Reports of Cases

OPINION OF ADVOCATE GENERAL
PIKAMÄE
delivered on 18 September 2019[1]

Joined Cases C-477/18 and C-478/18

Exportslachterij J. Gosschalk en Zn. BV (C-477/18)
and
Compaxo Vlees Zevenaar BV,
Ekro BV,
Vion Apeldoorn BV,
Vitelco BV (C-478/18)
v
Minister van Landbouw, Natuur en Voedselkwaliteit

(Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands))

(References for a preliminary ruling — Regulation (EC) No 882/2004 — Official controls on feed and food — Financing — Fees that may be collected by Member States to cover the costs occasioned by official controls — Annex VI — Concept of 'staff involved in the official controls' — Concept of 'associated costs' — Article 27 — Costs occasioned by official controls — Costs borne by the competent authorities — Quarter-hour periods reserved but not worked — Average rates — Buffer reserves built up within a private company which can be used to pay the training costs of staff who actually perform the controls in the event of an epidemic)

1. In the requests for a preliminary ruling forming the subject of this Opinion, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands) asks the Court inter alia about the interpretation of Article 27(1) and (4) of, and points 1 and 2 of Annex VI to, Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.[2]

2. Broadly speaking, the Court is asked to rule on the conditions and the limits which Regulation No 882/2004 imposes on the right of the national authorities competent for the official veterinary checks to require the slaughterhouses, in which those checks are performed, to pay fees intended to cover the costs borne in order to perform those checks.

3. In that context, the Court will have to determine, inter alia, whether the competent national authorities are entitled to pass on to the slaughterhouses the salaries of and the costs for staff other than the staff who actually perform the official controls, the inspection times which the slaughterhouse has determined in advance and reserved with the competent authority but which were not worked, and the build-up of buffer reserves within a private company which provides the competent authority with official auxiliaries for those controls.

1 Original language: French.

2 OJ 2004 L 191, p. 1 (corrigendum).

I. Legal context

A. European Union law

1. Regulation No 882/2004

4. Recitals 11 to 14 and 32 of Regulation No 882/2004 state:

‘(11) The competent authorities for performing official controls should meet a number of operational criteria so as to ensure their impartiality and effectiveness. They should have a sufficient number of suitably qualified and experienced staff and possess adequate facilities and equipment to carry out their duties properly.

(12) The official controls should be carried out using appropriate techniques developed for that purpose, including routine surveillance checks and more intensive controls such as inspections, verifications, audits, sampling and the testing of samples. The correct implementation of those techniques requires appropriate training of the staff performing official controls. Training is also required in order to ensure that the competent authorities take decisions in a uniform way, in particular with regard to the implementation of the Hazard Analysis and Critical Control Points (HACCP) principles.

(13) The frequency of official controls should be regular and proportionate to the risk …

(14) Official controls should take place on the basis of documented procedures so as to ensure that these controls are carried out uniformly and are of a consistently high quality.

…

(32) Adequate financial resources should be available for organising official controls. Hence, the competent authorities of the Member States should be able to levy the fees or charges to cover the costs incurred through official controls. In the process, the competent authorities of the Member States will be at liberty to establish the fees and charges as flat-rate amounts based on the costs incurred and taking the specific situation of the establishments into account. Where fees are imposed on operators, common principles should apply. It is appropriate therefore to lay down the criteria for setting the level of inspection fees. …’

5. Article 2(1) of that regulation defines an ‘official control’ as ‘any form of control that the competent authority or the Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules’.

6. Article 3 of that regulation, which is entitled ‘General obligations with regard to the organisation of official controls’, provides in paragraph 1 inter alia:

‘Member States shall ensure that official controls are carried out regularly, on a risk basis and with appropriate frequency, so as to achieve the objectives of this Regulation …’

7. Article 4 of that regulation, which is entitled ‘Designation of competent authorities and operational criteria’, provides, in paragraph 2:

‘The competent authorities shall ensure:

…

(c) that they have, or have access to, an adequate laboratory capacity for testing and a sufficient number of suitably qualified and experienced staff so that official controls and control duties can be carried out efficiently and effectively;

(d) that they have appropriate and properly maintained facilities and equipment to ensure that staff can perform official controls efficiently and effectively;

…'

8. Devoted to the 'Staff performing official controls', Article 6 of Regulation No 882/2004 provides:

'The competent authority shall ensure that all of its staff performing official controls:

(a) receive, for their area of competence, appropriate training enabling them to undertake their duties competently and to carry out official controls in a consistent manner. This training shall cover as appropriate the areas referred to in Annex II, Chapter I;

(b) keep up to date in their area of competence and receive regular additional training as necessary; and

(c) have aptitude for multidisciplinary cooperation.'

9. Title II of that regulation, which sets out the rules concerning the 'Official controls by Member States', contains inter alia a Chapter VI on the 'Financing of official controls', which consists of Articles 26 to 29.

10. Under Article 26 of the regulation, which is entitled 'General principle':

'Member States shall ensure that adequate financial resources are available to provide the necessary staff and other resources for official controls by whatever means considered appropriate, including through general taxation or by establishing fees or charges.'

11. Article 27 of that regulation, which is entitled 'Fees or charges', provides:

'1. Member States may collect fees or charges to cover the costs occasioned by official controls.

…

4. Fees collected for the purposes of official controls in accordance with paragraph 1 or 2:

(a) shall not be higher than the costs borne by the responsible competent authorities in relation to the items listed in Annex VI; and

(b) may be fixed at a flat-rate on the basis of the costs borne by the competent authorities over a given period of time or, where applicable, at the amounts fixed in Annex IV, section B or in Annex V, section B.

…

10. Without prejudice to the costs deriving from the expenses referred to in Article 28, Member States shall not collect any fees other than those referred to in this Article for the implementation of this Regulation.

…'

12. Entitled 'Criteria to be taken into consideration for the calculation of fees', Annex VI to that regulation refers to:

'1. The salaries of the staff involved in the official controls;

2. The costs for the staff involved in the official controls, including facilities, tools, equipment, training, travel and associated costs;

3. The laboratory analysis and sampling costs.'

2. Regulation (EC) No 854/2004

13. Article 2 of Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption,[3] which is entitled 'Definitions', provides:

'For the purposes of this Regulation, the following definitions shall apply:

…

(c) "competent authority" means the central authority of a Member State competent to carry out veterinary checks or any authority to which it has delegated that competence;

…

(f) "official veterinarian" means a veterinarian qualified, in accordance with this Regulation, to act in such a capacity and appointed by the competent authority;

…

(h) "official auxiliary" means a person qualified, in accordance with this Regulation, to act in such a capacity, appointed by the competent authority and working under the authority and responsibility of an official veterinarian;

…'

B. Netherlands law

14. Decree No 2164 of the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality, 'the Minister') of 4 May 2009 sets the fees for the work carried out by the Nederlandse Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority, 'NVWA') and the Algemene Inspectie (General Inspectorate Service) ('the Decree on NVWA rates'). The version of that decree applicable in the cases in the main proceedings is that which was in force from 3 April 2013 to 28 February 2014.

