OPINION OF ADVOCATE GENERAL LÉGER

delivered on 27 February 2003 [1]

1. Fresh meat intended for human consumption is covered, in the Member States, by different harmonised health inspection and control measures. These inspection and control measures apply *inter alia* to slaughtering and then to cutting operations. The conditions for financing these measure have also been subject to harmonisation at Community level.

I — Legal background

A — *The Community law*

3. The relevant Community law consists of the rules in respect of inspection of fresh meat and those relating to financing these inspections.

1. The rules in respect of inspection

2. In this case, the Court is being invited to determine whether the reduction in the fee in respect of inspections and controls connected with cutting operations, imposed when these operations take place in the establishment where slaughtering has been carried out, is subject to the condition that the slaughterhouse and the cutting plant shall belong to the same operator. The referring court also asks what criteria are to be taken into account in determining the amount by which this fee is to be reduced.

4. The rules in respect of inspection of fresh meat are defined by Council Directive 64/433/EEC, [2] as amended by Council Directive 91/497/EEC [3] (or 'Directive 64/433').

1 — Original language: French.

2 — Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-1964, p. 185).

3 — Council Directive 91/497/EEC of 29 July 1991 amending and consolidating Directive 64/433/EEC on health problems affecting intra-Community trade in fresh meat to extend it to the production and marketing of fresh meat (OJ 1991 L 268, p. 69).

5. Directive 64/433 is designed to eliminate differences between the health requirements of Member States concerning meat in order to facilitate the free movement of fresh meat. [4] Consequently, it undertakes to approximate the provisions of the Member States with the object of standardising health requirements for meat in slaughterhouses and cutting rooms and during storage and transportation. [5]

6. To that end, Directive 64/433, Article 2 contains a number of definitions. According to Article 2(k), 'establishment' means 'an approved slaughterhouse, an approved cutting plant, an approved cold store or a unit grouping together several such establishments'.

7. Article 3(1)(A) and (B) of Directive 64/433 requires that slaughtering and cutting operations are carried out, respectively, in a slaughterhouse and in a cutting plant which are approved in accordance with the conditions laid down by the Directive. The Directive also specifies that systematic measures must be taken for inspection and control of slaughtering and then of cutting. These inspections and these controls must be carried out by an official veterinarian in accordance with the conditions set out in Annex I to the Directive.

8. According to this Annex, these inspections and these controls relate, firstly, to the hygiene of staff, premises and equipment in the establishments [6] and, secondly, to the state of health of the meat. Therefore, on slaughtering, a post-mortem health inspection shall be carried out *inter alia* on all parts of the animal for the purposes of determining whether the meat is fit for human consumption. [7] With regard to cutting, the operator of the plant, the owner or his agent must be able on request to inform the supervising official veterinarian of the source of the meat brought into his establishment and of the origin of slaughtered animals. [8] Similarly, the official veterinarian must supervise the entry and exit of fresh meat and the health inspection of fresh meat held in the cutting plant, as well as the health inspection of fresh meat prior to cutting and when it leaves the establishment in question. [9]

9. In addition, Directive 64/433, Article 10, provides that each Member State shall draw up a list of approved establishments, each establishment having a veterinary approval number. The Member States shall send this list to the other Member States and to the Commission of the European Communities. Where hygiene is found to be inadequate, this approval may be suspended or withdrawn.

4 — First and second recitals.

5 — Fourth and fifth recitals.

6 — See, *inter alia*, Chapter V and Chapter X(48), fourth indent, of this Annex.

7 — Ibid., Chapter VIII.

8 — Ibid., Chapter IX(44).

9 — Ibid., Chapter X.

10. The veterinary approval numbers of slaughterhouses and cutting plants shall be reproduced on the documents which accompany meat and on packaging labels under the conditions provided for by Directive 64/433. [10]

2. The rules in respect of financing

11. The harmonised rules on the financing of measures for inspection and control of fresh meat are laid down by Council Directive 85/73/EEC, [11] in the version resulting from Council Directive 96/43/EC [12] (or 'Directive 85/73').

12. The harmonisation of these rules aims to prevent the distortions of competition which could result from the collection of different fees in the various Member States. [13]

13. Consequently, Directive 85/73 imposes on Member States the collection of a Community fee to cover the costs occasioned by harmonised inspections and controls. [14]

14. According to Directive 85/73, Article 5, this fee must cover the costs borne by the competent authority, firstly for salary costs and social security costs involved in the inspection service and, secondly, for administrative costs incurred in carrying out controls and inspections, which may include the expenditure required for in-service training of inspectors. No direct or indirect refund of this fee shall be permitted.

