REPORT FOR THE HEARING
delivered in Case C-332/88 *

I — Facts and procedure

1. *Legislative background*

Council Directive 71/118/EEC, which has been amended several times, in particular by Council Directive 75/431/EEC of 10 July 1975 (Official Journal 1975, L 192, p. 6), lays down rules concerning the health aspects of domestic and intra-Community trade in fresh poultrymeat in order to eliminate disparities between the Member States in that regard and promote a single market in that sector.

Article 5 of the directive concerns veterinary approval of slaughterhouses and cutting premises. It leaves the Member States free, subject to compliance with certain procedures, to approve them and oversee fulfilment of the conditions laid down for such approval.

The third subparagraph of Article 5(1) provides that an establishment may be approved by a Member State only where the provisions of the directive are met in each individual case: with particular regard to slaughterhouses, Chapters I and III of Annex I, and, with regard to cutting premises, Chapters II and III of Annex I.

The fourth subparagraph of Article 5(1) provides that a Member State is to withdraw approval if the conditions referred to in the third subparagraph are not met; any such withdrawal is to be notified to the other Member States and the Commission, and if an inspection has been carried out in accordance with Article 5a, the Member State is to take account of the conclusions drawn therefrom.

Article 5(3) provides that if a Member State considers that the conditions for approval are not, or are no longer, satisfied in an establishment in another Member State, it is to inform the Commission and the competent central authority in that State.

Pursuant to Article 5(4), [1] the Commission is immediately to initiate the procedure laid down in Article 5a and, if the findings of the expert inspection warrant this, the Member States may be authorized, in accordance with the procedure laid down in Article 12, to prohibit the introduction into their territory of products from that establishment. The authorization may be withdrawn under the same procedure if the findings of a further expert inspection carried out under the conditions specified in Article 5a warrant such withdrawal.

According to the third paragraph of Article 5a, the experts in the Member States, who are responsible for making regular on-the-spot checks to establish whether the approved establishments are in fact complying with the requirements of the directive, are appointed by the Commission on a proposal from the Member States. They must be nationals of a Member State other than that in which the check is carried out and, in the circumstances envisaged in

* Language of the case: French.

1 — Translator's note: The figure 4 is missing from the English version of the directive as amended.

Article 5(3) and (4), of a Member State other than those in dispute.

The provisions of Title III of the directive relate only to intra-Community trade. The first article, Article 8, provides that each Member State is to ensure that fresh poultrymeat sent to another Member State is accompanied during transportation to the country of destination by a health certificate issued by an official veterinarian at the time of shipment.

Article 9(1) empowers each Member State, without prejudice to its powers under Article 5(4), to prohibit the marketing in its territory of fresh poultrymeat coming from another Member State, in particular if it is found at the time of the health inspection carried out in the country of destination that the meat is unfit for human consumption.

Article 9(2) provides that decisions prohibiting marketing taken under paragraph 1 must, upon request of the consignor, authorize the return of the fresh poultrymeat provided that this is not contrary to considerations of health.

Pursuant to Article 9(3), such decisions must be communicated to the consignor or his representative together with the reasons for them. The reasoned decisions must, on request, be communicated to him forthwith in writing with an indication of what appeals are open against them and the form and time-limits in which they must be commenced.

Article 9(4) provides that where the decisions are based, *inter alia*, on a deterioration dangerous to human health they, and the reasons for them, must also be communicated forthwith to the competent central authority of the exporting country.

With respect to decisions taken under Article 9(1), Article 10 provides that each Member State is to grant the consignor concerned the right to obtain the opinion of a veterinary expert. That expert must have an opportunity of determining whether the conditions of Article 9(1) were fulfilled before the competent authorities of the State of destination take any other measures such as destroying the meat.

The second paragraph of Article 10 provides that the veterinary expert must be a national of a Member State other than the exporting country or country of destination.

Pursuant to the third paragraph of Article 10, 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 to lay down, after consulting the Member States, the general rules to be applied, in particular as regards the procedure for the formulation of those opinions.

Article 12 provides:

'(1) Where the procedure laid down in this article is to be used, matters shall without delay be referred by the Chairman, either on his own initiative or at the request of a Member State, to the standing Veterinary Committee (hereinafter called "the Committee") set up by the Council Decision of 15 October 1968.