3 OJ 2004 L 226, p. 83 (corrigendum).

II. Facts at the origin of the disputes, main proceedings and questions referred for a preliminary ruling

A. Case C-477/18

15. Exportslachterij J. Gosschalk en Zn.BV ('Gosschalk') operates a slaughterhouse where pork meat and beef meat are processed and placed on the market. Accordingly, it was subject to official controls intended to ensure that it was complying with feed and food legislation and animal health and animal welfare rules, as governed by Regulation No 882/2004 and by the Decree on NVWA rates.

16. Those controls are carried out inter alia in the course of ante-mortem and post-mortem inspections by, first, official veterinarians and auxiliaries working at NVWA, which is the designated competent authority, and, second, by contracted official auxiliaries from the private company Kwaliteitskeuring Dierlijke Sector (Quality Inspection within the Animal Sector, 'KDS').

17. In order to cover the costs incurred by that inspection work, the Ministry collects fees from the slaughterhouses pursuant to Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto, and in accordance with the Decree on NVWA rates.

18. The process of assigning the number of official veterinarians and official auxiliaries to the inspection work and the way in which those fees are collected may be summarised as follows. The slaughterhouse makes a request to NVWA specifying the inspection work to be performed, the number of official veterinarians and official auxiliaries required, and the time needed, expressed in quarter-hour periods, to carry out that work.

19. Once the inspection work has been carried out, the Minister charges the slaughterhouse the related amounts owed. For each official veterinarian and official auxiliary who carried out inspection work, the slaughterhouse is required to pay a base rate plus an amount for each quarter-hour devoted to that work. If the inspection work takes longer than planned, the slaughterhouse must pay an additional amount for each extra quarter-hour. However, if the inspection work takes less time than planned, the slaughterhouse is nevertheless required to pay the amount corresponding to the quarter-hour periods requested but not worked.

20. In the case in the main proceedings, Gosschalk received various invoices charging it fees intended to cover inspection work carried out at its premises by NVWA and KDS between 2013 and 2016. Taking the view that rules governing the collection of those fees were contrary to the judgment in *Kødbranchens Fællesråd*,[4] Gosschalk submitted objections to the Minister and, following the dismissal of those objections, brought the matter before the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry).

21. The referring court considers that it is able to annul those decisions because, inter alia, they lack a sufficient statement of reasons.

22. However, since, on the one hand, the Minister will be called upon to give due effect to the annulment of those decisions and, on the other, over 400 appeals are currently pending before it, the referring court considers it to be in the interest of the judicious and effective resolution of those disputes to put certain questions to the Court for a preliminary ruling, particularly since the parties disagree on the interpretation of Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto.

4 Judgment of 17 March 2016 (C-112/15, EU:C:2016:185).

23. That difference of opinion relates, in the first place, to the definition of the concept of 'staff involved in the official controls'. The referring court observes first of all that Regulation No 882/2004 does not identify the scope of that concept, which is contained in points 1 and 2 of Annex VI to the Regulation. Contrary to Gosschalk's claim, the referring court takes the view that it cannot be inferred from the judgment in *Kødbranchens Fællesråd*[5] that that concept covers only the official veterinarians and official auxiliaries who actually perform the control. However, it also questions the broader interpretation given to that concept by the Minister, namely that administrative staff and support staff may also be categorised as the staff referred to in Annex VI, such that the salaries of and the costs for such staff may be charged to the slaughterhouses.

24. In the second place, the parties to the main proceedings also disagree as to how the quarter-hour periods requested by the slaughterhouses but not worked should be treated. Whilst Gosschalk takes the view that the related costs should not be charged to the slaughterhouses because they have not actually been incurred, the Minister contends that the slaughterhouse is responsible for the accuracy of the number of quarter-hour periods declared necessary for the inspection work and that the work scheduling for NVWA officers is strict.

25. In the third place, the parties to the main proceedings disagree as to the interpretation of the rates for contracted veterinarians. In this regard, Gosschalk notes that the NWVA uses official veterinarians provided by temporary employment agencies to carry out inspection work and pays them fees which are significantly lower than those charged to the slaughterhouses, with that practice allowing them to generate almost EUR 8 500 000 in profits. In addition, if fewer quarter-hour periods are worked than requested, the contracted official auxiliaries from KDS or the temporary employment agencies are paid only for the number of quarter-hour periods actually worked, even though the slaughterhouse is also charged the amount corresponding to the quarter-hour periods requested but not worked. The Minister contends that that practice is justified by the requirement to keep the rates the same for all parties. Furthermore, according to the Minister, the surplus generated is used to cover NVWA's overhead costs.

26. In the fourth place, Gosschalk observes that the rates include a component which is used to build up buffer reserves within KDS in order to meet any costs that have to be incurred in the event of a crisis. That said, there is no direct link between the buffer reserves and the inspection work actually carried out, such that the costs incurred in that regard cannot be deemed to be connected with the staff actually responsible for carrying out the inspection work. According to the Minister, the underlying reason for building up the buffer reserves is to guarantee that, in the event of unforeseen circumstances, such as an epidemic justifying the suspension of animal slaughter for a lengthy period, the salaries of and the costs for staff as well as the training costs may continue to be paid without having to lay off staff, such that the inspections may resume immediately once such a crisis has ended. The buffer reserves therefore mean that amounts required to cover costs actually incurred in order to perform the official controls can be mobilised.[6]

27. Furthermore, the referring court observes that, in a decision adopted on 14 October 2010, it has previously found those buffer reserves to be compatible with Article 27 of Regulation No 882/2004. However, it asks about the criteria used to determine the maximum amount of the reserves and the necessary impact of the fact that the reserves are built up within a private company (KDS) used by NVWA to source official auxiliaries since that loss of income is meant to be in itself part of the normal risks faced by an undertaking. As a result of all those factors, the referring court is prompted to question the relevance of its decision of 14 October 2010.

5 Judgment of 17 March 2016 (C-112/15, EU:C:2016:185).

6 The order for reference states that those buffer reserves amount to half of KDS' average turnover over the past two years, plus an amount of EUR 500 000.

28. In that context, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Should the phrases "the staff involved in the official controls" in point 1 of Annex VI to Regulation [No 882/2004] and "the staff involved in [the performance of] the official controls" in point 2 of [that annex] be interpreted as meaning that the (salary) costs that may be taken into account when calculating the fees for official controls may only be the (salary) costs of official veterinarians and official auxiliaries who perform the official inspections, or can they also include the (salary) costs of other staff employed by [NVWA] or by [KDS]?

(2) If the answer to Question 1 is that the phrases "the staff involved in the official controls" in point 1 of Annex VI to Regulation No 882/2004 and "the staff involved in [the performance of] the official controls" in point 2 of [that annex] may also include the (salary) costs of other staff employed by [NVWA] or KDS, under what circumstances and within which limits is there then still such a relationship between the costs incurred for those other staff and the official controls, that the reimbursement of those (salary) costs can be based on Article 27(4) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto?

(3) (a) Should the provisions of Article 27(4)(a) of Regulation No 882/2004, and of points 1 and 2 of Annex VI thereto, be interpreted as precluding slaughterhouses from being charged fees in relation to official controls for quarter-hour periods requested by such slaughterhouses from the competent authorities but not actually worked?