15. The amount of this fee is defined in Chapter I of Annex A to Directive 85/73. According to paragraph 1, the Member States shall collect for inspection costs relating to slaughter standard amounts fixed by this provision in accordance with the kind of animal, its age and weight.

16. The costs of inspection connected with cutting operations are dealt with in Chapter I(2) of Annex A to Directive 85/73 in the following terms:

'The controls and inspections connected with the cutting operations referred to in,

10 — Chapters XI and XIII in Annex I, Annex IV and Annex V.

11 — Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC.

12 — Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (OJ 1996 L 162, p. 1).

13 — Fifth and seventh recitals to Directive 96/43.

14 — Article 1.

inter alia, Article 3(1)(B) of Directive 64/433/EEC... must be covered:

(a) either: at a standard rate by the addition of a standard amount of ECU 3 per tonne on meat entering a cutting plant.

That amount is added to the amounts referred to in 1 above;

(b) or: by charging the actual costs of inspection per hour worked.

Where the cutting operations are carried out in the establishment where the meat is obtained, the amounts laid down in the first subparagraph shall be reduced by up to 55%.

A Member State which opts to levy fees by the hour worked must be able to demonstrate to the Commission that the actual costs cannot be covered by charging fees in accordance with (a).'

17. According to Chapter I(4) in Annex A to Directive 85/73, Member States may, in order to cover increased costs, increase the standard amounts of fees as laid down in points 1 and 2(a) for individual establishments, if inspection costs have increased due *inter alia* to a lack of uniformity in the animals for slaughter, to frequent delays in the slaughtering process or to longer waiting periods for inspection staff and delivery times. Equally, Member States may charge a fee covering the actual costs incurred.

18. Under Chapter I(5) in Annex A to Directive 85/73, Member States may also exceptionally reduce the standard amounts fixed in points 1 and 2(a) of the Chapter in question. This exemption is authorised either in general, where the cost of living and salary costs are substantially lower than the Community average, or for individual establishments under certain conditions. *Inter alia*, uniformity of number and type of animals for slaughter should enable the deployment of the relevant inspection staff to be planned in advance and waiting periods to be avoided. In no case should the application of these exemptions result in reductions of more than 55% of the levels indicated in points 1 and 2(a).

19. According to Chapter I(6) in Annex A to Directive 85/73, the fees referred to above must be collected at the slaughterhouse or cutting plant. They shall be payable by the operator or the owner carrying out the slaughtering or cutting operations, who may, however, pass on the fee charged for the operation concerned to the natural or legal person on whose behalf

these operations are carried out. In the case of an establishment carrying out more than one operation and of chains of production covering more than one operation, Member States may charge a total aggregate fee including the various amounts simultaneously and at a single location.

B — *The national legislation*

20. Article 24 of the Fleischhygienegesetz (Law on Meat Hygiene) of 8 July 1993 as amended by the Law of 17 July 1996 [15] provides that charges shall be applicable as determined by the law of the Länder and that these fees shall be assessed in accordance with the legal provisions adopted by the European Community concerning the financing of inspections and health controls on meat.

21. Directive 85/73 was transposed into the law of Rhineland-Palatinate (Germany) by the Landesgesetz zur Ausführung fleisch- und geflügelfleischhygienerechtlicher Vorschriften (Law implementing meat and poultrymeat hygiene regulations) of 17 December 1998, [16] and by the Landesverordnung über die Gebühren und Auslagen für Untersuchungen und Hygienekontrollen nach fleisch- und geflügelfleischhygienerechtlichen Vorschriften (Regulation on fees and expenses for inspections and health controls under the meat and poultrymeat hygiene regulations) of 17 February 1999 [17] (or 'the Rhineland-Palatinate regulation').

22. Under the Rhineland-Palatinate regulation, the fee for 'inspections and controls, as well as for marking and certification, which were carried out in approved cutting plants from 1 January 1999 to 31 December 1999' was raised to DEM 5.76 per tonne of meat on the bone entering such plants and intended for cutting, which, according to the findings of the referring court, [18] corresponds to the amount of ECU 3 per tonne by reference to the exchange rates applying at that time.

23. Part 3, paragraph 6.4 of the Annex to the Rhineland-Palatinate regulation provides that:

'Where administrative activities within the meaning of No 6 are carried out in the establishment where the meat is obtained, fees for the purposes of Nos 6.1 to 6.3 must be reduced appropriately but by no more than 55%.'