(2) Within the Committee, the votes of Member States shall be weighted as provided in Article 148(2) of the Treaty. The Chairman shall not vote.

(3) The representative of the Commission shall submit a draft of the measures to be adopted. The Committee shall deliver its opinion on such measures within two days. Opinions shall be delivered by a majority of 12 votes.

(4) The Commission shall adopt the measures and shall apply them immediately where they are in accordance with the opinion of the Committee. Where they are not in accordance with the opinion of the Committee or if no opinion is delivered, the Commission shall without delay propose to the Council the measures to be adopted. The Council shall adopt the measures by a qualified majority.

If, within 15 days from the date on which the proposal was submitted to it, the Council has not adopted any measures, the Commission shall adopt the proposed measures and apply them immediately, save where the Council has decided by a simple majority against those measures.'

2. *Background to the proceedings*

In May 1987, Doux SA (hereinafter referred to as 'Doux') concluded with Alimenta SA (hereinafter referred to as 'Alimenta') a contract of sale for the supply of 93 875 kg of drawn chickens with offal for a price of FF 945 369.

The sale was agreed according to the international Incoterms definitions of cost and freight paid to Piraeus.

The goods, accompanied by a health certificate dated 24 May 1987, were shipped at Brest aboard the refrigerated ship 'Balmar' and reached Piraeus in June 1987.

The first inspection of the goods on arrival by the representative of the Greek veterinary authorities, Dr Gotsis, revealed the presence of salmonella in the meat which, according to those authorities, constituted 'an infringement of Presidential Decree 959/81, Section 1' and rendered the meat unfit for human consumption.

Following that inspection, the goods in question were seized and ordered to be kept in cold storage.

At the request of Alimenta, a committee of three experts carried out a second inspection on 8 July 1987 and took a sample of 50 chickens for microbiological examination. The results of that examination revealed the presence of five microbes belonging to the salmonella group and the committee decided unanimously to prohibit the marketing of the products in Greece, considering them unfit for human consumption according to the presidential decrees.

On 16 July 1987, a committee of five veterinary experts visited the cold stores where the goods were located. It confirmed the decision taken by the committee of three experts.

At its request, Doux was authorized, under Article 10 of Directive 71/118, to seek the opinion of a veterinary expert who was a national of a Member State other than the exporting country or country of destination.

On 27 November 1987, Dr Driessen de Voorburg, a veterinary expert of Netherlands nationality whose name was on the list drawn up by the Commission, went to Piraeus and carried out a fresh inspection. His conclusions were favourable to Doux.

At Doux's request, that expert went a second time to Piraeus and, after examining a further sample of the goods at issue, confirmed his previous conclusions to the effect that there was no reason for the goods in question not to be declared in conformity with the requirements of Directive 71/118.

The conclusions of those two opinions were brought to the notice of Alimenta and of the competent Greek authorities.

The Greek authorities nevertheless maintained the seizure. The goods at issue have thus not to date been marketed.

Considering that Doux had failed to fulfil its obligations as seller by supplying goods which could not be marketed in Greek territory, Alimenta commenced proceedings against Doux to obtain damages for breach of contract.

In those proceedings, Doux contends that it fully discharged its obligations under the sale contract. Although it was true that Directive 71/118 made no provision concerning the consequences of the opinion issued by the expert under Article 10, it was nevertheless unlikely that the conclusions arrived at in that opinion should have no effect at all. In its view, such an opinion should be binding on the Greek authorities and supersede the health inspections carried out by them, with the result that it could not be charged with failure to fulfil its contractual obligations.

3. *Preliminary question*

Considering that the decision in the dispute depended on the interpretation of Directive 71/118, in particular Article 10 thereof, by judgment of 30 September 1988 the tribunal de commerce, Quimper, stayed the proceedings and referred the following question to the Court 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?'

4. *Procedure*

The national court's judgment was received at the Court Registry on 16 November 1988. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted by Alimenta, the plaintiff in the main proceedings, represented by Y. Kerjean, of the Brest Bar, by Doux, represented by H. Gurland and U. C.