(b) Does the answer to Question 3(a) also apply in the case of official veterinarians contracted by the competent authority who do not receive any salary for quarter-hour periods which the slaughterhouse has in fact requested from the competent authority where no work related to official controls was in fact carried out during those quarter hours, and the amount which the slaughterhouse is charged for the number of quarter-hour periods applied for but not worked is for the benefit of the general overhead cost structure of the competent authority?

(4) Should the provisions of Article 27(4)(a) of Regulation No 882/2004, and of points 1 and 2 of Annex VI thereto be interpreted as Article 27(4) precludes the slaughterhouses from being charged an average rate for the work performed for the purposes of official inspections carried out by veterinarians employed by NVWA and by (lower-salaried) contracted veterinary surgeons, so that slaughterhouses are charged a higher rate than is paid to the contracted veterinarians?

(5) Should the provisions of Article 26 and Article 27(4)(a) of Regulation No 882/2004, and of points 1 and 2 of Annex VI thereto be interpreted as meaning that, when calculating the fees for official controls, costs may be taken into account for the purposes of building up the buffer reserves of a private company (KDS) which the competent authority uses to source official auxiliaries, reserves which, in the event of a crisis, can be used to pay the salary and training costs of staff who actually perform the official controls as well as of staff who make it possible to carry out the official controls?

(6) If the answer to the [previous question] is in the affirmative: what is the maximum amount that can be accumulated in such buffer reserves and what is the length of the period which may be covered by such reserves?'

B. Case C-478/18

29. By invoices issued between October 2016 and February 2017, the Minister sought payment from the four applicants in the main proceedings, namely Compaxo Vlees Zevenaar BV, Ekro BV, Vion Apeldoorn BV and Vitelco BV ('the applicants in the main proceedings') of a sum, amounting to between EUR 15 422.35 and EUR 49 628.22, intended to cover the costs associated with the inspection work to which they were subject.

30. Following the dismissal of the objections made against the invoices which had been addressed to them, the applicants in the main proceedings brought the matter before the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry).

31. The referring court states, first of all, that it intends to annul the contested decisions on grounds which, in its view, do not raise any difficulties in the interpretation of EU law. However, it takes the view, for the same reasons as those put forward in the order for reference in Case C-477/18,[7] that it is expedient to put questions to the Court in relation to other aspects of the dispute which raise reasonable doubts as to the interpretation of Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto.

32. Arguing that it follows from the judgment in *Kødbranchens Fællesråd*[8] that account may be taken only of the salaries of and costs for people who actually perform controls, the applicants in the main proceedings submit that some costs, such as costs relating to premises, material overhead costs, depreciation costs, office expenses and certain other costs cannot be regarded as costs for the purposes of points 1 and 2 of Annex VI to Regulation No 882/2004. The applicants in the main proceedings observe, inter alia, that it is not clear to what the item 'inspection work' refers. In that regard, the Minister states in response that the calculation of the hourly rate taken into account in that item includes technical administration and planning costs which must be regarded as being 'salaries and other costs of the staff involved in the control' since the inspection work cannot take place in their absence.

33. In addition, the applicants in the main proceedings suggest that questions be put to the Court for a preliminary ruling in order to establish whether other costs related to certain items, such as the information and communications technology implementation service, specific costs (work clothes), home-to-work travel costs, subcontracted labour costs and other staff costs may be regarded as being incurred by persons actually involved in the performance of the official controls.

34. In that context, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Should the phrases "the staff involved in the official controls" in point 1 of Annex VI to Regulation [No 882/2004] and "the staff involved in [the performance of] the official controls" in point 2 of [that annex] be interpreted as meaning that the (salary) costs that may be taken into account when calculating the fees for official controls may only be the (salary) costs of official veterinarians and official auxiliaries who perform the official inspections, or can they also include the (salary) costs of other staff employed by [NVWA] or by [KDS]?

(2) If the answer to Question 1 is that the phrases "the staff involved in the official controls" in point 1 of Annex VI to Regulation No 882/2004 and "the staff involved in [the performance of] the official controls" in point 2 of [that annex] may also include the (salary) costs of other staff

7 See point 22 of this Opinion.

8 Judgment of 17 March 2016 (C-112/15, EU:C:2016:185).

employed by [NVWA] or KDS, under what circumstances and within which limits is there then still such a relationship between the costs incurred for those other staff and the official controls, that the reimbursement of those (salary) costs can be based on Article 27(4) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto?

(3) Should the provisions of Article 27(4)(a) of Regulation No 882/2004, and of points 1 and 2 of Annex VI thereto, be interpreted as precluding slaughterhouses from being charged fees in relation to official controls for quarter-hour periods requested by such slaughterhouses from the competent authorities but not actually worked?'

C. The procedure before the Court

35. By decision of the President of the Court of 27 August 2018, Cases C-477/18 and C-478/18 were joined for the purposes of the oral procedure and of the judgment.

36. Written observations have been submitted, in Case C-477/18, by Gosschalk, the Netherlands, Danish, Hungarian, Swedish and United Kingdom Governments and by the European Commission and, in Case C-478/18, by the applicants in the main proceeedings and the Commission.

37. At the joint hearing for the two now joined cases, which was held on 4 July 2019, oral argument was presented by Gosschalk, the Netherlands, Danish and United Kingdom Governments, and the Commission.

III. Analysis

38. As a preliminary point, I note that the doubts raised by the referring court concern the compatibility with Regulation No 882/2004 of NVWA's administrative practice as regards charging the amount of the costs borne for the purposes of the official controls, and relate both to the scope of the costs included in the calculation of the average rate and the account taken of the costs associated with the quarter-hour periods of official controls reserved by the slaughterhouses. It is appropriate, in my view, to make some brief comments on the legislation at issue.

39. Under Article 1(a) of Regulation No 882/2004, the Regulation seeks inter alia to prevent, eliminate or reduce to acceptable levels risks to human and animal health, either directly or through the environment. As expressly stated in recital 6 of that regulation, that objective is achieved by Member States enforcing the relevant legislation and verifying compliance with that legislation by organising official controls.

40. In that context, Regulation No 882/2004 establishes a system for the financing of the official controls with a view to avoiding differences which may give rise to distortions of competition between private operators, but the harmonisation that it brings about is — it must be pointed out — only limited. All the provisions of which the referring court requests the interpretation, namely Articles 26 and 27 of, as well as points 1 and 2 of Annex VI to, the Regulation leave, in my view, broad discretion to the Member States, who remain free to choose the source of financing of the official controls (general taxation, fees or charges), the criteria for the calculation of fees (actual costs borne by the competent authority, flat rates or minimum prices) and the costs taken into consideration for the purposes of that calculation (amongst those listed in Annex VI); however, as I will go on to explain,[9] that discretion is governed by certain criteria enshrined in those same provisions.

9 See points 67 and 68 of this Opinion.

41. It is in the light of those factors that the Court will, in my view, have to answer the questions submitted by the referring court.

A. The first and second questions in Cases C-477/18 and C-478/18

42. By its first question, the referring court asks, in essence, whether the expressions 'staff involved in the official controls' in point 1 of Annex VI to Regulation No 882/2004 and 'staff involved in [the performance of[10]] the official controls' in point 2 of that annex are to be interpreted as meaning that the salaries and costs that may be taken into account in the calculation of the fees for the official controls include only the salaries of and costs for the official veterinarians and official auxiliaries who actually perform the official inspections or also include the salaries of and the costs for other staff employed by NVWA or by KDS. If those expressions were to be regarded as also covering the salaries of and costs for that other staff, the referring court is essentially asking, by its second question in each of the two joined cases, under which circumstances and within which limits the link existing between the official controls and the costs incurred by that staff — whose activities contribute to the performance of the inspection work of the official controls — may be regarded as being such as to allow those costs to be charged to the slaughterhouses pursuant to Article 27(4) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto.

