OPINION OF ADVOCATE GENERAL TESAURO
delivered on 16 February 1995 *

1. By making this reference for a preliminary ruling the Rechtbank van Eerste Aanleg, Ghent, essentially seeks to ascertain whether it may be inferred from Community rules on control of classical swine fever that there exists an entitlement to immediate and total compensation for owners whose pigs have been slaughtered on the instructions of the national veterinary authorities.

2. In order to make clear the exact scope of the questions referred to the Court, the rules adopted on the matter at Community level and the subsequent implementing measures adopted by the Kingdom of Belgium should be summarized in so far as is relevant to the present case.

3. First, there is Council Directive 80/217/EEC of 22 January 1980 introducing Community measures for the control of classical swine fever. [1] It requires the Member States, in particular in order to improve the state of health of livestock and to remove remaining barriers to trade between Member States in live animals and fresh meat, [2] to take every measure to ensure an immediate and effective control of the disease as soon as it appears and to prevent its spread.

To that end, the directive lays down an obligation to notify immediately the competent national authority of suspected or ascertained cases of classical swine fever. In such an event, the aforementioned authority must set in motion without delay the necessary investigation in order to confirm or rule out the presence of the disease, in the meantime placing the holding concerned under official surveillance. In this context, Article 5 of the directive provides as follows:

'In cases where the presence of swine fever is officially confirmed, Member States shall

* Original language: Italian.

1 — OJ 1980 L 47, p. 11. By virtue of the subsequent Council Directive 80/1101/EEC relating to the date of entry into force of Directive 80/217/EEC introducing Community measures for the control of classical swine fever (OJ 1980 L 325, p. 17), the time-limit for the transposition of Directive 80/217 into national law was fixed at 1 July 1981.

2 — See, in this respect, the first and second recital of the preamble to the directive in question.

ensure that (...) the competent authority prescribes that:

— all pigs on the holding must be slaughtered without delay under official supervision and in such a way as to avoid the risk of the swine fever virus spreading during transport or slaughter,

(...)'.

4. Council Directive 80/1095/EEC laying down conditions designed to render and keep the territory of the Community free from classical swine fever was adopted on 11 November 1980. [3] It was subsequently amended by Council Directive 87/487/EEC of 22 September 1987, [4] which extended the duration of the measures which had been undertaken in view of the serious outbreak of classical swine fever which at that time had affected various regions of the Community, rendering difficult the completion of the eradication programme within the time-limits previously prescribed.

According to Article 3 of the directive, any Member State which was not officially swine-fever-free was to submit a plan to be approved by the Commission for the accelerated eradication of the disease to be carried out within a maximum of six years. [5] Article 3a, inserted in 1987, provided the possibility for those Member States which had not yet fully achieved the objective, to submit a new plan extending the total duration of the operation to make their territory disease free to ten years. The criteria to which the eradication plans drawn up at national level had to adhere were laid down in Articles 4 and 4a (the latter inserted by Directive 87/487/EEC).

5. On 11 November 1980 the Council adopted, in addition to Directive 80/1095/EEC, Decision 80/1096/EEC introducing Community financial measures for the eradication of classical swine fever, [6] supplemented and amended by Decision 87/488/EEC of 22 September 1987, [7] the main objective of which was to establish an additional period in which the measures taken were to be carried out, in the same way as occurred with Directive 80/1095/EEC.

By virtue of that decision the Member States were able to benefit from assistance from the

3 — OJ 1980 L 325, p. 1.

4 — OJ 1987 L 280, p. 24.

5 — The time-limit, which had been fixed at five years in the 1980 directive, was subsequently extended to six years by Council Decision 87/230/EEC of 7 April 1987 (OJ 1987 L 99, p. 16).

6 — OJ 1980 L 325, p. 5.

7 — OJ 1987 L 280, p. 26.

European Agricultural Guidance and Guarantee Fund ('the Fund') for the expenses incurred under measures provided for in Directives 80/217/EEC and 80/1095/EEC. To that end, Article 5(1) and (1a) — the latter introduced following amendments made in 1987 — provides that Member States are to forward to the Commission the plans for the eradication of classical swine fever, together with supplementary plans, drawn up in accordance with Articles 3 and 3a of Directive 80/1095/EEC. It is for the Commission therefore to ascertain whether all the conditions for Community financial assistance have been met (Article 5(3)). To that end, Article 3(2) provides that:

'The guidance section of the Fund shall reimburse the Member States under the eradication plan referred to in Article 5:

(a) up to 50% of the cost incurred in respect of compensation to owners for the slaughter and destruction of the animals;

(...)'.