15 — BGBl. I, p. 991.
16 — GVBl. p. 422.
17 — GVBl. p. 32.
18 — See the order for reference, paragraph 2.1.1.

II — Facts and proceedings

24. Färber GmbH & Co. (or 'Färber') operates an approved meat-cutting plant in the municipal area of Neustadt an der Weinstraße (Germany). The slaughterhouse Schlachthof-Betriebs-GmbH, a company which is not the same as Färber, from which Färber purchases some of the meat for its cutting operations, is situated in the same building.

25. The municipality of Neustadt an der Weinstraße charged Färber fees in respect of 1999 for the inspections and health controls conducted in the cutting plant, calculated at the rate of DEM 5.76.

26. Färber lodged an objection with the municipality against the amount of these fees. When Färber's objection was dismissed, it appealed to the Verwaltungsgericht (Administrative Court) Neustadt an der Weinstraße. Färber asserted that some of the meat cut in its plant originated from the slaughterhouse operating in the same building, with the result that, under the Rhineland-Palatinate regulation, the fees payable for control of this meat should be reduced by 55%. It argued that its cutting plant and the slaughterhouse should be viewed as a single establishment as provided for in Article 2(k) of Directive 64/433.

27. The municipality of Neustadt an der Weinstraße objected to this argument on the ground that a slaughterhouse and a cutting plant can be viewed as the same establishment only where they are operated by the same natural or legal person.

III — The questions

28. The Verwaltungsgericht Neustadt an der Weinstraße took the view that, because of the consistency between, firstly, Part 3, paragraph 6.4 of the Annex to the Rhineland-Palatinate regulation and, secondly, Chapter I(2)(b) in Annex A to Directive 85/73, the decision in the case before it turns on the interpretation of the latter provision.

29. It therefore decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) On a proper construction of the second subparagraph of Chapter I(2) in Annex A to Council Directive 85/73/EEC as amended and consolidated by Council Directive 96/43/EC, is an establishment which is situated in the same building as a cutting plant but whose operator is a natural or legal

person other than the operator of the cutting plant also to be regarded as the "establishment where the meat is obtained"?

(2) Which criteria are relevant to the fee-levying authority's decision regarding the extent to which it grants a reduction of the fees of up to 55% as provided for in the second subparagraph of Chapter I(2) in Annex A to the abovementioned Directive?

In that regard, may in particular the fact that staff need less time to carry out the controls or inspections also be taken into consideration where the fees in respect of such controls and inspections are determined by the addition of a standard amount pursuant to the first subparagraph under (a) of Chapter I(2) in Annex A to the abovementioned Directive?

Moreover, if Question I is answered in the affirmative, when reducing the fee, may account nevertheless be taken of the fact that the establishments situated in one building are attributable to operators regarded in law as distinct, and may this in principle lead to a situation where in such cases less of a reduction is granted than in cases where the slaughterhouse and cutting plant are not only situated in the same building but are also operated by the same natural or legal person?'

IV — Answers to the questions

A — *The first question*

30. In its first question, the referring court is essentially asking whether the second subparagraph of Chapter I(2) in Annex A to Directive 85/73 must be interpreted in the sense that this provision applies equally when the cutting plant and the establishment where the meat is obtained do not belong to the same natural or legal person.

31. The Commission maintains that ownership of the slaughterhouse and the cutting plant in question is not a relevant criterion. It goes on to say, however, that their geographical proximity is not enough to confer entitlement to the disputed reduction. For this, it would be necessary for the slaughterhouse and the cutting plant to form a production unit and be operated in a coordinated manner. Thus, each of them should be planning in advance, organising and carrying out at least a part of its relevant production stages in step with the relevant part carried out by the other, and some health advantages should result.

32. The Swedish Government considers that the benefit of a reduction is acquired only if the slaughterhouse and the cutting plant are operated by the same natural or

legal person. It takes the view that the need to guarantee effective control of hygiene conditions demands that, in each establishment, there is only one responsible natural or legal person. According to the Swedish Government, conceding that a slaughterhouse and a cutting plant belonging to different owners constitute the same establishment creates doubt about the identity of the person responsible for each operation. 'Traceability' of meat is also compromised, since this slaughterhouse and this cutting plant would put the same number on it.

33. I take the view, as does Färber, that the first question referred for a preliminary ruling must be answered in the affirmative. Applying the method of interpretation followed by the Court, I base this assessment on the wording of relevant provisions, their context and the objectives of the legislation of which they form part. [19]

1. The wording of the relevant provisions

34. These provisions are, firstly, the second subparagraph of Chapter I(2) in Annex A to Directive 85/73 and, secondly, Article 2(k) of Directive 64/433.

