JUDGMENT OF THE COURT (Second Chamber)
30 May 2002 *

In Joined Cases C-284/00 and C-288/00,

REFERENCES to the Court under Article 234 EC by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Stratmann GmbH und Co. KG

and

Landrätin des Kreises Wesel (C-284/00),

and between

Fleischversorgung Neuss GmbH und Co. KG

and

Landrat des Kreises Neuss (C-288/00),

* Language of the case: German.

on the interpretation of, first, Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) and 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 (OJ 1988 L 194, p. 24) and, secondly, Directive 85/73 as amended by Council Directive 93/118/EC of 22 December 1993 (OJ 1993 L 340, p. 15), in conjunction with Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-64, p. 185) both in the version resulting from Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13) and in that resulting from Council Directive 91/497/EEC of 29 July 1991 amending and consolidating Directive 64/433 to extend it to the production and marketing of fresh meat (OJ 1991 L 268, p. 69),

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges,

Advocate General: P. Léger,
Registrar: M.-F. Contet, Administrator,

after considering the written observations submitted on behalf of:

— Stratmann GmbH und Co. KG (C-284/00), by L. Liebenau, Rechtsanwalt,

— Fleischversorgung Neuss GmbH und Co. KG (C-288/00), by L. Liebenau, Rechtsanwalt,

— the Landrätin des Kreises Wesel (C-284/00), by G. Harmeling, Kreisverwaltungsdirektor,

— the Landrat des Kreises Neuss (C-288/00), by S. Heithoff, Kreisrechtsdirektor,

— the Commission of the European Communities (C-284/00 and C-288/00), by G. Braun and G. Berscheid, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Stratmann GmbH und Co. KG, represented by H. Tuengerthal, Rechtsanwalt; Fleischversorgung Neuss GmbH und Co. KG, represented by L. Liebenau; the Landrätin des Kreises Wesel, represented by G. Harmeling; the Landrat des Kreises Neuss, represented by S. Heithoff; and the Commission, represented by G. Braun and G. Berscheid, at the hearing on 17 January 2002,

after hearing the Opinion of the Advocate General at the sitting on 21 March 2002,

gives the following

Judgment

1 By two orders of 27 April 2000, received at the Court on 19 and 21 July 2000 respectively, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of, first, Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) and 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 (OJ 1988 L 194, p. 24) and, secondly, Directive 85/73 as amended by Council Directive 93/118/EC of 22 December 1993 (OJ 1993 L 340, p. 15), in conjunction with Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-64, p. 185) both in the version resulting from Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13) and in that resulting from Council Directive 91/497/EEC of 29 July 1991 amending and consolidating Directive 64/433 to extend it to the production and marketing of fresh meat (OJ 1991 L 268, p. 69).

2 Those questions were raised in two sets of proceedings respectively between Stratmann GmbH und Co. KG ('Stratmann') and the Landrätin des Kreises Wesel (Chief Administrative Officer of the District of Wesel; 'the Landrätin') and between Fleischversorgung Neuss GmbH und Co. KG ('Fleischversorgung Neuss') and the Landrat des Kreises Neuss (Chief Administrative Officer of the District of Neuss; 'the Landrat') concerning the recovery of fees demanded from those companies for health inspections and controls in respect of meat carried out for them between 1991 and 1994 by officers of the Districts of Wesel and Neuss.

Relevant Community provisions

Rules concerning health inspections and controls in respect of fresh meat

Directive 64/433, in the version resulting from Directive 89/662

3 Directive 64/433, in the version resulting from Directive 89/662, applies, as Article 1(1) states, to intra-Community trade in fresh meat from domestic animals of several species including bovine animals and swine. Article 2 provides that 'fresh meat' means meat which has not undergone any treatment, other than cold treatment, to ensure preservation.

4 Article 3(1)(A)(d) of Directive 64/433, in the version resulting from Directive 89/662, states:

'Each Member State shall ensure that only fresh meat which meets the following requirements is sent from its territory to that of another Member State:

A. Carcases, half carcases or half carcases cut into no more than three wholesale cuts, and quarters must:

...

(d) have been inspected post mortem by an official veterinarian in accordance with Chapter VII of Annex I and not have shown any change except for traumatic lesions which occurred shortly before slaughter or localised malformations or changes, provided that it is established, if necessary by appropriate laboratory tests, that these do not render the carcase and offal unfit for human consumption or dangerous to human health'.

5 The post mortem inspection must include, 'where necessary, laboratory tests' (paragraph 39(e) of Chapter VII of Annex I to Directive 64/433, in the version resulting from Directive 89/662). In addition, fresh meat from swine which contains skeletal muscles (striated muscles) must undergo an investigation for trichinosis carried out under the supervision and responsibility of the official veterinarian and in accordance with proven methods which are scientifically recognised, in particular methods which are defined in Community directives or in other international standards (paragraph 41(D) of Chapter VII of Annex I to that directive).