1. The scope of the expression 'staff involved in the official controls'

43. With regard to the first question, I would point out from the outset that it is apparent from the orders for reference that the reference to 'the other staff employed by NVWA or KDS' is understood by the referring court as covering administrative and support staff, namely the staff whose contribution means that the public system of official controls can be established, supported and maintained. It is therefore the potential inclusion of the salary of and costs for those categories of staff in the overall costs which may be charged to the slaughterhouses which forms the subject matter of this first question.

44. That said, I note that points 1 and 2 of Annex VI to Regulation No 882/2004 do not themselves provide any indication of the degree of involvement in the official controls which would allow the staff of the competent authorities to be classified as 'staff involved in the official controls' or 'staff involved in the performance of the official controls'.

45. Since that annex provides no such clarification, the scope of those expressions must be determined by applying the Court's traditional methods of interpretation.

(a) Literal interpretation

46. There is little doubt, in my view, that a literal interpretation of those expressions cannot offer an unequivocal answer to this question.

47. The language versions of Annex VI to Regulation No 882/2004 differ crucially as regards the words used to designate this category of staff, as the Court has already observed in the judgment in *Kødbranchens Fællesråd*.[11] In particular, according to paragraph 34 of that judgment, 'that regulation in the German language version ('des für die amtlichen Kontrollen eingesetzten Personals') and the French version ('personnel chargé des contrôles officiels') refers to the staff who *carry out* the controls, whereas the English language version ('staff involved in the official controls') and the Italian

10 The words in square brackets are inserted to take account of the use of two separate forms of words in the Dutch version of points 1 and 2 of Annex VI to Regulation No 882/2004.

11 Judgment of 17 March 2016 (C-112/15, EU:C:2016:185).

version ('personale partecipante ai controlli ufficiali'), use terms that could relate to a *wider* group of people'.[12] The fact that the Dutch language version appears to refer, like the English and Italian language versions, to the staff who are involved in the official controls ('het personneel dat betrokken is bij de officiële controles' in point 1 and 'het personneel dat betrokken is bij de uitvoering van de officiële controles' in point 2 is of no importance.

48. Given such a disparity between the different language versions, it is necessary to determine the scope of the expressions at issue using a systematic, historical and teleological approach.

(b) Systematic interpretation

49. With regard to the context of Annex VI to Regulation No 882/2004, that is to say the system of rules laid down by that regulation with a view to being able to finance the official veterinary checks, an in-depth analysis of the system of financing for those controls leads me to conclude, as I have already stated, that the expressions 'staff involved in the official controls' and 'staff involved in the performance of the official controls' should be interpreted as encompassing the support staff and the administrative staff who, by relieving the official veterinarians and official auxiliaries of the burden associated with the logistical organisation of the inspection work, allow them to focus on their inspection role in the strict sense.

50. In that regard, I note, in the first place, that the 'cornerstone' of that system, that is to say Article 26 of Regulation No 882/2004, provides that 'Member States shall ensure that adequate financial resources are available to provide the necessary staff and other resources for official controls by whatever means considered appropriate, including through general taxation or by establishing fees or charges'. In addition, if the fees collected from the slaughterhouses must make it possible for provision to be made for the *necessary* staff and other resources to perform those official controls, I do not see how the salaries of and costs for the administrative and support staff could be regarded as incapable of being taken into account when setting those fees, given that the official controls could not be carried out without the contribution of those two categories of staff, during both the planning and the monitoring stages.

51. That interpretation is, it seems to me, supported by a reading of the recitals of Regulation No 882/2004. In particular, I consider it to be revealing that recital 32 sets out that 'adequate financial resources should be available for *organising* official controls'.[13] If the EU legislature has clarified that the system of financing must be established by the Member States to ensure 'the organisation' — and not just the 'performance' — of the official controls, this necessarily means that the aim of that financing is to enable the Member States to establish a *comprehensive system* of official controls which is not limited just to the actual performance of the control duties. It follows logically from that fact that, rather than being restricted to the costs linked to the involvement of the staff responsible for performing those duties, that financing may also cover the salaries of and costs for the administrative and support staff.

52. In the second place, I note that Article 27 of Regulation No 882/2004, for which Annex VI lays down certain detailed rules of application, provides, in its first paragraph, that 'Member States may collect fees or fees to cover the costs *occasioned* by official controls'.[14] Those costs can, in my view, include the salaries of and costs for administrative and support staff. In the same way that it could

12 Emphasis added.

13 Emphasis added.

14 Emphasis added.

not be denied that the costs linked to the activities of an architect, such as planning, organisation or management tasks, are 'occasioned' by the construction of a building, I do not see how it could be claimed that the costs linked to the activities of administrative and support staff are not 'occasioned' by the performance of the official controls.

53. Be that as it may, I take the view that consideration of the history of Regulation No 882/2004 allows any residual doubt to be dispelled as regards the fact that the proposed interpretation of the expressions 'staff involved in the official controls' and 'staff involved in the performance of the official controls' in points 1 and 2 of Annex VI is correct.

(c) Historical interpretation

54. It is therefore necessary to examine the approach adopted by the EU legislature over the years in matters relating to the financing of the official veterinary checks. In order to conduct such an analysis, Regulation No 882/2004 must be placed in the chronological order of the EU legislative acts which have governed such financing, that is to say between Directive 85/73/EEC, as amended by Directive 96/43/EC ('Directive 85/73'),[15] which was in force prior to Regulation No 882/2004, and Regulation (EU) 2017/625,[16] which — admittedly — is already in force but is not yet applicable to the periods covered by the present cases.

55. As far as Directive 85/73 is concerned, I note that it provided, in Articles 1 to 3 thereof, that Member States were required to collect a Community fee to cover the costs *occasioned* by official inspections and controls. In relation to those costs, Article 5(1) of that directive clarified, in exhaustive terms, that they included 'salary costs and social-security costs involved in the inspection service' and 'administrative costs incurred in carrying out controls and inspections, which may include the expenditure required for in-service training of inspectors', with both categories of costs being incurred 'for the controls and inspections referred to in Articles 1, 2 and 3'. In other words, Directive 85/73 expressly provided that Member States were authorised to apply fees in order to cover costs other than just the salaries of and costs for the staff who actually carried out the official controls, which also included the salaries of and costs for the administrative and support staff.

56. The same is true of Regulation 2017/625. This is particularly clear from a reading of recital 66 of that regulation, which states that 'fees or charges should cover, but not exceed, the costs, including overhead costs, incurred by the competent authorities to perform official controls. Overhead costs could include *the costs of the support and organisation necessary for planning and carrying out the official controls*',[17] and of Article 81(a) to (g) of the Regulation, under which the costs on the basis of which those fees or charges are determined include, in so far as they result from the official controls, 'the salaries of the staff, *including support and administrative staff*,[18] involved in the performance of official controls, their social security, pension and insurance costs (under (a)), as well as the 'cost of facilities and equipment' (under (b)), 'the cost of training' — with the exclusion of the training necessary to obtain the qualification necessary to be employed by the competent authorities (under (e)) — and 'the cost of travel' (under (f)) of such staff.