35. It is clear that the second subparagraph of Chapter I(2) in Annex A to Directive 85/73 includes no condition or restriction under which the provision shall apply only when the cutting plant and the slaughterhouse belong to the same natural or legal person. The sole condition laid down by the Community legislature is that the cutting operations are carried out in the establishment where the meat is obtained. The sole criterion expressly laid down is therefore the location of the cutting operations, to the exclusion of any reference to the ownership of the slaughterhouse and the cutting plant.

36. Like the referring court [20] and all the intervening parties, [21] I think that Article 2(k) of Directive 64/433 is relevant to the interpretation of Directive 85/73. This Directive applies *inter alia* to the controls and inspections provided for by Directive 64/433 and there exists no definition of the concept of 'establishment' other than the one in Article 2(k) in the provisions which prescribe health control measures, financing of which is also covered by Directive 85/73. [22]

19 — Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 203 and case-law cited.

20 — See the order for reference, paragraph 2.1.2.

21 — See Färber's written observations, paragraph 2.2, those of the Swedish Government, paragraph 3, and those of the Commission, paragraph 9.

22 — In this connection, see Council Directive 71/118/EEC of 15 February 1971 on health problems affecting trade in fresh poultrymeat (OJ, English Special Edition 1971 (I), p. 106), Council Directive 91/495/EEC of 27 November 1990 concerning public health and animal health problems affecting the production and placing on the market of rabbit meat and farmed game meat (OJ 1991 L 268, p. 41); and Council Directive 92/45/EEC of 16 June 1992 on public health and animal health problems relating to the killing of wild game and the placing on the market of wild-game meat (OJ 1992 L 268, p. 35).

37. Nor does the wording of Article 2(k) of Directive 64/433 make any reference to ownership, since it is limited to stipulating that the concept of 'establishment' covers at the same time an approved slaughterhouse, an approved cutting plant, an approved cold store or a unit grouping together several such establishments. Thus, the Community legislature did not require that this unit should take a particular legal form.

38. In this regard, it should be pointed out that the versions of Article 2(k) of Directive 64/433 in the majority of the official languages use terms that are a perfect semantic match with those of the French version. [23]

39. It follows that the argument defended by the municipality of Neustadt an der Weinstraße and referred to by the Swedish Government, according to which the application of the reduction provided for in the second subparagraph of Chapter I(2) in Annex A to Directive 85/73 is subject to the condition that the cutting plant and the slaughterhouse operating in the same building belong to the same natural or legal person, has no basis in the wording of the relevant provisions.

23 — A reservation must be expressed as far as the German version is concerned. This concludes with the words 'oder rein aus diesen Betrieben bestehender Gebäudekomplex', which mean 'or a complex made up of these establishments'. However, this differing version strengthens the view that the concept of 'establishment' does not depend on a condition of ownership.

40. This interpretation of the wording of these provisions is confirmed by their legal context.

2. The context of the relevant provisions

41. I shall examine in turn the legal context of the second subparagraph of Chapter I(2) in Annex A to Directive 85/73 and that of Article 2(k) of Directive 64/433.

(a) The context of the second subparagraph of Chapter I(2) in Annex A to Directive 85/73

42. It seems to me that two factors must be emphasised, one historical and the other relating to the broad logic of Chapter I in Annex A to the Directive.

43. Firstly, as far as the historical context is concerned, it must be borne in mind that the origin of the provision to be interpreted is one of the factors that the Court may take into account to corroborate the interpretation which follows from the wording

of the provision.[24] In the present case, Chapter I in Annex A to Directive 85/73 essentially reproduces Decision 88/408/EEC of the Council.[25] It is apparent from the fifth recital to this Decision that the fixing, by the legislature, of a distinct amount for the fee for the inspections connected with slaughtering, cutting and storage operations was intended to take into account situations in which these three operations would not take place at the slaughterhouse. The determining factor which led to the fixing of a fee level specific to each of these three operations was therefore solely the place where they should be carried out, regardless of any consideration of ownership of the different establishments concerned.[26]

44. Next, the broad logic of Chapter I in Annex A to Directive 85/73 shows, in my opinion, that the Community legislature did not want the reduction in the amount of inspection fees to depend on the issue of whether the slaughtering, cutting and storage plants belong to the same person or to different legal persons.