Feldmann, of the Cologne Bar, by the Government of the Greek Republic, represented by N. Frangakis, I. Galani-Marangoudaki and I. Laios, acting as Agents, and by the Commission of the European Communities, represented by R. Barents and C. Berardis-Kayser, members of its Legal Department.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, on 18 October 1989, to assign the case to the First Chamber and to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

Written observations were submitted by Alimenta, the plaintiff in the main proceedings, Doux, the Greek Government and the Commission.

According to Alimenta, the opinion delivered by the veterinary expert appointed under Article 10 of Directive 71/118 cannot be accorded precedence since Article 10 does not indicate the scope of that opinion and in particular does not say that it is to override the conclusions of the experts of the country of destination. An opinion of that kind is not therefore binding on the Greek authorities.

It also observes that the opinions delivered initially by Dr Gotsis and then by the committee of three experts and finally by the committee of five experts justify the decision adopted by the Greek State. It did not appear that the finding, arrived at by an analytical method, that there was salmonella on the surface of the samples could be seriously challenged and the Greek authorities' refusal to allow the goods supplied by Doux to be marketed was therefore fully justified.

The Greek Government states that the opinion in question is certainly not binding on the national court. It is merely one factor in the proceedings and its importance should be determined in relation to the other evidence adduced.

A fair and proper judicial examination would undeniably show that the opinion delivered by Dr Driessen de Voorburg is formally and materially incorrect, as appears from the following information:

(i) the expert should have stated expressly if it could be confirmed on the basis of the inspection whether or not the seized chickens were fit for human consumption and whether or not they constituted a danger to public health, instead of saying in vague and inappropriate terms that 'there is no indication that the consignment mentioned above is not certified in conformity with Directive 71/118' — a final conclusion which the Court of Justice could arrive at on the basis of a correct expert's opinion indicating the reasons on which it was based and after verification of the requirements of Directive 71/118;

(ii) the expert's report endeavours to minimize the seriousness of the danger presented by salmonella by, on the one hand, attributing its presence to external factors, in so far as it was found during the inspection on the skin

of the poultry and not deep in the muscular tissue and, on the other, by stating that the cooking process removes the dangers presented by salmonella. It also tried to minimize the importance and reliability of the health inspections carried out by the Greek authorities on the samples of mixtures of skins and muscle tissue of chickens which were found to contain salmonella. The expert, although also undertaking that type of examination and having in fact found salmonella bacteria, nevertheless considered that there was 'no indication' that the chickens were unfit for human consumption;

(iii) the expert's findings in that respect do not remove the danger to public health deriving from the presence of salmonella, and were contrary to both the spirit and the letter of Directive 71/118, as is apparent from the following considerations:

(a) the directive nowhere provides that chickens are fit for consumption despite the presence of salmonella bacteria and regardless of the part of the carcass in which they are found;

(b) the directive does not specify any examination method but leaves it to the discretion of the health authorities to choose the most appropriate and reliable scientific method, having regard in particular to the specific climatic conditions; the Greek Government observes that the method used by the health authorities is part of the Afnor method and is also used by the French *Institut vétérinaire*;

(c) salmonella bacteria may indeed result from contamination of the chickens, but the Greek consumer cannot put his health at risk because of technical or other failings of Doux, which may occur at the various production stages. Moreover, chicken meat and skin are used in numerous culinary preparations;

(d) Chapters I, II, III, IV, V, IX and X of Annex I to Directive 71/118 precisely define the health rules and conditions for chickens from the stage of slaughter to that of distribution so as to guarantee that the meat presents absolutely no danger to public health. There is, and can be, no derogation from those rules.

The Greek Government states that, in view of the fact that Chapters IX and X of the directive, concerning packaging and transport, regulate the cleaning of transport facilities and packagings precisely in order to avoid any contamination, *a fortiori* the presence of a bacterium as lethal as salmonella is prohibited whatever the part of the animal in which it is found.

It adds that it is clear in this case that the Greek authorities took all the requisite measures to safeguard public health, without in any way discriminating against the French company Doux and respecting

the rights accorded to the consignor by Articles 9(3) and 10 of Directive 71/118.

It concludes from the foregoing that the expert's opinion which, far from saying whether the chickens in question were fit for human consumption and were not dangerous, states that there is no indication that the chickens did not comply with Directive 71/118, has no legal effect since the products in question, which were contaminated by salmonella, are unfit for human consumption and are manifestly not in conformity with Directive 71/118 or with any related national provision concerning the protection of public health.