15 Council Directive of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (OJ 1985 L 32, p. 14).

16 Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ 2017 L 95, p. 1).

17 Emphasis added.

18 Emphasis added.

57. In those circumstances, with regard to the transition between Directive 85/73 and Regulation No 882/2004, I take the view that, if the EU legislature had intended to depart from the broad interpretation of the recoverable costs accepted by that directive, it would have expressly stated that fact. In addition, the *travaux préparatoires* for Regulation No 882/2004 contain no trace of any such intention to restrict the scope of the costs that Member States are entitled to take into account in order to finance the official controls.

58. Similarly, as for the transition between Regulation No 882/2004 and Regulation 2017/625, I consider that, even assuming that points 1 and 2 of Annex VI to Regulation No 882/2004 exclude the salaries of and costs for the administrative and support staff from the overall costs which may be recovered by way of fees, the choice made in Regulation 2017/625 to define those costs broadly would necessarily be explained by the intention of the EU legislature to abandon the allegedly restrictive approach adopted in Regulation No 882/2004. Conversely, in its proposal,[19] the Commission referred to an external study evaluating the application of the financing mechanism established by Regulation No 882/2004, according to which those costs are identified in Annex VI to that regulation in a way that leaves far too much room for interpretation to the competent national authorities.[20] In addition, that reference, when assessed in the context of the objectives of Regulation 2017/625 of rationalising and harmonising the existing provisions, leads me to conclude that, far from envisaging a radical change of approach vis-à-vis recoverable costs, that regulation merely seeks to provide clarifications regarding their definition.

59. In conclusion, although the difference in drafting between Regulation No 882/2004 and the directive which preceded it, on the one hand, and the regulation which succeeded it, on the other, remains, in my view, highly surprising, the fact that the EU legislature's approach has remained constant over the course of the legal acts governing the financing of the official controls appears to me to argue quite eloquently in favour of a broader interpretation of the costs of official controls which may be recovered by way of fees by the competent authorities. It would be wrong, in my opinion, to interpret Regulation No 882/2004 as allowing those authorities to recover a more limited set of costs than those which they are authorised to recover under both the directive which preceded it and the regulation which will repeal it, since, first, no provision of Regulation No 882/2004 expressly states that it is adopting a more restrictive approach than Directive 85/73 as regards the recovery of costs and, secondly, no provision of Regulation 2017/625 states that the legislature wishes to return to a broader approach, since — as I have explained above — the *travaux préparatoires* for the latter regulation make clear that it seeks merely to clarify the scope of the provisions concerning the financing of the official controls.[21]

60. Such an interpretation is, in my view, likewise supported by a teleological reading of points 1 and 2 of Annex VI to Regulation No 882/2004.

19 Proposal for a Regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material, plant protection products and amending Regulations (EC) No 999/2001, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 1/2005, (EC) No 396/2005, (EC) No 834/2007, (EC) No 1099/2009, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) …/2013 and Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC, 2008/120/EC and 2009/128/EC (Official controls Regulation, COM(2013) 265 final, p. 4).

20 See 'Fees or charges collected by Member States to cover the costs occasioned by official controls', Food Chain Evaluation Consortium (FCEC), 2009, p. 35.

21 See footnote 19.

(d) Teleological interpretation

61. In its proposal for Regulation No 882/2004, the Commission observed that the system of financing based on the collection of fees, as established by Directive 85/73, had not allowed the achievement of the objective of avoiding continuing differences between Member States that may lead to distortions of competition. It is with a view to addressing that situation that it proposed the introduction of the principle, currently enshrined in Article 26 of the Regulation, that Member States are to ensure that adequate financial resources are available so that the competent authorities have the necessary staff and other resources for official controls. [22]

62. In addition, if the financial resources collected by the competent authorities via fees were not sufficient to cover the *full range* of the costs occasioned by the provision of the official controls, including therefore the salaries of and costs for the administrative and support staff, the objectives of Regulation No 882/2004, namely to prevent, eliminate or reduce to acceptable levels risks to humans and animals, could by achieved only by means of a contribution from public finances which, by creating — by definition — distortions in conditions of competition, would run counter to the objective of harmonisation pursued in Article 27 of that regulation.

63. In addition, I agree with the argument put forward by the Danish Government that, if the salaries of and costs for the administrative and support staff were not regarded as coming under the category of recoverable costs, the competent authorities would likely be led to entrust the tasks pertaining to the organisation and the planning of the official controls to the official veterinarians or the official auxiliaries. In my view, this would be at odds with the requirement that the controls are effective, a requirement which appears to me to follow from several provisions of Regulation No 882/2004, in particular from Article 4(2) ('The competent authorities shall ensure: (a) the effectiveness and appropriateness of official controls …'); from Article 7(1) ('… In general, the public shall have access to: (a) information on the control activities of the competent authorities and their effectiveness …'); and from Article 8(3) ('Competent authorities shall have procedures in place: (a) to verify the effectiveness of official controls that they carry out …').

64. In the light of all those considerations, I propose that the Court answer the first question referred for a preliminary ruling to the effect that the expressions 'staff involved in the official controls' in point 1 of Annex VI to Regulation No 882/2004 and 'staff involved in [the performance of] the official controls' in point 2 of that annex are to be interpreted as meaning that the salaries and costs that may be taken into account when calculating the fees for official controls also include the salaries and costs of the administrative and support staff employed by NVWA or KDS.

2. The conditions to be met for the costs of the administrative and support staff to be taken into account when calculating the fees

65. It is now necessary to answer the second question referred for a preliminary ruling, by which the referring court asks the Court to define the conditions to be met in order for costs incurred by the administrative and support staff to be taken into account when calculating the fees imposed on the slaughterhouses.

66. In this regard, I note that, when Member States decide to finance the official controls by way of fees, their discretionary power in the determination of the costs which may be taken into account when calculating the amount of those fees is subject to the following provisions.

22 Proposal for a Regulation of the European Parliament and of the Council on official food and feed controls (COM(2003) 52 final, p. 43).

67. In the first place, Article 27(1) of Regulation No 882/2004, to which paragraph 4 of the same article refers, requires the presence of a *causal link* between the costs referred to and the official controls where it provides that the fees may be collected by Member States only to cover the costs 'occasioned' by official controls ('the causality test').

68. In the second place, Article 27(4)(a) of Regulation No 882/2004, which the referring court asks the Court to interpret, provides, I repeat, that those fees cannot be higher than the costs borne by the competent authorities ('the maximum compensation test').

69. Accordingly, in its response to the second question submitted by the referring court, the Court should find simply that the causality and maximum compensation tests must be applied on a case-by-case basis in relation to the categories of costs listed in Annex VI to Regulation No 882/2004.

70. In that regard, I recall that, in its written observations, Gosschalk submitted that, in the judgment in *Kødbranchens Fællesråd*,[23] the Court defined the recoverable costs which have a *general scope*. In particular, according to that interested party, only the *direct* costs, that is to say those which can be directly linked to the official controls, can be passed on to the slaughterhouses by the competent authorities, and not *indirect* costs.