45. We have already seen that Chapter I(4) and (5) in Annex A to Directive 85/73 provide that Member States may exceptionally increase or reduce the standard amounts fixed in paragraphs 1 and 2(a) of that Chapter for inspections and controls connected, respectively, with slaughtering and cutting operations either for an individual establishment or in general. It should be pointed out that, among the conditions laid down in paragraphs (4) and (5) for implementing these exemptions, at no time is there any reference to the ownership of the slaughterhouse and of the cutting plant concerned. All the criteria laid down relate to the conditions in which slaughtering is carried out or those in which the inspections are carried out, or to the cost of living and salary costs in the Member State concerned.

46. If the Community legislature thought that the increases and the reductions laid down in Chapter I(4) and (5) in Annex A to Directive 85/73 could be applied regardless of the issue of whether the slaughterhouse and the cutting plant belong to the same operator, then it is particularly the case that such a criterion must be viewed as irrelevant to the granting of the reduction laid

24 — In support of this, see the judgments in Case 18/76 *Germany* v *Commission* [1979] ECR 343, paragraph 5 and in joined Cases C-95/99 to C-98/99 and C-180/99 *Khalil and Others* [2001] ECR I-7413, paragraph 43. For a recent application of this interpretation, see Case C-292/99 *Commission* v *France* [2002] ECR I-4097, paragraph 42.

25 — Council Decision of 15 June 1988 on the levels of the fees to be charged for health inspections and controls of fresh meat pursuant to Directive 85/73/EEC (OJ 1988 L 194, p. 24). Article 3(1) of the Decision provides that '[t]he part of the fees covering the controls and inspections connected with the cutting operations referred to in Article 3(1)(B) of Directive 64/433/EEC... shall be fixed at a standard rate of 3 ECU/tonne of unboned meat intended for cutting'. Paragraph 4 of the same Article provides that '[w]here the cutting operations are carried out in the establishment where the meat is obtained, the amounts laid down in paragraph 1 may be reduced by up to 50%.'

26 — The fifth recital is formulated as follows: '[w]hereas it is possible that slaughtering, cutting and storage operations may take place in separate plants; whereas, as a result, in such cases, not all the health inspections and controls to be covered by the fees under Directives 64/433/EEC... are consequently carried out in the slaughterhouse; whereas,... these exceptional cases should be covered by providing for fees to be charged in proportion to the different health controls and inspections to be carried out'.

down in paragraph 2 of the same Chapter, which applies only to the fee payable by the cutting plant.

47. This analysis is corroborated by the rules relating to collection of these fees. We have seen that Chapter I(6) in Annex A to Directive 85/73 provides that the fees connected with slaughtering, cutting and storage operations must be collected, respectively, at the slaughterhouse, at the cutting plant and at the cold store. According to the second sentence of paragraph 6(a), ownership of the slaughterhouse, the cutting plant and the cold store must be taken into account solely in order to determine the person responsible for paying the fee at each of these collection points. It does not, however, constitute a relevant criterion for determining whether the Member States may charge an overall fee. Paragraph 6(b) provides that, 'in the case of an establishment carrying out more than one operation and of chains of production covering more than one operation, Member States may charge a total aggregate fee including the various amounts simultaneously and at a single location'. The legislature has not, therefore, made the charging of an overall fee subject to the condition that the slaughterhouse, the cutting plant and the cold store have the same operator.

48. The broad logic of Directive 85/73 as I have described it is confirmed by that of Directive 64/433.

(b) The broad logic of Directive 64/433

49. In Directive 64/433, the Community legislature has defined the health requirements which must be observed for slaughtering, cutting and storage operations as if they were autonomous operations. In particular, it requires that each of them shall be carried out in an approved establishment and under the responsibility of, respectively, the slaughterhouse operator, the cutting plant operator or the cold store operator, or of its owner or his representative. [27] It stipulates that each establishment shall receive a veterinary approval number. [28] Finally, it provides that this approval should be subject, firstly, to the conditions common to all the types of establishments and, secondly, to the conditions specific to slaughterhouses, cutting plants and cold stores in particular. [29]

50. In my opinion, it is apparent from these factors that an establishment belonging to the same owner and in which slaughtering and cutting operations are carried out must have two approvals, one for the slaughterhouse and the other for the cutting plant. [30] Furthermore, each of these approvals may be temporarily suspended or withdrawn if the hygiene rules are infringed, independently of the other.

27 — Article 3(1)(A)(a) and (B)(a).

28 — Article 10.

29 — Chapters I to IV in Annex I.

30 — Chapters I to III in Annex I, Annex IV and Annex V to Directive 64/433.

