OPINION OF ADVOCATE GENERAL LÉGER

delivered on 18 March 1999 *

1. In this case the Bayerischer Verwaltungsgerichtshof (Bavarian Administrative Court) is seeking an interpretation by the Court of certain provisions of Community law concerning harmonisation of the fees to be charged for health inspections in slaughterhouses. The Court is requested in particular to rule on whether certain provisions of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat, [1] as amended by Council Directive 93/118/EC of 22 December 1993 [2] (hereinafter 'the Directive'), which were not transposed into German law within the prescribed period, have direct effect.

The relevant Community legislation

2. The purpose of the Directive is to harmonise the rules on the financing of health inspections and controls in slaughterhouses [3] and to prevent distortion of competition occurring as a result of the reduction or abolition of the fees [4] charged in respect of such inspections and controls.

3. Article 1(1) of Directive 85/73 requires Member States to charge a Community fee for the costs occasioned by health inspections and controls of the meat referred to in the various Community directives.

4. Article 1(2) specifies the costs covered by those fees. It provides: 'The fees referred to in paragraph 1 shall be fixed so as to cover the costs incurred by the competent authority for

— salary costs, including social-security costs;

— administrative costs, which may include the expenditure required for in-service training of inspectors

for carrying out the controls and inspections referred to in paragraph 1'.

* Original language: French.

1 — OJ 1985 L 32, p. 14.

2 — OJ 1993 L 340, p. 15.

3 — Fourth recital in the preamble to the Directive.

4 — Sixth recital in the preamble to the Directive.

5. The amount of those fees is specified in point 1 of the annex relating to Article 2(1) of the Directive and varies depending, in particular, on the type of animal, its age and weight.

6. In addition, Article 2(3) of the Directive provides: 'Member States shall be authorised to collect an amount exceeding the level or levels of the Community fees, provided that the total fee collected by each Member State is not greater than the actual figure for inspection costs'.

7. Point 4 of the Annex relating to Article 2(1) of the Directive sets out the different circumstances in which a State may fix fees which are higher than the standard amount. It provides:

'In order to cover increased costs, Member States may,

(a) increase the standard amounts for fees pursuant to points 1 and 2(a) for individual establishments;

this would be subject... to one or more of the following conditions... :

...

(b) or collect a special fee covering actual costs'.

8. Those provisions entered into force on 1 January 1994 (Article 3(1) of the Directive).

The relevant national legislation

9. Paragraph 24(1) of the *Fleischhygienegesetz* (Law on Meat Hygiene; hereinafter 'the FlHG') of 18 December 1992, [5] in the version in force at the time when the decisions contested in the main proceedings were taken, [6] provides that the measures giving rise to collection of fees are to be determined by *Land* legislation and that the fees are to be calculated 'pursuant to Council Directive 85/73/EEC of 29 January

5 — BGBl. I, p. 2022.
6 — See point 14 of this Opinion.

1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) and to the legal measures adopted on the basis of that Directive by the organs of the European Community...' (Paragraph 24(2)).

10. The *Bayerisches Gesetz zur Ausführung des Fleischhygienegesetzes* (Bavarian Law implementing the Law on Meat Hygiene; hereinafter 'the AGFlHG') of 24 August 1990 [7] — the *Land* law at issue in the main proceedings — empowers, *inter alia*, the *Landkreise* to determine by regulation the measures in respect of which fees are payable in their area. On that basis, the *Landkreis* Rottal-Inn, the competent territorial authority, adopted the *Satzung über die Erhebung von Gebühren und Auslagen für Amtshandlungen im Vollzug fleischhygienisher Vorschriften* (By-law on the charging of fees and disbursements in respect of official acts performed in the implementation of the legislation on meat hygiene) of 20 August 1997 [8] (hereinafter 'the By-law'), which entered into force with retroactive effect on 1 January 1994 and which constitutes the legal basis for the contested decisions.

11. Paragraph 3(1) of the AGFlHG provides that the competent authorities of the *Land* concerned must bear the costs connected with performance of the tasks allocated to them, whether or not such authorities operate import inspection facilities.