71. However, in my view, such a reading must be rejected on the basis of a more careful analysis of the judgment in question.

72. In that case, the Court was asked whether Member States, in setting the amount of the fees for the official controls, are, pursuant to Article 27(4)(a) of Regulation No 882/2004, read in conjunction with points 1 and 2 of Annex VI to that regulation, entitled to pass on to the slaughterhouses the costs relating to the salaries and the training of those who undergo the compulsory basic training for official auxiliaries. In its response, the Court found that 'the fees may be intended to cover only the costs which the Member States *actually incur in performing controls* in the food establishments' and accordingly 'their purpose is not to impose the cost of the initial training of those staff members on undertakings in the relevant sector'.[24]

73. In my view, the Court did not, in that judgment, define the categories of costs that the competent authorities are entitled to recover from slaughterhouses, but merely stated that one *specific* category, namely that of the costs resulting from the compulsory basic training of official auxiliaries, was not recoverable. This is, it would appear to me, a case of the ordinary application of the causality test laid down in Article 27(1) of Regulation No 882/2004, which has the effect of excluding from the scope of the recoverable costs those costs not incurred by the competent authority on account of the performance of any actual official control, since in that case the recipients of that compulsory basic training were not yet qualified and could therefore neither carry out the official controls nor assist in their performance.

74. In the light of the considerations set out above, I propose that the Court answer the second question referred for a preliminary ruling to the effect that costs incurred by the administrative and support staff of a competent authority may be included when calculating the fees applied to the slaughterhouses pursuant to Article 27(4) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto, provided, first, that they actually stem from the performance of the official controls and, secondly, that they do not exceed the costs borne by such an authority in relation to the categories of costs at issue amongst those listed in that annex.

23 Judgment of 17 March 2016 (C-112/15, EU:C:2016:185).

24 See judgment of 17 March 2016, *Kødbranchens Fællesråd* (C-112/15, EU:C:2016:185, paragraph 39) (emphasis added).

75. I do, however, consider it necessary to add one clarification. I am aware that the referring court's concern vis-à-vis the definition of recoverable costs is due to the legal uncertainty occasioned by the fact that the application of a pure causal test has the effect, in practice, of leaving NVWA free to charge the slaughterhouses costs that have only an extremely tenuous link with the performance of the official controls, which is generating a vast volume of litigation before that court,[25] on account of the *vague nature* of the categories of costs contained in points 1 and 2 of Annex VI to Regulation No 882/2004. Nevertheless, I am persuaded that such legal uncertainty must, to a great extent, by attributed to NVWA's misinterpretation of the concept of 'associated costs' in point 2 of Annex VI to Regulation No 882/2004.

76. As is clear from the study commissioned with a view to the adoption of Regulation 2017/625[26] to which I have already referred in point 58 of this Opinion, and from the written observations of the Governments of Denmark and of the United Kingdom, the term 'associated costs' has been understood by many competent national authorities as a *catch-all* term which has ultimately allowed those authorities to pass on to slaughterhouses, by way of fees, an extremely wide variety of costs, which appears to me, primarily, to be liable to render the exhaustive list contained in Annex VI wholly redundant.

77. In any event, I take the view that, within the context of a comprehensive interpretation of point 2 of Annex VI to Regulation No 882/2004, the term 'associated costs', far from referring to a connection with *all* other categories of costs included in the annex, must be viewed in relation to the category of 'travel costs' *only*.

78. One historical factor, amongst other factors, could support the interpretation that I suggest be adopted by the Court. In its proposal for Regulation No 882/2004, the Commission observed that the system of financing the official controls which had been established by Council Decision 98/728/EC[27] and was based on the levying of fees for the examination of dossiers of specified additives and for the approval of certain establishments and intermediaries had functioned correctly, contrary to what had occurred in relation to the system applied in the veterinary sector. In particular, the Commission noted that that decision laid down, in Annex B, an exhaustive list of the costs to be taken into account when setting fees. That list, which seems therefore to have been a primary source of inspiration for the drafting of Annex VI to Regulation No 882/2004, identifies, in the third indent entitled 'Administrative costs', the category of 'travel and associated costs' as a separate category.

79. On the basis of that interpretation, the de facto unlimited margin of discretion enjoyed by Member States in determining the costs which can be passed on to slaughterhouses would be significantly reduced as compared with the current practice of the competent national authorities, since only the costs connected with travel costs, such as, for example, costs linked to the reservation of train tickets, hotel rooms and rental cars could thus be taken into account when calculating the fees. This seems to me to be sufficient to address the situation of legal uncertainty which, as I have pointed out above, has given rise to a vast volume of litigation before the referring court.

25 According to the orders for reference, 400 cases relating to decisions of the Minister ruling on objections similar to the decisions at issue in the cases in the main proceedings are currently pending before the referring court.

26 See 'Fees or charges collected by Member States to cover the costs occasioned by official controls', Food Chain Evaluation Consortium (FCEC), 2009, p. 35.

27 Council Decision of 14 December 1998 concerning a Community system of fees in the animal feed sector (OJ 1998 L 346, p. 51).

B. Question 3(a) in Case C-477/18 and Question 3 in Case C-478/18

80. By these questions, the referring court is asking whether Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as precluding the application of the fee to slaughterhouses for quarter-hour periods of official controls that those slaughterhouses requested from the competent authority but which were not actually worked.

81. In this regard, it must first of all be recalled once more that Article 27(4)(a) lays down the principle that the costs that may be taken into account in calculating the fees collected for the purposes of performing the official controls must have actually been borne by the competent national authorities. In other words, costs lacking that *genuine* nature cannot, under any circumstances, be charged to the slaughterhouses.

82. It follows from the foregoing that compliance with Article 27(4) of Regulation No 882/2004 when charging slaughterhouses for the costs of the official controls is not a question of law, but rather depends in essence on a factual analysis, and in particular on the answer to the question whether, in the case in question, the competent authority has borne costs solely because slaughterhouses reserved quarter-hour periods of official controls with it, even though those quarter-hour periods were ultimately not worked.

83. In this connection, two opposing lines of argument are put forward in the written procedure. Whilst Gosschalk submits that amounts corresponding to the quarter-hour periods requested but not worked in relation to official controls cannot be charged to slaughterhouses under Article 27(4) of Regulation No 882/2004 since they do not correspond to costs actually incurred by NVWA, the Netherlands Government takes the opposite view, arguing that NVWA bears the same costs for quarter-hour periods requested but not worked as for quarter-hour periods actually worked.

84. In my view, the two lines of argument fail to take into account the factor giving rise to any costs borne by the competent national authorities, namely the fact that the staff assigned for control purposes at the slaughterhouse which has reserved extra quarter-hour periods cannot be re-assigned to other slaughterhouses.