51. Similarly, as the Commission set out very clearly at the hearing, and contrary to what the Swedish Government has maintained, the view that a slaughterhouse and a cutting plant belonging to different owners constitute the same establishment does not call into question the fact that each of them has its own approval. Nor is it liable to entail a risk of confusion as to the person responsible for observing the requirements of Directive 64/433 concerning health in the slaughterhouse and in the cutting plant, since the slaughtering and cutting operations will have to be, respectively, the responsibility of the operator or of the owner of the slaughterhouse and of the cutting plant concerned.

52. I therefore infer from all these factors that the Community legislature did not want the application of the health measures provided for by Directive 64/433 and the rules laid down for the financing of these measures to depend in one way or another on whether the slaughterhouse and the cutting plant concerned belong to the same natural or legal person.

53. Finally, this analysis seems to me to accord with the objectives of the relevant Community legislation.

3. The objectives of the relevant Community legislation

54. Directive 85/73 has the objective of avoiding the distortions of competition that could be occasioned by the collection of differing fees in the different Member States. In particular, the Community legislature wanted to avoid a Member State giving an advantage to its national producers' marketing within the Community by paying all or part of the expenses occasioned by the implementation of inspections and of harmonised controls. To that end, the Community legislature fixed standard amounts for the expenses relating to the inspections and controls connected with slaughtering and cutting operations. It also stipulated that the possibility of exceptionally reducing these amounts should be subject to certain conditions. Therefore, the pursuit of the objective referred to requires that the criteria which serve to determine whether these conditions are met should not be left to the discretion of each Member State.

55. Consequently, the concept of 'establishment', which is referred to several times in Directive 85/73 and which determines the application of Chapter 1(2) in Annex A to this Directive, must not depend on the specific linguistic or legal features of the different Member States, but must assume a meaning in Community law. This consideration constitutes an additional reason to apply the definition of 'establishment' contained in Article 2(k) of Directive 64/433. Therefore, it would be illogical to make this

concept dependent on that of 'ownership', which, under Article 295 EC, would be a matter for the legislative competence of the Member States.

56. In other words, the objective pursued by Directive 85/73 would be undermined if, in application of the Directive, the concept of 'establishment' were to depend on the ownership of the slaughterhouse and of the cutting plant concerned, since the issue of whether these two establishments belong to the same natural or legal person could, given the same factual situation, lead to differing responses in different Member States. [31]

57. Finally, contrary to what the Swedish Government maintains, the outcome to which this analysis leads does not jeopardise the 'traceability' of meat. This 'traceability' requirement already underpinned certain requirements of Directive 64/433, such as the communication of the list of establishments approved by a Member State to other States in the Community and to the Commission and the marking of the veterinary approval number on the documents which accompany meat being marketed, and its full significance has been reinforced by the Community legislature. [32]

These requirements enable the different stages of meat processing to be followed and checks to be made that they are being carried out in an establishment which observes Community health provisions. As I have stated above, to take the view that an approved slaughterhouse and cutting plant belonging to different natural or legal persons constitute the same establishment within the meaning of Chapter I(2) in Annex A to Directive 85/73 does not call into question the fact that each of them has its own approval and person responsible.

58. Having regard to those considerations, the sole condition required, in my opinion, for the purpose of acquiring the right to the reduction of the fee payable for inspections and controls connected with cutting operations provided for in the second subparagraph of Chapter I(2) in Annex A to Directive 85/73, is that the cutting plant operates in the same building or complex as the slaughterhouse.

59. I infer from this that, contrary to what the Commission maintains, the acquisition of the right to this reduction need not be subject to the condition that the slaughterhouse and the cutting plant are operated in a coordinated manner, such that each of them plans in advance, organises and carries out at least a part of its relevant production stages in step with the relevant part carried out by the other and that some health advantages result from this.

31 — In support of this, with regard to exemption from value added tax on provision of medical care in the exercise of the medical and paramedical professions, see the judgment in Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 30.

32 — See the Action Plan 'From farm to table', set out in the Commission's White Paper on Food Safety of 12 January 2000 [COM (1999) 719 final] and Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ 2000 L 204, p. 1).

60. Furthermore, this condition does not relate to the scope of the disputed reduction. The reduction in question, unlike that provided for in Chapter I(5) in Annex A to Directive 85/73, relates only to the fee payable for controls and inspections connected with cutting operations. Therefore, it benefits primarily only the operator or the owner of the cutting plant. Thus, it would not be logical to make acquisition of the right to such a reduction subject to the condition that the slaughterhouse plans in advance, organises and carries out all or part of its activity in step with the benefits achieved by the cutting plant. Coordination of the cutting plant's activities with those of the slaughterhouse is, in my opinion, one of the criteria which serve to determine the size of the reduction to be granted, which are covered by the second question referred for a preliminary ruling.