Doux, Europe's leading chicken producer, points out that its products have never before been rejected because of salmonella contamination and states that, in order to guarantee optimum standards of health and hygiene it has established, in addition to the controls required by national law and Community directives, its own monitoring procedure involving constant analyses and checks, extending from the arrival of the live birds at the plant to the despatch of pre-packaged and frozen products.

With respect to the consignment at issue, Doux states in the first place that the goods in question were accompanied by several certificates from the French veterinary authorities indicating that they had been declared fit for human consumption and certifying that there was no salmonella in the muscles of the carcasses, and also that the cargo was not subject to any damage during the sea voyage. It adds that the *Balmar* carried not only the cargo rejected by the Greek authorities but also a second consignment of frozen chickens bound for Greece, and the latter consignment, which came from the same farms and slaughterhouses — owned by Doux — and was produced at the same time, was not the subject of any observations by the Greek authorities.

With respect to the health inspections carried out by the Greek authorities, Doux makes the following observations.

It observes in the first place that following the visual re-examination of the products concerned on 16 July 1987, by the committee made up of five experts, one of the latter's members considered that further samples should be taken and examined in the presence of a representative responsible for the loading of the cargo, whereas the other four members of the committee expressed the view that the seizure and import ban should be maintained.

It then states that, when carrying out his examination, Dr Driessen de Voorburg had discovered the cause of the difference in results as between the health certificates issued by the French authorities and the analyses carried out in Greece: the method of analysis adopted.

Whereas the 'French method' consists in thawing the product, cauterizing the skin of the chicken breast and removing the surface of the skin thus burned, and then cauterizing the pectoral muscles and subsequently taking a sample of about 25 grams of the muscular tissue below the cauterized surface, the 'Greek method' involves, after thawing, taking a sample of about 25 grams

directly both from the skin and the subcutaneous tissues and pectoral muscle. In the absence of cauterization, that method is subject to the risk that salmonella on the surface of the bird's skin may be displaced into the tissues.

It points out that the expert considered that the origin of the salmonella found in Greece was probably contamination of the poultrymeat after slaughter and that, referring to similar findings by the FAO/WHO of 20 to 25 February 1979, the expert had nevertheless added that, in view of the modern production techniques allowed in approved slaughterhouses, there can never be any guarantee that there will be no salmonella on the external surfaces and in the cavity of the carcasses.

Doux also states that during the second examination undertaken by that expert on samples from 50 chickens, carried out in accordance with the 'Greek' method on the right-hand side of each chicken breast and according to the 'French' method on the left side of the breast of the same chickens, traces of salmonella were detected on two chickens on conclusion of the analysis by the 'Greek' method whereas on the sample analysed by the method used in France no trace of salmonella was detected.

With respect to the interpretation of Article 10 of Directive 71/118, Doux states that the experts' conclusions do not just have the status of an expert's counter-report but constitute a final arbitration. That is apparent from the text of Article 10 itself which provides that 'each Member State shall ensure that, before the competent authorities take any other measures ... the veterinary experts have an opportunity of determining whether the conditions of Article 9(1) are fulfilled'.

In its view, the expert must therefore also give a decision concerning the legal and administrative conditions under which the importing State was entitled to take the decisions provided for in Article 9(1) of the directive. That is apparent from reference to Article 9(1)(b), which mentions *inter alia* the administrative and legal conditions such as those laid down in Article 3(1)(a) or the administrative conditions laid down in Article 8.

Accordingly, the expert is entitled to negate or confirm an administrative decision by the importing State and therefore is empowered to give a final decision as to the acceptability of the goods.

Furthermore, that interpretation of Article 10 is in conformity with the aims and objectives of the directive set out in the first, second, third, fifth and eighth recitals.

Doux then analyses the scope of the Community expert's report in the context of the measures and decisions provided for by Directive 71/118.

In its view, the last recital in the preamble to that directive explicitly describes the objective to be attained by the Member States, which is to lay down '*certain conditions* under which *Member States may prohibit* or restrict the introduction of poultrymeat into their territory for animal-health reasons and by providing for a Community emergency procedure within the Standing Veterinary Committee under

which measures taken by a Member State could be examined in close cooperation by Member States and the Commission and, where appropriate, amended or repealed'.