12. However, in the exercise of the powers conferred on them, those authorities are required to comply with set criteria. Thus, under Paragraph 3(2) of the AGFlHG, they must 'determine by *Satzung* (by-law) uniformly for their territory the matters giving rise to recovery of costs for official acts within the meaning of Paragraph 24(1) of the FlHG and also, uniformly for their territory and separately from the fees for slaughterhouse use, the fees to cover costs in accordance with Paragraph 24(2) of the FlHG'. [9]

13. The various acts in respect of which fees are payable are listed in the By-law.

Facts and procedure

14. Mr Feyrer, who runs a butcher's business within the jurisdiction of the *Landkreis* Rottal-Inn — attending to his own slaughtering operations — is challenging the amount of the fees which he was charged following health inspections and controls of meat carried out by the competent authorities in 1995.

7 — GVBl. I, p. 336.

8 — *Abl. des Landkreises Rottal-Inn 1997*, p. 123.

9 — The *Fleischhygiene-Verordnung* (meat hygiene regulations) of 30 October 1986 (BGBl. I, p. 1678), amended by the regulation of 11 March 1988 (BGBl. I, p. 303).

15. He claims that those authorities cannot require him to pay a fee which is higher than the standard amount laid down in point 1 of the Annex relating to Article 2(1) of the Directive. However, he does not deny that the fees correspond to the actual figure for inspection costs incurred by *Landkreis* Rottal-Inn.

16. *Landkreis* Rottal-Inn, for its part, considers that the aim of the Directive is not to harmonise the amount of the fees and that, on the contrary, the Member States are authorised to charge fees higher than the standard amounts where those amounts are lower than the actual figure for inspection costs incurred by the veterinary inspection services.

17. The judgment of the Bayerisches Verwaltungsgericht Regensburg, the national court seised of the dispute at first instance, was the subject of an appeal by *Landkreis* Rottal-Inn before the Bayerischer Verwaltungsgerichtshof, which speculates whether the judgment of the Court in Case C-156/91 *Hansa Fleisch* [10] may be applied to the present case. In that case the Court was asked whether it would regard as unconditional and sufficiently precise Article 2(1) of Council Decision 88/408/EEC 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, [11] which laid down the amounts of fees fixed at a standard rate for each species of animal.

18. In *Hansa Fleisch*, the Court ruled that: 'Article 2(1) of Council Decision 88/408/EEC... may be relied on by a private individual as against a Member State in order to resist the collection of fees in excess of the amount provided for by that provision where the conditions to which Article 2(2) of the decision subjects the possibility of increasing the level of fees laid down by Article 2(1) are not satisfied. However, Article 2(1) of Decision 88/408 may be relied on only in order to oppose demands for the payment of fees issued after the expiry of the period laid down by Article 11 of the decision'. [12]

19. The national court states that the wording of the provisions concerning the Member States' option of collecting an amount exceeding the standard amounts laid down was amended by Directive 93/118. Point 4(b) of the Annex relating to Article 2(1) of the Directive, in particular, was thereby amended.

20. Since the Bayerischer Verwaltungsgerichtshof was uncertain as to the meaning and scope of the judgment in *Hansa Fleisch*, cited above, and as to the interpretation of the new provisions of Directive 93/118, which have a direct bearing on the outcome of the case pending before it, it stayed proceedings and referred the follow-

10 — [1992] ECR I-5567.
11 — OJ 1988 L 194, p. 24.
12 — Paragraph 1 of the operative part.

ing questions to the Court of Justice for a preliminary ruling:

'1. Can an individual oppose the collection of fees higher than the standard amounts listed in point 1 of the annex relating to Article 2(1) of Council Directive 85/73/EEC as amended by Council Directive 93/118/EC where the Member State has not transposed Directive 93/118/EC into national law within the prescribed period?

2. Can a Member State collect fees higher than the standard amounts in reliance on point 4(b) of the annex relating to Article 2(1) of Council Directive 85/73/EEC as amended by Directive 93/118/EC provided that the fees levied do not exceed the actual costs, no further conditions being imposed?

3. Is the authorisation given to Member States under Article 2(3) of Council Directive 85/73/EEC as amended by Directive 93/118/EC to collect an amount exceeding the Community fees dependent on the total fee collected in the Member State as a whole and the actual figure for inspection costs incurred in the Member State as a whole or is it sufficient, when the Member State has delegated authorisation to collect the fees to the local authorities, that the total fee collected by the local authority is not greater than the actual figure for inspection costs incurred by that authority?'