61. Having regard to all these factors, I propose that the Court reply to the first question referred for a preliminary ruling that the second subparagraph of Chapter I(2) in Annex A to Directive 85/73 must be interpreted in the sense that this provision applies equally when the cutting plant and the establishment where the meat is obtained do not belong to the same natural or legal person.

B — *The second question*

62. This question has three parts. In the first part, the referring court is asking what the criteria are which the fee-levying authority must take into account in fixing the amount of the reduction provided for in the second subparagraph of Chapter I(2) in Annex A to Directive 85/73.

63. It should be borne in mind that, under the terms of the second subparagraph of Chapter I(2) in Annex A to Directive 85/73, the authority levying the fee for inspections and controls connected with cutting operations may grant a reduction in the fee by up to 55% of the amounts laid down in the first subparagraph. The words 'by up to 55%' mean than this reduction may vary within the limit of the stated percentage.

64. It is undisputed that the contested provision does not precisely define the criteria which must be taken into account in determining the value of this reduction. However, these criteria may be identified, in my opinion, from the broad logic of Directives 85/73 and 64/433. Since these Directives are provisions of Community law, it is for the Court to clarify to the referring court what these criteria are, in the context of the cooperation established by Article 177 of the EC Treaty (now Article 234 EC), in order to ensure the uniform application of this law. Failing that, the effectiveness of Directive 85/73 could be undermined. If the way in which this reduction is calculated were left to the discretionary determination of each Member State, it is possible that, while remaining within the limit of 55% fixed by

the legislation, the reduction would lead to a fee lower than the actual costs of the inspection and control measures in the cutting plant concerned. Such a situation could have the effect of giving an improper advantage to marketing within the Community of meat cut in that establishment.

65. The Commission proposes that the Court's reply to the referring court should be that the extent of the disputed reduction must be mainly based on the degree of integration of the parts of the establishment concerned, on the health advantages to be gained from this and, in so far as it does not already come into the calculation of the fee, on lessening the workload for the organisations which effect the controls.

66. This response does not seem to me to be satisfactory, because the criteria adopted are not precise enough and do not allow a clear understanding of how the disputed reduction may be calculated. Like Färber, I consider that savings on the costs of staff in charge of the controls and inspections constitute one of the relevant criteria. I base this analysis on the following factors.

67. First of all, it must be borne in mind that Community fees are fixed so as to cover all the costs generated by health controls and inspections. According to Directive 85/73, Article 5, these costs are made up, firstly, of staff costs arising from the salaries of members of the inspection service and from the corresponding social security costs and, secondly, of administrative costs incurred in carrying out controls and inspections, which may include the expenditure required for in-service training of inspectors. I infer from this that the reduction in the fee for inspections and controls connected with cutting operations must logically depend on the size of the decrease in staff costs and administrative costs connected with these controls and inspections when the cutting plant is close to the slaughterhouse.

68. Next, it cannot be disputed that such proximity is very likely to reduce these costs. Thus, we have seen that Directive 64/433 provides that the qualification required to effect the controls and inspections connected, respectively, with slaughtering and cutting operations is identical, since, in both cases, these inspections and these controls must be carried out by an official veterinarian. [33] Furthermore, these controls and these inspections must be carried out on the spot, since they relate to the slaughterhouse and cutting plant premises and equipment as well as to the meat found there. Finally, the health inspections and controls provided for in regard to cutting duplicate to some extent those provided for in regard to slaughtering. The veterinarian concerned must, in regard to slaughtering, carry out a

33 — According to Directive 64/433, Article 2(g), 'official veterinarian' means 'the veterinarian designated by the competent central authority of the Member State'.

thorough post-mortem check of all parts of the animal in order to verify that the meat is fit for human consumption. In regard to cutting, it is again required, under Chapter X of Annex I to Directive 64/433, that control and health inspection of fresh meat be carried out before cutting operations.

69. It follows that, when the cutting plant is close to the slaughterhouse, the inspections and controls in respect of cutting operations may be carried out by the veterinarian who dealt with the health measures in respect of slaughtering. Furthermore, their progress may be made a great deal easier or quicker if the organisation of the cutting plant's activity in relation to that of the slaughterhouse allows this veterinarian to follow the meat from its post-mortem inspection to its cutting. The effect of this is a saving of time and, therefore, a decrease in the staff costs and administrative costs connected with inspection and control measures, such as, *inter alia*, delivery costs.