Since, as the Court has consistently held, the preamble to a directive facilitates interpretation of the articles thereof, it is important to treat as a coherent whole the procedures prescribed for the event of a Member State's refusal to permit the marketing of goods coming from other Member States.

Doux puts forward the following arguments concerning those procedures. It states in the first place that although the right to refuse products which allegedly constitute a danger to public health is expressly granted to the Member States in the ninth recital, that right must be exercised within the context and limits of the procedure provided for in the directive.

In the present case, in the exercise of the right provided for in Article 9(1), the Member State must comply with paragraph 4 of the same article, which is a binding provision. It is undeniable that the Greek health authorities took a decision to the effect that the cargo at issue was unfit for human consumption, without immediately informing the French Government. Article 9(4) shows that the directive is concerned essentially with the organization of health inspections in the country of despatch, under the latter's responsibility.

It then states that Article 9 also contains a reference to Article 5, and the scope of the latter must be determined. Pursuant to Article 5(3): 'If a Member State considers that the conditions for approval are not, or are no longer, satisfied in an establishment in another Member State it shall inform the Commission and the competent central authority of that State.'

It is only after the urgent inspection provided for in Article 5(4), organized forthwith by the Commission, that the Member States may be authorized 'to prohibit the introduction into their territory of products from that establishment'. It thus follows from those provisions that a refusal by the Member State of destination may only be provisional and that the final decision may be given only on completion of the procedure provided for in Article 5 of the directive. A Member State's refusal will be withdrawn only when, as provided for in the last paragraph of Article 5, 'the findings of a further expert inspection, carried out under the conditions specified in Article 5a, warrant such withdrawal'.

Doux observes, finally, that the Member States may not arbitrarily refuse to release for circulation within their territory poultry-meat coming from another Member State. Article 10 makes two references to Article 9. The first indicates that the Member State of destination may take a decision to refuse meat only after finding that it is unfit for human consumption, and the second relates to the opportunity which the Member States must offer to veterinary experts to determine whether the conditions under Article 9(1) are fulfilled before taking any other measures.

It follows that, where the 'Community' expert's report contradicts the grounds of the national decision and the State of destination maintains its refusal, the Member State of despatch must be informed pursuant to Article 9, as must the

Commission under Article 5, so that the emergency procedure provided for in Article 5(4) may be initiated. Since in this case Greece issued its refusal in the form of a final decision, which can only be arrived at under the urgent procedure referred to above, which it did not observe, Doux considers that the Greek authorities' decision is open to challenge since the formalities laid down by the directive were not complied with.

Doux also claims that the substance of the decision is open to challenge, since the refusal to permit the marketing of the products in question was based on an examination carried out in accordance with procedures specific to Greece. Whilst it does not deny that the Community regulation allows the Member States to choose the technical basis of the inspections to be carried out to establish whether or not products from another Member State are fit for human consumption, it considers that two cases must nevertheless be envisaged.

The first consists in determining whether the 'Greek inspection' is actually the method commonly used in Greece both for domestic products and for imported products. If that is not the case, the national practice in question is discriminatory within the meaning of Article 30 of the EEC Treaty, and cannot be justified by Article 36 unless it is proved that it is essential for the protection of public health and is entirely reasonable having regard to the interest to be protected.

If that method is actually applicable both to domestic and to imported products, the measure is one which applies without distinction but it must also be established that it is in no way disproportionate. In so far as the products in question were all accompanied by the certificates prescribed by the Community rules in force, the circumstances were such that the statements contained in those certificates should have been deemed correct, as has been held by the Court (judgment of 8 February 1983 in Case 124/81 *Commission* v *United Kingdom* [1983] ECR 203, paragraph 30).

According to Doux, that presumption of correctness would be totally negated if it could be contradicted by an original method applied by a Member State. While it recognizes that the Court of Justice stated in its judgment of 21 February 1984 in Case 202/82 *Commission* v *French Republic* [1984] ECR 933, that cooperation between Member States 'does not go so far as to require them to carry out inspections according to methods laid down by the legislation of the other Member States', it nevertheless considers that, short of conceding that the 'Community' expert's report serves no useful purpose whatsoever, such cooperation must, at the very least, render necessary the urgent procedure provided for in Article 5.