The answers to the questions

Questions 1 and 2

21. By these first two questions, which should be considered together, the national court asks whether the ruling in *Hansa Fleisch* concerning the direct effect of Article 2(1) of Decision 88/408 remains the same following the entry into force of Directive 93/118 and, in particular, of Article 2(1) thereof and point 4(b) of the annex thereto. In other words, the Court is being asked whether in cases where Article 2(1) of the Directive has not been transposed within the prescribed period, a person may rely on the effects of that provision before the national courts in order to oppose the collection, by the authorities of a Member State which are seeking payment of fees, of an amount which exceeds the standard amounts provided for in the Directive, where the amount of the fees charged does not exceed the actual costs incurred by the veterinary

inspection services and the option of exceeding the standard amount is open to Member States with no obligation to demonstrate in advance that certain conditions have been satisfied.

22. In order to answer this question I consider it essential to comment on the judgment in *Hansa Fleisch*.

23. The facts on which that judgment was based were very similar to those forming the subject-matter of the present proceedings. Hansa Fleisch Ernst Mundt, a company which operated a slaughterhouse, had undergone veterinary inspections. Since the fee charged in accordance with the legislation in force in the *Land* concerned exceeded the standard levels provided for in the Community legislation, which had not yet taken effect, [13] Hansa Fleisch Ernst Mundt contested the demand notices issued, on the ground that they were unlawful, *inter alia*, because the fees charged exceeded those provided for in Article 2(1) of Decision 88/408, the period for transposing which had not yet expired.

24. The Court pointed out that an individual may rely directly before the courts on rules which confer on him rights but also impose on him obligations, since 'it would be incompatible with the binding effect attributed to [directives] by Article 189 to exclude in principle the possibility that persons affected may invoke the obligation imposed by the [directive]'. [14]

25. The Court has consistently held that a [directive] addressed to a Member State may be relied on as against that Member State where the provision in question imposes on its addressee an *obligation which is unconditional and sufficiently clear and precise...* . [15]

26. In reply to the German Government's submission that 'the Member States' obligation to fix the fee at the levels provided for in Article 2(1) of Decision 88/408 [was] not an unconditional obligation, in view of the possibility granted to the Member States by Article 2(2) of that Decision of derogating from the standard levels of fees', [16] the Court stated that 'the fact that a decision allows the Member States to which it is addressed to derogate from clear and precise provisions of it does not in itself deprive those provisions of direct effect. In particular, such provisions may have direct effect where *recourse to the possibilities of*

13 — Namely, Directive 85/73 and Decision 88/408.

14 — *Hansa Fleisch*, cited above, paragraph 12.

15 — Ibid., paragraph 13, emphasis added.

16 — Ibid., paragraph 14.

derogation thus provided for is subject to judicial review...'.[17]

27. The Court also stated that 'the possibility granted to individuals of relying on a decision as against the Member States to which it is addressed is based on the binding nature of the decision vis-à-vis its addressees. Consequently, where the decision grants the Member States a specified period in which to comply with the obligations resulting from it, the decision may not be relied on by individuals as against the Member States before the expiry of the period in question'.[18]

28. Consequently, the Court ruled that 'Article 2(1) of Decision 88/408... may be relied on by a private individual as against a Member State in order to resist the collection of fees in excess of the amount provided for by that provision where the conditions to which Article 2(2) of the Decision subjects the possibility of increasing the level of fees laid down by Article 2(1) are not satisfied. However, Article 2(1) of Decision 88/408 may be relied on only in order to oppose demands for the payment of fees issued after the expiry of the period laid down by Article 11 of the decision'.[19]

29. It was therefore only because the period for transposition had not yet expired that the Court refused to recognise that the applicant could rely on Article 2(1) of the Decision before the competent national courts in order to oppose demands for the payment of fees issued after the expiry of the period laid down by Article 11 of that Decision. However, where *derogations from the principle* of a standard Community fee are *subject to strict compliance with conditions which are subject to judicial review*, the contested provision may have direct effect.