70. Finally, these savings on staff costs and administrative expenditure may be subject to an assessment to allow determination of the value of the reduction being granted by the fee-levying authority. This assessment necessitates knowing, firstly, the staff costs and the administrative expenditure generated by carrying out inspections and controls in the cutting plant and, secondly, what these costs and expenses would be if this plant were not close to the slaughterhouse. Determining these two sets of data does not seem to me inevitably to pose real difficulties. For the first, it is enough to summarise the time spent by the inspection services on health measures in the cutting plant and the administrative expenditure that these measures have generated over a given period. The second may be determined from the staff costs and the administrative expenditure generated by the inspections and controls carried out in one or more cutting plants which are not close to a slaughterhouse.

71. According to my analysis, the disputed reduction must be granted in step with the decrease in staff costs and administrative expenditure connected with the inspections and controls in the cutting plant concerned, and this is borne out by the conditions set out in Chapter I(5) of Annex A to Directive 85/73. As I have already stated, these conditions, which govern the Member States' right to reduce exceptionally the standard amounts fixed in Chapter I(1) and (2)(a) of that Annex, relate *inter alia* to salary costs and to advance planning of deployment of the inspection services. It is true that this provision does not specify the criteria under which the reduction in standard amounts must be calculated, since it indicates that Member States may waive these amounts up to a maximum of the actual inspection costs, as long as this reduction does not exceed 55% of these amounts. However, it seems to me that, in all logic, the criteria used in calculating the reduction thus provided for should correspond to the conditions for acquisition of the right to the reduction.

72. Having regard to these factors, I take the view that the disputed reduction should be proportional to the decrease, resulting from the proximity of the slaughterhouse, in staff costs and administrative expenditure connected with the inspections and controls on cutting operations.

73. In the second part of the second question referred for a preliminary ruling, the referring court is asking whether the saving of time for the staff carrying out the inspections and controls may be taken into account when the fee is fixed at the standard amount of ECU 3 per tonne on meat entering the cutting plant.

74. Like both the intervening parties who have submitted observations on the second question referred for a preliminary ruling, I consider that the disputed reduction is applicable in this situation and on the basis of the same criteria. It is apparent from the wording of the second subparagraph of Chapter I(2) in Annex A to Directive 85/73 that this reduction may relate 'to the amounts laid down in the first subparagraph'. It follows that this reduction is intended to apply in the same conditions not only to the actual 'costs of inspection per hour worked', laid down in this first subparagraph of paragraph (2)(b), where these costs are fixed by the competent authorities for the whole territory of the Member State or part thereof, but also to the standard amount of ECU 3 per tonne, laid down in the first subparagraph of paragraph (2)(a).

75. In the third part of the second question referred for a preliminary ruling, the referring court is asking whether, if Question 1 is answered in the affirmative, the fact that the slaughterhouse and the cutting plant in the same building belong to the same operator may nevertheless be taken into account for the reduction of the fee and may justify a larger reduction than if they belong to different operators.

76. Just as the fact that a slaughterhouse and a cutting plant belong to the same operator is not a condition for the acquisition of the right to the disputed reduction, so it need not, I think, be taken into account in assessing this reduction.

77. The fact that the slaughterhouse and the cutting plant have the same operator may not in itself be capable of reducing the costs described in Directive 85/73, Article 5. It is true that ownership of the two establishments may allow the operator to organise them to function in such a way that the progress of the inspections and controls connected with the cutting operations is made much easier and quicker. However, this situation will be taken into account by the competent authorities through the decrease in staff costs and administrative expenditure connected to these inspections and to these controls.

78. Having regard to these considerations, I propose that the Court's reply to the second question referred for a preliminary ruling should be that the disputed reduction must be proportional to the saving in staff costs and administrative expenditure resulting from the proximity of the cutting plant and the slaughterhouse, at the time the controls and inspections connected to the cutting operations are carried out.

V — Conclusion

79. Having regard to all these factors, I propose that the Court reply to the questions referred by the Verwaltungsgericht Neustadt an der Weinstraße as follows:

(1) The proper construction of the second subparagraph of Chapter I(2) in Annex A to Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls laid down by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC, as amended and consolidated by Council Directive 96/43/EC of 26 June 1996 in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC, is that this provision applies equally when the cutting plant and the establishment where the meat is obtained do not belong to the same natural or legal person.

(2) The reduction provided for by this provision must be proportional to the saving in staff costs and administrative expenditure made as a result of the proximity of the cutting plant and the slaughterhouse at the time the controls and inspections connected to the cutting operations are carried out.