Article 3(2a), introduced by the aforementioned Decision 87/488/EEC, provides, moreover, that:

'The Community shall reimburse the Member States under the supplementary measures ...:

(a) up to 50% of the cost incurred in respect of compensation to owners for the slaughter and destruction of pigs in areas of the territory of the Member States where an outbreak of the disease has been recorded;

(b) up to 50% of the cost incurred in respect of compensation to owners for the slaughter and destruction of pigs in connection with systematic serological screening campaigns carried out with a view to implementing the new plan referred to in [Article 5(1a)];

(...)'.

6. Pursuant to those provisions, the Commission adopted Decision 88/529/EEC of 7 October 1988 approving the plan for the eradication of classical swine fever presented by the Kingdom of Belgium, [8] which had been included among the countries as not being officially recognized free from that disease by Decision 81/400/EEC of 15 May 1981. [9] Since the operation to make the territory disease free had not been successful under the first plan approved by the Commission, in December 1987 the Belgian State forwarded to the Commission a new plan for completing the measures taken, which was the subject of Decision 88/529. Since it was in conformity with Directives 80/217/EEC

8 — OJ 1988 L 291, p. 78.

9 — Commission decision establishing the status of Member States as regards classical swine fever with a view to its eradication (OJ 1981 L 152, p. 37).

and 80/1095/EEC, it also benefited from financial assistance from the Community. Article 2 of Decision 88/529/EEC in particular required Belgium to bring into force from 1 January 1988 'the laws, regulations and administrative provisions for implementing the plan'.

7. At the same time as it adopted the legislation and specific plans of action against classical swine fever, the Council took a series of specific measures against another disease which also affects pigs, African swine fever. One was Council Decision 80/1097/EEC of 11 November 1980 on financial aid from the Community for the eradication of African swine fever in Sardinia, [10] to which the national court referred in its order for reference.

Following the granting in 1976 of an initial financial contribution, [11] that decision takes note of the fact that the disease had not been completely eradicated and upholds the new request for Community financing submitted by the Italian authorities. Article 1 requires Italy to submit for the Commission's approval an emergency plan for the eradication of the disease, the effectiveness of which was to be ensured by the inclusion therein of a series of measures listed in detail in Article

2. That article, in so far as is relevant, provides as follows:

'The plan specified in Article 1 must provide for:

1. rigorous eradication measures including the following:

(...)

(f) immediate and total compensation for owners whose pigs have been slaughtered under the plan;

(...)'.

8. Moreover, it must be pointed out that, because the disease persisted in the region in question, the Council required the Italian Republic by a decision of 25 April 1990, [12] following the material events in the main proceedings, to draw up a new plan for the eradication of African swine fever in Sardinia, and provided for Community financial assistance towards its implementation. The measures which the plan must contain are listed in Article 2 of the decision and are

10 — OJ 1980 L 325, p. 8.

11 — The contribution in question was granted by Council Decision 77/97/EEC of 21 December 1976 on the financing by the Community of certain emergency measures in the field of animal health (OJ 1977 L 26, p. 78).

12 — Council Decision 90/217/EEC on financial aid from the Community for the eradication of African swine fever in Sardinia (OJ 1990 L 116, p. 24).

largely equivalent to those already provided for in the 1980 decision; however, unlike the earlier provisions, it provides that the compensation for the owners of pigs which have been slaughtered should be 'immediate and adequate'.

9. Finally, it should be noted that Directive 80/217/EEC was transposed into Belgian law by a Royal Decree of 10 September 1981, laying down health inspection measures concerning classical swine fever and African swine fever. [13] Article 7 provides that, where the existence of swine fever is officially confirmed in a holding, the veterinary inspector must order the slaughter of all the pigs present in the holding in accordance with Chapter IV of that decree. Among those provisions, Article 15 provides as follows:

'Within the limits of the budgetary appropriations there shall be granted to owners whose pigs have been slaughtered by order of the veterinary authorities compensation corresponding to:

1. 50% of the estimated value of slaughtered pigs which were infected or suspected of being infected;

2. the total estimated value of slaughtered pigs which were suspected of being contaminated'.