85. Two kinds of situations, which are clearly detailed in the United Kingdom Government's written observations, show how this fact determines the answer to the question whether costs have actually been incurred by the authorities and can therefore be charged to the slaughterhouses concerned. If a slaughterhouse reserves a period of time of 2 hours 45 minutes and uses only 2 hours and 30 minutes because it in fact took less time to perform the official controls, it is clear that the competent authority will not be able to re-assign its staff. Accordingly, it is justified for the costs associated with the assignment of the staff for 2 hours and 45 minutes to be charged to that slaughterhouse because they have already been borne by the competent authority. However, where the slaughterhouse has cancelled the reservation of the last quarter-hour, it will be necessary to verify that the costs associated with such a quarter-hour have already been borne by the competent national authority. With that in mind, I agree with the argument put forward by the United Kingdom Government that it will have to be determined whether the slaughterhouse in question gave the competent national authority *sufficient notice* for the latter to be able to re-assign its staff resources. If so, the staff could have been re-assigned and an amount cannot therefore be charged in respect of that quarter-hour.

86. I am aware that, in that last scenario, a pure case-by-case assessment would risk generating a significant additional volume of litigation. It is for that reason, and to ensure that the slaughterhouses have at their disposal a test that is easy to apply, that I take the view, like the United Kingdom Government, that the competent national authorities could specify a *notice period* which would allow their staff to be re-assigned from one slaughterhouse to another.

87. In the light of the foregoing, I suggest that the Court answer Question 3(a) in Case C-477/18 and Question 3 in Case C-478/18 to the effect that Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as not precluding the application to slaughterhouses of an amount in the form of fees for quarter-hour periods of official controls which those slaughterhouses requested from the competent national authority but which were not actually worked where that authority is unable to re-assign the staff made available to the slaughterhouse concerned.

C. Question 3(b) in Case C-477/18

88. By this question, the referring court is essentially asking whether the answer given to Question 3(a) likewise applies where the competent authority uses contracted veterinarians who do not receive a salary for quarter-hour periods which the slaughterhouse requested but which were not worked and where the amount which the slaughterhouse is charged for the number of quarter-hour periods requested but not worked covers the overhead costs of the competent authority.

89. As a preliminary point, I note that in its written observations the Netherlands Government refutes the very premiss of this question, taking the view that, from the point at which the involvement of an NVWA veterinarian or a contracted official veterinarian is scheduled, the veterinarian in question will receive a salary, regardless of whether the control is carried out or not. In any event, there can be no doubt that the Court will have to answer this question as it is worded by the referring court, since it is settled case-law that, in the context of the preliminary ruling procedure, the referring court alone has jurisdiction to find and assess the facts in the case before it.[28]

90. It is therefore necessary to examine whether the amount corresponding to the salaries not received by contracted veterinarians for the number of quarter-hour periods requested but not worked may be charged to the slaughterhouses with a view to covering NVWA's overhead costs.

91. In my view, a fee calculated thus raises doubts as to its compatibility with Article 27(4) of Regulation No 882/2004.

92. In the first place, I consider that the criterion that the overhead costs must reflect the costs actually borne by NVWA requires that the savings made on account of the reduced remuneration received by the contracted veterinarians because they do not receive a salary for the quarter-hour periods requested by the slaughterhouse but not worked correspond to overhead costs of an *equivalent* amount, which appears to me to be doubtful in practice. In any event, it will be for the referring court to determine whether this is the case.

93. In the second place, I note that it is unclear from the documents before the Court whether the costs in question fall into one or more categories of costs referred to in Annex VI to the same regulation, to which Article 27(4) of Regulation No 882/2004 refers. 'Overhead costs' are not included, as such, in the exhaustive list of the categories of costs which may be taken into account for the calculation of fees contained in Annex VI to Regulation No 882/2004, since they cannot be regarded as being covered by the term 'associated costs'. Accordingly, it will be necessary to ensure that only the fraction of NVWA's overhead costs falling within one or more of the aforementioned categories is taken into account when calculating the fees imposed on the slaughterhouses, which is a matter for the referring court to assess.

28 See judgment of 8 June 2016, *Hünnebeck* (C-479/14, EU:C:2016:412, paragraph 36 and the case-law cited).

94. In the light of those considerations, I propose that the Court answer the referring court to the effect that the answer given to Question 3(a) likewise applies where the competent authority uses contracted veterinarians who do not receive a salary for quarter-hour periods which the slaughterhouse requested but which were not worked and where the amount which the slaughterhouse is charged for the number of quarter-hour periods requested but not worked covers the competent authority's overhead costs, provided that those overhead costs fall within one or more of the categories listed in points 2 and 3 of Annex VI to Regulation No 882/2004 and that they are of an amount equivalent to the savings made by the competent authority on account of the reduced remuneration received by the contracted veterinarians because they do not receive a salary for the quarter-hour periods requested by the slaughterhouse but not worked. It is for the referring court to determine whether this is the case.

D. The fourth question in Case C-477/18

95. By its fourth question referred for a preliminary ruling, the referring court wishes to ascertain, in essence, whether Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as precluding the same average rate being applied to slaughterhouses for official control work performed by veterinarians employed by NVWA and that performed by contracted veterinarians, who are paid less, such that the slaughterhouses may be charged a higher amount than the remuneration paid to the contracted veterinarians.

96. I confess that even after a careful reading of the observations set out in the order for reference I am unable to identify precisely the question of interpretation which the referring court wishes the Court to examine in this question referred for a preliminary ruling.

97. First of all, I note that, under Netherlands law, rates must be set annually on the basis, first, of the average costs incurred by NVWA over the three previous years and, second, taking into account the expected development in costs for the year ahead. On that basis, an equivalent amount is charged to the slaughterhouses for the work carried out on their premises as part of the official controls. [29]

98. In those circumstances, it is clear that the average of the salaries of the official veterinarians and the contracted veterinarians incorporated into that rate may, in the case of some inspection work, be of an amount greater than the costs actually borne by NVWA. As a result, it appears to me that the issue in relation to which the referring court puts its question to the Court may be regarded as being (i) whether NVWA would not be required by Regulation No 882/2004 to apply a fee based on the *actual* costs of performing the official controls at each slaughterhouse considered individually, or (b) whether the possibility of NVWA making a profit in a specific year is not incompatible with Regulation No 882/2004.

99. Even assuming that, in line with the view expressed by the majority of the interested parties in their written observations, the referring court is seeking clarification about the first of those two points, I would simply point out that, under Article 27(4)(b) of Regulation No 882/2004, fees 'may be fixed at a flat-rate on the basis of the costs borne by the competent authorities over a given period of time'. In addition, there can be scarcely any doubt, in my view, that a *requirement* to apply to slaughterhouses fees based on the costs actually incurred in the performance of the official controls in their specific establishment is not compatible with the *option* laid down in that provision.

29 As the Minister stated in Case C-477/18, the underlying reason for the adoption of an average rate lies in the need to maintain equal treatment, with such a rate proving useful in preventing the emergence of differences in treatment between slaughterhouses depending on whether the inspections are performed by official veterinarians or by contracted veterinarians.

100. If the question submitted by the referring court concerns the second of those points, I note that Article 27(4)(b) of Regulation No 882/2004 effectively gives the competent authorities the option to charge slaughterhouses costs which — depending on the year in question — may be higher or lower than the costs actually borne by those authorities. That being said, the fact that the competent authorities make a profit in a specific year, a fact which Gosschalk complains about in its written observations,[30] is — far from being incompatible with Regulation No 882/2004 — simply an inherent consequence of the option afforded to them and necessarily entails, assuming that the other components of the rate remain unchanged, a reduction in the fees applied to slaughterhouses in the following year.