30. I share the view, expressed by the majority of those who submitted written observations,[20] that Article 2(1) of the Directive does not meet the conditions which enable an individual to rely on it in judicial proceedings before the Directive has been transposed into the law of a Member State. To my mind, with effect from the entry into force of Directive 93/118, the obligation on Member States to fix the amount of the fee at the levels provided for in Article 2(1) of the Directive and point 1 of the annex thereto is no longer unconditional because Article 2(3) of the Directive and point 4(b) of the annex relating to Article 2(1) thereof offer Mem-

17 — Ibid., paragraph 15, emphasis added.
18 — Ibid., paragraph 20.
19 — Paragraph 1 of the operative part.
20 — With the exception of Mr Feyrer.

ber States ample opportunity to provide for fees exceeding the standard levels in question.

31. Let us compare the Community legislation at issue.

32. Under Article 2(2) of Decision 88/408, Member States could reduce or increase the amount of the Community fee fixed at the standard level in paragraph 1 to meet the real figure for inspection costs only where 'salary costs, the structures of establishments, and the ratio between veterinarians and inspectors differ[ed] from those of the Community average adopted for the calculation of the standard amounts laid down in paragraph 1'. Also, the second subparagraph of Article 2(2) provides: 'Member States shall have recourse to the exemptions laid down in the first paragraph on the basis of the principles set out in the Annex'. The annex set out a series of conditions to be met in order to depart — upwards or downwards — from the Community average.

33. The inference was that the Community legislature permitted only a narrow discretion to Member States in determining the amount of the fee.

34. Since the entry into force of Directive 93/118, compliance with pre-conditions is required only in order to charge less than the standard amount fixed by the Community legislature. [21] There are no longer any conditions for charging more than the standard amount. In other words, the Directive relaxed the conditions for taking the option, available to Member States under Decision 88/408, of collecting fees higher than the standard amount. Article 2(3) of the Directive provides simply that 'Member States shall be authorised to collect an amount exceeding the level or levels of the Community fees, provided that the total fee collected by each Member State is not greater than the actual figure for inspection costs'. Moreover, point 4 of the annex relating to Article 2(1) of the Directive merely provides that: 'in order to cover increased costs, Member States may... (b) or collect a special fee covering actual costs'.

35. Since Member States are no longer required to satisfy pre-conditions in order to increase the standard amount of fees provided for in Article 2(1) of the Directive, they are at liberty to choose either the fee at the standard rate fixed by the Community legislature or a specific fee in a higher amount, covering the actual costs

21 — See point 5 of the Annex relating to Article 2(1) to the Directive, which provides:
'(5) Member States in which salary costs, the structure of establishments and the relationship between veterinarians and inspectors diverge from the Community average taken as a basis for calculation of the standard amounts fixed in points 1 and 2(a) may exceptionally reduce them to meet the real costs of inspection:
(a) in general, where there are substantial differences in the cost of living and salary costs;
(b) for individual establishments, where the following conditions are met...'.

incurred by the inspection services, without any need to justify their choice. It must be inferred from this that *the Directive offers Member States an alternative*: either a standard rate Community fee fixed in accordance with Article 2(1) of the Directive and point 1 of the annex thereto, or a specific fee in an amount determined by the competent national authorities and covering the costs actually incurred. It appears from the documents in the case that the Federal Republic of Germany legitimately chose the second option.

36. I must therefore conclude that, following upon the entry into force of Directive 93/118, persons liable to pay fees cannot rely before the national courts on an obligation to comply with the standard amounts set by the Community legislature as against the administrative authorities of their Member State in order to oppose the collection of fees which are higher than the amount provided for in Article 2(1) of the Directive and which correspond to the actual figure for inspection costs. In other words, Article 2(1) of the Directive, from which Member States may easily derogate, does not impose an unconditional obligation on a Member State.

37. Further support for this interpretation of Article 2(1) of the Directive is offered by the fact that it is consistent with the purpose of that Directive.

38. Indeed, the aim of this piece of legislation is not to harmonise the amount of the fee to be collected for health inspections and controls of fresh meat, but to harmonise the rules for financing such controls and to prevent distortion of competition. Provision is thus made for a minimum amount which may be departed from where the actual costs of inspections and controls differ from the levels set by the Community legislature. Those costs comprise *inter alia* salary costs, including the social-security costs of the inspectors. [22] Such costs are not identical throughout the Community. Hence, the aim of the directive cannot be to harmonise the amount of the fee. However, by determining the procedure which must be followed in order to fix the amount of the fee and the parameters which must be taken into account in order to calculate it, the Community legislature has put into effect instruments which will prevent distortion of competition.

