attainment of this objective, the emphasis should be placed on the checks to be carried out at the place of dispatch and on organising those that could be carried out at the place of destination; ... such a solution would entail the suspension of veterinary checks at the Community's internal frontiers'.

66. With this in view, Article 1 of Directive 89/662 requires the Member States to ensure 'that the veterinary checks to be carried out on products of animal origin ... are no longer carried out, without prejudice to Article 6, at frontiers but are carried out in accordance with this directive'.

67. Therefore I consider that the fact that, in the context of the system established by the Swedish authorities, importers have a systematic obligation of prior notification of certain products of animal origin from other Member States is inconsistent with the *aim of eliminating checks at frontiers* and also with the aim of *limiting the checks which may take place in the State of destination.*

68. Like the Commission, I think the systematic obligation of prior notification in the Swedish rules is a form of frontier control in so far as the notification has to be given by the importer. [28] It contributes to maintaining a barrier to the entry into Sweden of products of animal origin imported from other Member States, thus helping to maintain an internal frontier.

69. It is true that the concept of 'operators who have products delivered to them from another Member State or who completely divide up a batch of such products' in Article 5(3) of Directive 89/662 could be interpreted literally as including importers of products of animal origin from other Member States.

70. However, this interpretation does not seem to me to be consistent with the Community legislature's intention of removing controls at the internal frontiers of the Community.

71. It must also be observed that, to attain this aim, which is essential to the completion of the internal market, the Community legislature used a very broad definition of 'veterinary check'. Under Article 2(1) of Directive 89/662, this term covers 'any physical check and/or *administrative form-*

28 — According to the Commission, 'the word "frontiers" must be taken here in its legal rather than its physical sense' (see the application, points 20 and 21).

ality which applies to the products referred to in Article 1 and *which is intended for the protection, direct or otherwise, of public or animal health*'. [29]

72. Therefore I think it is pertinent to conclude that Directive 89/662 prohibits the systematic accomplishment by an importer of an administrative formality of that kind because such a measure contributes to the maintenance of internal frontiers, which is completely contrary to the aim of eliminating veterinary checks at internal frontiers pursued by the Community legislature in Directive 89/662.

73. I also think, like the Commission, that such a measure is contrary to the aim of limiting checks which may be carried out in the State of destination. In this connection it must be emphasised that, as we have previously seen in the context of Directive 89/662, the checks which may take place in the State of destination have been exhaustively provided for or, in other words, 'detailed provisions were laid down'. [30] Consequently, the introduction by a Member State of destination of an administrative formality the detailed arrangements for which go beyond the framework laid down by Directive 89/662 is a breach of that directive.

74. Having stated my case, I therefore consider that Directive 89/662, and in particular Article 5(3)(c), must be interpreted as meaning that it precludes the introduction by a Member State of destination of a systematic obligation of prior notification, by importers, of imports of certain products of animal origin from other Member States.

75. Consequently, in so far as the system established by the Swedish Decree includes a systematic obligation of that kind to be fulfilled by importers, it must, in my view, be considered incompatible with Directive 89/662.

76. Before concluding, I have a few observations regarding the submissions of the Kingdom of Sweden during the pre-litigation procedure consisting, in substance, in arguing that its national system of notification of imports is necessary in order to verify compliance by the other Member States with the Community anti-salmonella rules.

29 — Emphasis added.

30 — Case C-102/96 *Commission* v *Germany*, cited above.

77. In this connection it must be observed that, on the accession to the European Union of the Kingdom of Sweden, additional guarantees with regard to salmonella were provided for in relation to the supply to that Member State of certain animals and certain products of animal origin. [31]

78. For example, in respect of fresh poultrymeat, these guarantees were given by Council Decision 95/411/EC of 22 June 1995 laying down the rules for the microbiological testing for salmonella by sampling of fresh poultrymeat intended for Finland and Sweden. [32] Accordingly, Article 2 of that decision states that 'fresh poultrymeat intended for Finland and Sweden shall be subject to microbiological testing for salmonella by sampling carried out in accordance with the Annex at the establishment of origin of such meat'. This rule does not apply where the establishment in question is covered by a programme for salmonella checks which is recognised as equivalent to that implemented by the Republics of Finland and Sweden. [33]

79. The documents in the file show that the Swedish system of systematic notification of imports of certain products of animal origin, laid down by the Swedish Decree, seems to have been established by reason of the doubts of the Kingdom of Sweden concerning compliance with the anti-salmonella guarantees in certain Member States of dispatch.