101. In the light of the foregoing, I suggest that the Court answer the fourth question to the effect that Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as not precluding the same average rate being applied to slaughterhouses for the official control work carried out by veterinarians employed by NVWA and that carried out by contracted veterinarians, who are less well paid, such that the slaughterhouses may be charged a higher amount than the remuneration paid to contracted veterinarians, since it is apparent from Article 27(4)(b) of the Regulation that the competent authorities are entitled to fix the fees at a flat-rate.

E. The fifth and sixth questions in Case C-477/18

102. By its fifth question, the referring court asks, in essence, whether Article 26 and Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as meaning that the fees collected for the official controls performed in slaughterhouses may be used to build up buffer reserves for a private company from which the competent authority contracts official auxiliaries, it being understood that those reserves could, in the event of a crisis, be used to pay the salaries of and costs for staff who, once the crisis is over, will perform the official controls or enable them to be performed. If so, the referring court asks in essence, by its sixth question, what is the maximum amount with which those reserves should comply and what is the length of the period which they may cover.

103. It must be recalled from the outset that the buffer reserves at issue are being built up within KDS in order to guarantee that, in unforeseen circumstances, such as an epidemic justifying the suspension of animal slaughter for a lengthy period, the salaries and training costs of official auxiliaries[31] can continue to be paid without it being necessary to lay off staff.

104. The argument that building up those reserves within KDS is consistent with Regulation No 882/2004 is based, it would appear to me, on a reading of Article 4(2)(c) in conjunction with Article 26 of that regulation.

105. With regard to the content of those provisions, Article 4(2)(c) provides that the competent authorities are required to have a sufficient number of suitably qualified and experienced staff so that official controls and control duties can be carried out efficiently and effectively, whereas Article 26 provides — it should be recalled — that it is for the Member States to ensure that adequate resources are available for that purpose.

106. Since the reserves at issue are intended to mobilise the resources necessary to guarantee the availability of that staff so that the controls may resume immediately after the crisis situation, it might be claimed that Regulation No 882/2004 does not preclude the building up of those reserves.

30 Gosschalk in fact argues, without providing any further details, that in this way NVWA makes profits of up to EUR 8 500 000.

31 As the Netherlands Government acknowledges in its written observations, the problem does not arise in the case of official veterinarians since, in such circumstances, they would be tasked with destroying the animals affected by the epidemic.

107. However, in my view, such a conclusion would be incorrect.

108. I am not seeking to suggest that the Member States cannot envisage the financing of such reserves within the context of Regulation No 882/2004. On the contrary, I have no doubt that they have the power to do so. However, it is my view that the Member States are not entitled to do so *by way of fees*.

109. As I have pointed out repeatedly in this Opinion, unlike financing assured by means of general taxation, financing by way of fees (or charges) is subject to the conditions laid down in Article 27(1) and (4)(a) of Regulation No 882/2004. Those conditions cannot be regarded as being met in the present case for the following reasons.

110. In the first place, the costs which may be taken into account when calculating the fees must, pursuant to Article 27(4)(a) of Regulation No 882/2004, have been borne by 'the competent authorities'. In the present case, any costs linked to the salaries of and costs for official auxiliaries employed by KDS would be borne, during the crisis period, by that private undertaking and not by the competent national authority, that is to say NVWA. [32]

111. In the second place, and pursuant to that same provision, those costs must have *actually* been borne by the competent authority. In the present case, I am persuaded that, given the *future and hypothetical* nature of the event to which those costs are subject, that is to say the outbreak of an epidemic, the view cannot be taken that this is the case.

112. In the third place, in view of the fact that the actual nature of the costs borne by the competent authority appears to me to be a necessary condition for the existence of the causal link between those costs and the official controls, as required in Article 27(1) of Regulation No 882/2004, the future and hypothetical nature of the outbreak of an epidemic is, in my view, such as to rule out the existence of that causal link too.

113. In the light of the foregoing, I propose that the Court answer the fifth question referred for a preliminary ruling to the effect that Article 26 and Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as meaning that the fees collected for the official controls carried out in the slaughterhouses cannot be used to build up buffer reserves within a private company from which the competent authority contracts official auxiliaries, it being understood that those reserves could, in the event of an epidemic, be used to pay the salaries of and costs for the staff who, once the crisis is over, will perform the official controls or enable them to be performed.

114. In the light of the response which I propose that the Court give to that question, there is no need to address the sixth question.

IV. Conclusion

115. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands) as follows:

(1) The expressions 'staff involved in the official controls' in point 1 of Annex VI to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and

32 I would point out, in this regard, that the term 'competent authority' is defined in point (4) of the second subparagraph of Article 2 of Regulation No 882/2004 as 'the central authority of a Member State competent for the organisation of official controls or any other authority to which that competence has been conferred'.

animal welfare rules and 'staff involved in [the performance of] the official controls' in point 2 of that annex are to be interpreted as meaning that the salaries and costs that may be taken into account when calculating the fees for official controls also include the salaries and costs of the administrative and support staff employed by the Nederlandse Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority) or the private company Kwaliteitskeuring Dierlijke Sector (Quality Inspection within the Animal Sector).

(2) Costs incurred by the administrative and support staff of a competent authority may be included when calculating the fees applied to the slaughterhouses pursuant to Article 27(4) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto, provided, first, that they actually stem from the performance of the official controls and, secondly, that they do not exceed the costs borne by such an authority in relation to the categories of costs at issue amongst those listed in that annex.

(3) Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as not precluding slaughterhouses from being charged an amount in the form of fees for quarter-hour periods of official controls which those slaughterhouses requested from the competent national authority but which were not actually worked where that authority is unable to re-assign the staff made available to the slaughterhouse concerned.

(4) The preceding answer likewise applies where the competent authority uses contracted veterinarians who do not receive a salary for quarter-hour periods which the slaughterhouse requested but which were not worked and where the amount which the slaughterhouse is charged for the number of quarter-hour periods requested but not worked covers the competent authority's overhead costs, provided that those overhead costs fall within one or more of the categories listed in points 2 and 3 of Annex VI to Regulation No 882/2004 and that the costs in question are of an amount equivalent to the savings made by the competent authority on account of the reduced remuneration received by the contracted veterinarians because they do not receive a salary for the quarter-hour periods requested by the slaughterhouse but not worked. It is for the referring court to determine whether this is the case.

(5) Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as not precluding the same average rate being applied to slaughterhouses for the official control work carried out by veterinarians employed by the Netherlands Food and Consumer Product Safety Authority and that carried out by contracted veterinarians, who are less well paid, such that the slaughterhouses may be charged a higher amount than the remuneration paid to contracted veterinarians, since it is apparent from Article 27(4)(b) of the Regulation that the competent authorities are entitled to fix the fees at a flat-rate.

(6) Article 26 and Article 27(4)(a) of Regulation No 882/2004, and points 1 and 2 of Annex VI thereto are to be interpreted as meaning that the fees collected for the official controls carried out in the slaughterhouses cannot be used to build up buffer reserves within a private company from which the competent authority contracts official auxiliaries, it being understood that those reserves could, in the event of an epidemic, be used to pay the salaries of and costs for the staff who, once the crisis is over, will perform the official controls or enable them to be performed.