10. The facts of the main proceedings may be summarized as follows:

The applicants, Flip CV, a cooperative, and the company O. Verdegem NV, as owners of pigs slaughtered by order of the veterinary authority under measures for the control of classical swine fever, asked the Belgian State for compensation under Article 15 of the abovementioned Royal Decree of 10 September 1981.

Before the national court they contested the amount of the compensation paid to them inasmuch as it did not correspond to the total value of the slaughtered animals and did not include default interest. In reply to the argument put forward by the Belgian State, that, on the basis of that provision, payment of compensation is possible only within the limit of the relevant budgetary appropriation and that any payment other than the principal amount is excluded since no provision is made in that regard, the applicants contended that the 1981 Royal Decree should be

13 — *Belgisch Staatsblad* of 11 November 1981, p. 14238.

interpreted in the light of Community law. In their view, those rules entitle owners of pigs slaughtered on health grounds to 'total and immediate' compensation, as expressly provided for in Article 2(1)(f) of Decision 80/1097/EEC.

11. Taking account, therefore, of the arguments expounded by the applicants, the national court referred to the Court for a preliminary ruling three questions on the interpretation and validity of certain provisions of Community law.

The Rechtbank van Eerste Aanleg, Ghent, wishes to ascertain, first of all, whether Commission Decision 88/529/EEC of 7 October 1988 approving the plan for the eradication of classical swine fever presented by the Kingdom of Belgium should be interpreted as also including the expression 'immediate and total compensation for owners whose pigs have been slaughtered under the plan' as laid down in Article 2(1)(f) of Commission Decision 80/1097/EEC on the eradication of African swine fever in Sardinia.

In the event that the reply to the first question should be in the affirmative, the national court wishes to ascertain whether it follows therefrom that default and statutory interest is also payable on the principal amount.

On the other hand, in the event that the reply to the first question should be in the negative, the Court is asked whether Commission Decision 88/529/EEC is invalid inasmuch as it is contrary to Article 7 of the EEC Treaty (now Article 6 in the new numbering under the Maastricht Treaty), inasmuch as Italian owners are entitled to immediate and total compensation, whereas Belgian owners enjoy that right only within the limits of the budgetary appropriation, although the two decisions — it is pointed out — should be considered to be expressions of the same Community legislation.

12. As a preliminary point I would observe that, notwithstanding the fact that the questions refer exclusively to Decision 88/529/EEC, they are in fact intended to ascertain whether the Community rules on measures against classical swine fever — implemented by the abovementioned decision — lay down a general obligation to pay 'total and immediate' compensation to those whose animals had to be slaughtered because they had been infected with that disease. Thus, in order to give a useful reply to the national court, I feel the questions should be reworded to that effect, making reference, in particular, to Directives 80/217/EEC and 80/1095/EEC and to Decision 80/1096/EEC and their subsequent amendments.

13. Having thus clarified the terms of the questions referred to the Court, I consider that the reply should be in the negative. It

does not seem to me that it is possible to infer from the Community rules the existence of a general principle that owners of animals which have been slaughtered under health inspection measures are entitled in any event to 'total and immediate' compensation.

First, the legislation on the control of classical swine fever merely provides, on the one hand, for measures of a veterinary nature which the Member States are required to adopt with the double aim of preventing an outbreak of the disease and avoiding its spread, and, on the other, for Community financial assistance for operations to make their territory disease free undertaken by the Member States concerned. In this last respect, it has been seen that, while Decision 80/1096/EEC includes costs incurred in compensating owners whose animals have been slaughtered or destroyed [14] among the costs which may be eligible for Community financial aid, it is silent on the nature of such compensation and, furthermore, it does not even impose the obligation to pay compensation. In the absence of specific provisions in that respect, only the national legal provisions apply, in so far as Belgium is concerned, the abovementioned Royal Decree of 10 September 1981.

14. Analysis of the other Community acts adopted in order to safeguard and improve the level of the protection of veterinary health, in particular, those for the eradication of diseases communicable to man, reveals even more disparities as regards compensation for farmers and its characteristics.