39. It is apparent therefore that Article 2(1) of the Directive cannot, on account of its conditional nature, directly enable individuals, in the absence of measures to transpose the Directive within the prescribed period, to rely on the obligation to pay the standard amount laid down therein, where a Member State fixes a

22 — Article 1(2) of the Directive.

higher fee which corresponds to the actual inspection costs incurred by the competent authority concerned.

Question 3

40. By the third question the national court asks whether Article 2(3) of the Directive should be interpreted as meaning that, where a Member State has delegated to local authorities the collection of fees, the 'actual figure for inspection costs' mentioned in that provision means the costs incurred in the Member State as a whole or those incurred by the local authorities concerned. In other words, the Court is being asked to rule at what geographical level the actual figure for inspection costs should be determined where a Member State has delegated authorisation to regional or local authorities, as is the case in Germany.

41. As we have seen, Article 2(3) states that 'Member States shall be authorised to collect an amount exceeding the level or levels of the Community fees, provided that the total fee collected by each Member State is not greater than the actual figure for inspection costs'.

42. According to Mr Feyrer, the 'actual figure for inspection costs' referred to in Article 2(3) of the Directive means the costs incurred throughout the Member State even if that State has entrusted the power to collect fees to the local authorities.

43. I do not agree. In my view, that provision should be read in conjunction with Articles 1(2) and 2(1) of the Directive, under which, respectively: '[t]he fees ... shall be fixed so as to cover the costs incurred by the *competent authority* for:

— salary costs, including social-security costs,

— administrative costs, which may include the expenditure required for in-service training of inspectors

for carrying out the controls and inspections referred to in paragraph 1' and '[t]he Member States shall ensure, for the purpose of financing the controls carried out pursuant to the Directives referred to in Article 1 by the *competent authorities* and for that purpose only, the collection... of

Community fees following the procedures laid down in the Annex...'. [23]

44. The Court has already held that 'each Member State is free to allocate powers internally and to implement Community acts which are not directly applicable by means of measures adopted by regional or local authorities, provided that that allocation of powers enables the Community legal measures in question to be implemented correctly'. [24]

45. Consequently, where a Member State has delegated authorisation to collect the Community fee referred to in Article 2(3) of the Directive, the 'competent authority' for the purposes of Articles 1(2) and 2(1) of the Directive is the regional or local authority. According to those provisions, the geographical level at which to determine the actual figure for inspection costs, incurred by the veterinary inspection services which carry out the tasks entrusted to them, is therefore the regional or local level, not the national level.

46. Moreover, in my view, the very concept of the 'actual figure for inspection costs' precludes the interpretation proposed by Mr Feyrer. If one accepts that, where a Member State delegates its powers to local authorities, the amount of the fee is calculated at national level, this can only be an average of the total costs incurred by each veterinary service operating in national territory, never the actual costs incurred by the competent service concerned.

47. Consequently, Article 2(3) of the Directive should be interpreted as meaning that, where a Member State has delegated the collection of fees to local authorities, the 'actual figure for inspection costs' referred to in that provision means the actual figure for the costs incurred by the local authorities in question, not the total costs incurred in the Member State.

23 — Emphasis added.

24 — *Hansa Fleisch*, cited above, paragraph 23.

Conclusion

48. I therefore propose that the Court give the following answer to the questions referred by the Bayerischer Verwaltungsgerichtshof:

(1) Point 1 of Chapter 1 of the Annex relating to Article 2(1) of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat, as amended by Council Directive 93/118/EC of 22 December 1993, is not sufficiently precise and unconditional directly to enable an individual to rely before the national courts on the obligation to pay the standard amount laid down therein, in the absence of transposition measures within the prescribed period, in order to oppose the collection by the administrative authorities of a Member State of fees higher than the standard amounts provided for in Directive 93/118, where the amount of the fees sought does not exceed the actual figure for costs incurred by the veterinary inspection services. Moreover, pursuant to point 4(b) of the Annex relating to Article 2(1) of Directive 93/118, the option of departing from the standard amount of the fee is available to Member States free of the need to provide evidence that certain conditions have been satisfied.

(2) Article 2(3) of Directive 85/73, as amended by Directive 93/118, should be interpreted as meaning that where a Member State has delegated the collection of fees to local authorities, the 'actual figure for the inspection costs' mentioned in that provision means the costs incurred by the local authorities in question, not the total costs incurred in the Member State.