JUDGMENT OF THE COURT (First Chamber)
22 May 1990 *

In Case C-332/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal de commerce (Commercial Court), Quimper, for a preliminary ruling in the proceedings pending before that court between

Alimenta SA

and

Doux SA,

on the interpretation of Article 10 of Directive 71/118/EEC of the Council of 15 February 1971 on health problems affecting trade in fresh poultrymeat (Official Journal, English Special Edition 1971 (I), p. 106),

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

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

after considering the written observations submitted on behalf of

Alimenta SA, the plaintiff in the main proceedings, by Y. Kerjean, of the Brest Bar,

Doux SA, by H. Gurland and U. C. Feldmann, of the Cologne Bar,

* Language of the case: French.

the Government of the Hellenic Republic, by N. Frangakis, Legal Adviser to the Greek Permanent Representation to the European Communities, I. Galani-Marangoudaki, Legal Officer in the Ministry of Foreign Affairs, and I. Laios, Legal Adviser in the Ministry of Agriculture, acting as Agents,

the Commission of the European Communities, by R. Barents and C. Berardis-Kayser, members of its Legal Department, acting as Agents,

having regard to the Report for the Hearing and further to the hearing on 9 January 1990,

after hearing the opinion of the Advocate General delivered at the sitting on 7 March 1990,

gives the following

Judgment

1 By judgment of 30 September 1988, which was received at the Court on 16 November 1988, the tribunal de commerce, Quimper, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 10 of Directive 71/118/EEC of the Council of 15 February 1971 on health problems affecting trade in fresh poultrymeat (Official Journal, English Special Edition 1971 (I), p. 106), with a view to determining the legal effect to be attributed to the opinion delivered by the veterinary expert appointed under that article.

2 The question was raised in proceedings brought by Alimenta SA, a company governed by Greek law, whose registered office is at Piraeus, and Doux SA, a company governed by French law, whose registered office is at Châteaulin, concerning a consignment of drawn chickens with offal seized by the Greek veterinary authorities which declared them unfit for human consumption on their arrival at Piraeus owing to the presence of salmonella.

3 Pursuant to Article 9(1) of Council Directive 71/118, a Member State may prohibit the marketing in its territory of fresh poultrymeat coming from another Member State if at the time of the health inspection carried out in the country of destination it is found that the meat is unfit for human consumption. Decisions adopted pursuant to that provision must be communicated to the consignor or his representative together with the reasons for them.

4 Article 10 of the same directive provides that each Member State is to grant to consignors whose fresh poultrymeat cannot, pursuant to Article 9(1), be marketed in its territory the right to obtain the opinion of a veterinary expert, who must be a national of a Member State other than the exporting country or country of destination. Each Member State is to ensure that, before the competent authorities take any other measures such as destroying the meat, the veterinary experts have an opportunity of determining whether the conditions of Article 9(1) are fulfilled. The Commission, acting on a proposal from the Member States, is to draw up a panel of veterinary experts who may be instructed to formulate such opinions and, after consulting the Member States, is to lay down the general rules which are to be applied, in particular as regards the procedure for formulation of those opinions.

5 Following the Greek veterinary authorities' decisions to declare the goods unfit for human consumption (which were confirmed by two committees made up of three and five veterinary experts respectively) and to seize the goods supplied by Doux, the latter requested the opinion of an expert from the panel drawn up by the Commission. That expert, who was of Netherlands nationality, carried out two examinations and concluded that there was no reason for the goods in question not to be declared to be in conformity with the requirements of Directive 71/118.

6 However, the Greek authorities maintained the seizure, thus preventing marketing of the goods. Considering that Doux had failed to fulfil its contractual obligations by delivering goods which could not be marketed, Alimenta commenced proceedings for damages against Doux before the tribunal de commerce, Quimper. That court stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'What is the legal effect of the opinion delivered on 11 December 1987 and 3 February 1988 by the veterinary expert appointed under Article 10 of Council Directive 71/118/EEC of 15 February 1971, who concluded: "My investigation showed that there is no indication that the consignment mentioned above is not certified in conformity with Directive 71/118/EEC" when, by contrast, the competent Greek authorities have declared the same goods to be unfit for human consumption and have ordered their seizure?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and the applicable legislation, the course of 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.