Finally, Doux analyses the Community situation and the general context. It states in the first place that, according to Article 3 of 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 has been held by the Court to have direct effect, the veterinary and food control authorities of Member States are obliged to recognize documents and certificates prepared by the competent authorities of the other Member State.

There is therefore a presumption that all certificates from the country of origin are

correct and therefore that the product concerned is sound (see the judgment of 17 December 1981 in Case 272/80 *Frans-Nederlandse Maatschappij voor Biologische Producten BV* [1981] ECR 3277, and the judgment of 8 February 1983 in Case 124/81, *supra*).

It concludes that a product accompanied by the documentation prescribed by the applicable provisions must be regarded as fit for consumption in the importing Member State, regardless of differing results arrived at in the inspection carried out by the importing State. That principle, it considers, is confirmed by Article 1(2) of Council Directive 84/642/EEC of 11 December 1984 (Official Journal 1984, L 339, p. 26).

Doux then goes on to say that, even if it were assumed that Directive 83/643 related only to mutual recognition of certificates in the course of inspections at the time of or directly relating to an intra-Community transport operation, the view expressed by Lord Cockfield in a reply given on behalf of the Commission (Official Journal 1986, C 126, p. 3), the result would necessarily be the same. In the present case, the French health certificates were issued specifically in connection with carriage of the goods sold from France to Greece and were intended to accompany them.

Finally, it states that, even if it were assumed that the Community position regarding recognition of inspections and certificates is such that Greece was under an obligation to recognize the French certificates only in so far as they corresponded to those which might be required under the Greek rules, the result would necessary remain the same. The Community market in poultrymeat and the transport thereof must be regarded as harmonized, with the result that Greece is not entitled to require certificates and inspections other than those provided for by the Community rules, that is to say precisely those produced by Doux.

Doux is of the opinion that that result is perfectly in conformity with the programme for the internal market, as described by the Commission in its White Paper of June 1985. That programme, which sets out the principles laid down by the Court in relation to Articles 30 and 36, provides that all goods produced and lawfully placed on the market in a Member State must be allowed into any other Member State, without obstacle, and that unlimited and immediate recognition of the various quality standards and rules concerning composition of food products should be the rule.

Whilst there is an exception to that rule in cases where harmonization of the system cannot be required for public health reasons, public health is nevertheless not threatened by the presence of a few salmonella bacteria on the skin of chickens. That is apparent from the conclusions of the EEC Workshop in October 1983 on 'Priority aspects of salmonellosis research' and the expert's opinion according to which any normal cooking is sufficient to eliminate entirely any salmonella infestation of the chicken.

Doux adds that the result proposed by it appears practicable and is indeed necessary merely by reason of the ubiquitousness of salmonella in all food and all objects touched by human beings in daily life. It states that, if on the other hand the 'Greek method' were recognized, the result would

be that almost all raw food which was not hermetically wrapped would be banned, with the exception of totally sterilized food. Even a large number of products in daily use in hospitals would not meet that standard.

It suggests therefore that the Court reply as follows:

'The opinion given by the European expert is decisive as regards the parties and the Member States and, in the present case, as soon as the opinion is delivered the goods must immediately be recognized as fit for human consumption and, consequently, for release into circulation in the Member State of destination.'

The Commission states that it has only an administrative role with respect to the right granted by Article 10 to consignors, in so far as it prepares the list of approved veterinary experts. The fact that the expert called upon to act appears on that list provides both the Member State and the trader concerned with some guarantee regarding the expert's competence and the trust which may be placed in him.

The Commission observes however that Directive 71/118/EEC does not make any provision as to the legal effect of the opinion of the expert appointed under Article 10. It considers therefore that, if that opinion conflicts with the decision taken by the national authorities under Article 9 of the directive, it is for those authorities and, if appropriate, for the judicial authorities to decide whether the decision taken under Article 9 should be changed by virtue of the expert's opinion.

It therefore proposes that the following answer be given to the question submitted:

'The opinion given by an expert under Article 10 of Directive 71/118/EEC has the same legal effect as an opinion given by an expert whose opinion is sought under the provisions of national law.'

G. Slynn
Judge-Rapporteur