Compensation was not envisaged, for example, in Council Directive 77/391/EEC of 17 May 1977 introducing Community measures for the eradication of brucellosis, tuberculosis and leucosis in cattle. [15] It was only subsequently, in Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field, [16] and Council Decision 90/638/EEC of 27 November 1990 laying down Community criteria for the eradication and monitoring of certain animal diseases, [17] that, in order to guarantee the effectiveness of Community actions, it was laid down that national eradication programmes for those diseases and those listed in Decision 90/424/EEC should provide for 'swift and adequate compensation of the livestock farmers'. [18]

14 — Article 3(2) and (2a), see footnote 5 above.

15 — OJ 1977 L 145, p. 44.

16 — OJ 1990 L 224, p. 19.

17 — OJ 1990 L 347, p. 27.

18 — Final subparagraph of Article 3(2) of Decision 90/424/EEC. Annex I to Decision 90/638/EEC laying down 'criteria for eradication programmes' is also worded in similar terms. Likewise, Article 3(2)(d) of Council Decision 89/145/EEC of 20 February 1989 introducing a Community financial measure for the eradication of contagious bovine pleuropneumonia (CBPP) in Portugal, also with the aim of ensuring the effectiveness of the measures taken, requires that the plan to be drawn up by Portugal should provide for 'immediate and adequate compensation for the owners of bovines which have been slaughtered (...)' (OJ 1989 L 53, p. 55).

In Council Decisions 86/649/EEC [19] and 86/650/EEC [20] of 16 December 1986 introducing Community financial measures for the eradication of African swine fever in Portugal and Spain respectively, the plan drawn up by the competent national authorities, in order to ensure its effectiveness and to obtain Community financial aid, had to include 'immediate and adequate compensation for the owners of holdings whose pigs have been slaughtered'. [21]

Finally, as regards the provisions contained in the two decisions introducing a Community financial measure for the eradication of African swine fever in Sardinia, reference is made to what was said above.

15. While the provision of compensation for farmers has indeed become a standard clause, in particular since 1989, in Community programmes for the control of animal diseases, it appears, however, to be dictated essentially by the concern to ensure the effectiveness of the action taken by means of the active collaboration of the individuals concerned. As the Commission pointed out in its observations, the abovementioned provision applies not only in relation to the rules for Community financing, but also where and in so far as it is considered a condition necessary in order to ensure the success of certain measures in the veterinary field. That being the objective, I do not believe that a right to compensation may be inferred from it for owners of animals that have been slaughtered. On the other hand, the disparate and, often, general nature of the wording used to that effect — compensation is to be variously 'swift and adequate' or 'immediate and adequate' — clearly shows that the matter continues to be governed by national law, which is also to determine whether default or statutory interest is payable.

16. Finally, in so far as concerns the alleged discrimination between Belgian and Italian breeders, I will restrict myself to the following remarks.

First of all, it is undeniable that Directive 80/1095/EEC, to which the questions refer in particular, inasmuch as Decision 88/529/EEC merely approves the eradication plan submitted by the Belgian authorities on the basis of that directive, is to be applied uniformly throughout the Community, irrespective of the nationality of the pig farmers and where they are established. Nor, secondly, could there be any discrimination as a result of the fact that Decision 80/1097/EEC provides for 'total and immediate' compensation for Sardinian pig farmers, inasmuch as that decision is concerned with control of African swine fever, a different disease from classical swine fever, which is the object of Directive 80/1095/EEC.

19 — OJ 1986 L 382, p. 5.

20 — OJ 1986 L 382, p. 9.

21 — Article 2(1)(c) of the two decisions concerned, whose content is analogous.

17. In the light of the foregoing, I therefore propose that the Court should give the following answers to the questions referred by the Rechtbank van Eerste Aanleg, Ghent:

— Commission Decision 88/529/EEC of 7 October 1988 approving the plan for the eradication of classical swine fever presented by the Kingdom of Belgium must be interpreted as meaning that the Belgian State is not obliged to provide total and immediate compensation in every case to owners of pigs slaughtered under that plan;

— Consideration of Council Directive 80/1095/EEC of 11 November 1980 laying down conditions designed to render and keep the territory of the Community free from classical swine fever and of Commission Decision 88/529/EEC of 7 October 1988 has disclosed no factor of such a kind as to affect their validity.