8 The Greek Government and the parties to the main proceedings suggest that the Court give a decision on the substance of the opinions issued by the experts, the differing conclusions of which are, it is said, accounted for by differences in their analytical methods.

9 However, it must be stated that it is not for the Court, when making a ruling under Article 177 of the EEC Treaty, to appraise the facts of the main proceedings or the well-foundedness of an opinion issued by an expert; in response to a question formulated in general terms as to the legal effect of the opinion, it is required to provide the national court with such interpretative information as may be necessary to enable it to decide the dispute.

10 The question submitted by the national court in this case is concerned only with the legal effect of the opinion delivered by the veterinary expert appointed under Article 10 of Directive 71/118, and not whether that opinion is well founded.

11 The directive gives no specific details of the legal effect of the opinion.

12 The plaintiff in the main proceedings and the Greek Government claim that that opinion is binding neither on the national court nor on the Greek authorities. It is, in their view, a factor to be taken into account together with the other opinions, having regard to all the circumstances.

13 According to the defendant in the main proceedings, the opinion of the expert chosen from the list prepared by the Commission not only has the status of a counter-opinion but also constitutes a final arbitration; in support of that view, it refers to the wording of Article 10 of the abovementioned directive pursuant to which the expert in question has an opportunity of 'determining' whether the conditions of Article 9(1) are fulfilled.

14 According to the Commission, that opinion has the same legal effect as an opinion issued by an expert whose opinion is sought in accordance with the provisions of national law.

15 It must be pointed out that the expert is called on to deliver an opinion, not to take a decision. Although, in certain circumstances, an opinion may produce binding legal effects, the directive does not give any indication that the opinion in question is definitively binding on the national or Community authorities. If the Council had intended giving such a power of decision to the expert, it would have done so expressly. The word 'determining' cannot be interpreted as being decisive and binding: it merely means that the expert must form his own opinion as to whether the conditions for the application of Article 9(1) are fulfilled. The procedure provided for by the directive does not necessarily imply that the expert's opinion produces binding legal effects.

16 The defendant also relies on the scheme of Directive 71/118 and the regime governing the single market and refers in particular to 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 (Official Journal 1983, L 359, p. 8), which envisage the organization of health controls in the exporting country, under the latter's responsibility, and create a presumption as to the correctness of the certificates from the country of origin concerning the fitness for consumption of products imported from a Member State.

17 That argument cannot be upheld, since Directive 71/118 expressly reserves to the Member States, until such time as greater harmonization is achieved, the power to prohibit the importation into their territory of poultrymeat which is deemed to be unfit for human consumption.

18 The defendant contends, finally, that if the opinion provided for in Article 10 has no binding effect, that provision would serve no useful purpose whatsoever.

19 That statement is unfounded. Even if it is not binding on the national authorities, the opinion of the expert chosen from the list drawn up by the Commission, who is a national of a Member State other than those concerned, displays clear advantages: it provides an assessment of the facts by an expert who is independent from the parties and from the national authorities involved; it may therefore encourage the latter to reconsider their opinion, provide an important factor to be taken into account by the national court seised when making its assessment or to enable the Commission to decide whether or not a measure has been adopted which has an effect equivalent to a quantitative restriction.

20 Consequently, the terms and purpose of the directive do not show that the expert's conclusions are decisive as regards the interested parties and Member States or that they take precedence over any other opinion or, in the event of the opinion being favourable to the exporter, that they entail the result that the goods must be recognized as being fit for human consumption and, consequently, must be allowed freely to enter the territory of the Member State of destination.

21 Accordingly, it must be stated in reply to the national court that the opinion delivered by a veterinary expert provided for under Article 10 of Council Directive 71/118 of 15 February 1971 on health problems affecting trade in fresh poultry-meat is not decisive or binding but does represent an important factor to be taken into account by the national authorities and any national courts before which proceedings are brought.

Costs

22 The costs incurred by the Government of the Hellenic Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in reply to the questions submitted to it by the tribunal de commerce, Quimper, by judgment of 30 September 1988, hereby rules:

The opinion delivered by a veterinary expert provided for under Article 10 of Council Directive 71/118/EEC of 15 February 1971 on health problems affecting trade in fresh poultrymeat is not decisive or binding but does represent an important factor to be taken into account by the national authorities and any national courts before which proceedings are brought.

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 22 May 1990.

J.-G. Giraud
Registrar

G. Slynn
President of the First Chamber