80. In this connection it must be borne in mind that, as stated in the sixth recital in the preamble to Directive 89/662, the aim of eliminating veterinary checks at the Community's internal frontiers 'implies increased confidence in the veterinary checks carried out by the State of dispatch'.

81. As products of animal origin from another Member State are accompanied by a health certificate, animal health certificate or by any other document provided for by Community veterinary rules, they must be presumed to comply with the rules in force at Community level.

31 — See footnote 6.

32 — OJ 1995 L 243, p. 29. Similar guarantees were provided for by Council Decision 95/409/EC of 22 June 1995 laying down the rules for the microbiological testing for salmonella by sampling of fresh beef and pigmeat intended for Finland and Sweden (OJ 1995 L 243, p. 21).

33 — See Article 3 of Decision 95/411. The same rules apply in relation to fresh beef and pigmeat by virtue of Articles 2 and 3 of Decision 95/409.

82. If it appears, in the course of an inspection at the place of destination of the consignment or during transport, that such a product may prejudice the objective of public health, Articles 7, 8 and 9 of Directive 89/662 lay down the procedure to be followed by the Member State of destination. Accordingly, the Court has ruled, for example, that 'if the Federal Republic of Germany found, in the course of carrying out authorised checks and on the basis of its own methods, that the imported meat gave off a pronounced sexual odour which rendered it unfit for human consumption — a situation covered by Article 7(1)(b) of Directive 89/662 — it should have initiated the procedure provided for in Article 8 of that directive and contacted the competent authority of the Member State of dispatch — in this case, the Kingdom of Denmark — without delay'. Consequently, the German authorities could not unilaterally declare that the method known as Professor Claus's modified enzyme immunoassay, which enables such an odour to be detected, was mandatory in all cases and therefore refuse to recognise the conformity with health regulations of pigmeat imported and checked under the Danish skatol method, without, however, initiating the special procedure set up by Article 8 of Directive 89/662. [34]

83. In addition, Article 9 of Directive 89/662 sets up 'a protective system to replace possibly disparate interim protective measures taken in an emergency by Member States in order to counter serious risks'. [35]

84. These considerations justify me in saying that, in case of doubt as to whether the Community anti-salmonella rules are being complied with in a Member State of dispatch, the Member State of destination must use the procedures and safeguard measures laid down by Directive 89/662. It cannot unilaterally add supplementary national measures which go further than the provisions of the directive providing for a harmonised system of veterinary checks applicable in intra-Community trade in certain products of animal origin.

85. This assessment is consistent with a fundamental principle of the Community legal order, which is that the Member States must act within the framework of the procedures and the judicial remedies provided for by the EC Treaty if they consider that another Member State is failing in its obligations under Community law. [36]

34 — Case C-102/96 *Commission* v *German*, cited above, paragraphs 37 and 41.

35 — Case C-477/98 *Eurostock* [2000] ECR I-10605, paragraph 59.

36 — Joined Cases 90/63 and 91/63 *Commission* v *Luxembourg and Belgium* [1964] ECR 625, and Case 232/78 *Commission* v *France* [1979] ECR 2729, paragraph 9.

V — Conclusion

86. In the light of all those considerations, I propose that the Court should:

(1) declare that, by maintaining an obligation on the part of importers of certain products of animal origin from other Member States for the systematic prior notification of imports of such products, the Kingdom of Sweden has failed to fulfil its obligations under 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 in particular Article 5(3)(c) thereof;

(2) order the Kingdom of Sweden to pay the costs of the proceedings.