6 Under Article 4(1)(a) of Directive 64/433, in the version resulting from Directive 89/662, each Member State is to ensure that in the case of fresh pigmeat — other than meat which has undergone cold treatment in accordance with Council Directive 77/96/EEC of 21 December 1976 on the examination for trichinae (trichinella spiralis) upon importation from third countries of fresh meat derived from domestic swine (OJ 1977 L 26, p. 67) — only meat which has undergone an examination for trichinosis in accordance with paragraph 41(D) of Chapter VII of Annex I to Directive 64/433 is sent from its territory to that of another Member State. Likewise, as provided in Article 5(f) of that directive, every Member State is to ensure that fresh meat from swine which have been found to have trichinae is not sent from its territory to that of another Member State.

7 Under the first paragraph of Article 2, in conjunction with the first paragraph of Article 6, of Council Directive 88/409/EEC of 15 June 1988 laying down the health rules applying to meat intended for the domestic market and the levels of the fees to be charged, pursuant to Directive 85/73, in respect of the inspection of such meat (OJ 1988 L 194, p. 28), the Member States were to take the necessary steps to ensure that, by 1 January 1991 at the latest, all fresh meat produced in their territory for marketing there was also inspected in accordance with the inspection rules laid down, *inter alia*, in Chapter VII of Annex I to Directive 64/433.

Directive 64/433, in the version resulting from Directive 91/497

8 Under Article 3(1)(A)(d) of Directive 64/433, as amended and consolidated by Directive 91/497, each Member State is to ensure that 'carcases, half carcases or half carcases cut into no more than three wholesale cuts, and quarters... have been inspected post mortem by an official veterinarian in accordance with Chapter VIII of Annex I and do not show any change except for traumatic lesions which occurred shortly before slaughter or localised malformations or changes, provided that it is established, if necessary by appropriate laboratory tests, that these lesions, malformations or changes do not render the carcase and offal unfit for human consumption or dangerous to human health'.

9 As previously laid down in Directive 64/433 in the version resulting from Directive 89/662, the post mortem inspection must include, 'where necessary, laboratory tests' (paragraph 40(e) of Chapter VIII of Annex I). In addition, the official veterinarian must systematically carry out an investigation for trichinosis in the case of fresh meat from swine which contains skeletal muscles (striated muscles) (paragraph 42(A)(3) of Chapter VIII of Annex I).

10 Article 5(1)(a)(ii) and (iii) of Directive 64/433, in the version resulting from Directive 91/497, states:

'Member States shall ensure that the official veterinarian declares unfit for human consumption:

(a) meat [from] animals:

...

(ii) showing acute lesions of broncho-pneumonia, pleurisy, peritonitis, metritis, mastritis, arthritis, pericarditis, enteritis or meningo-encephalomyelitis confirmed by a detailed inspection, possibly supplemented by a bacteriological examination and a search for residues of substances with a pharmacological effect.

...

(iii) affected by the following parasitic diseases:... trichinosis'.

11 By virtue of Article 6(1)(a) of the same version of Directive 64/433, the Member States are to ensure that fresh pigmeat not tested for trichinosis in accordance

with Annex I to Directive 77/96 undergoes cold treatment in accordance with Annex IV to that directive.

12 Under the first paragraph of Article 3 of Directive 91/497, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive no later than 1 January 1993.

Directive 77/96

13 Directive 77/96 was adopted on the basis of Article 21 of Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries (OJ, English Special Edition 1972 (31 December, L 302), p. 7) which, in its original version, states that 'the method and procedures required for [detecting] the presence of threadworms in fresh meat of swine shall be laid down by the Council, acting on a proposal from the Commission'.

14 Under Directive 77/96, fresh meat from domestic swine imported from third countries must undergo an examination to detect the presence of trichinae in accordance with one of the methods provided for in Annex I. However, Member States may provide that fresh meat from certain third countries or parts of such countries are not subject to that examination, provided that it is frozen in accordance with Annex IV to Directive 77/96.

Rules on the financing of health inspections and controls in respect of fresh meat

Directive 85/73 and Decision 88/408

15 Directive 85/73 provides, in the first indent of Article 1(1), that as from 1 January 1986 the Member States are to ensure that fees are collected, when the animals referred to in Article 1(2) are slaughtered, for the costs occasioned by health inspections and controls. In accordance with Article 1(2), for the purpose of the directive 'animals' means domestic animals of several species including bovine animals and swine.

16 Under Article 2(1) of Directive 85/73, the Council was to take a decision before 1 January 1986 on the standard level or levels of the fees referred to in the first indent of Article 1(1), on the detailed rules and principles for the implementation of the directive and on possible exceptions. In accordance with Article 2(2), the Member States were to be authorised to collect an amount exceeding the level or levels referred to in Article 2(1) provided that the total fees collected by them remained lower than or equal to the real figure for inspection costs.

17 As stated in Article 1 thereof, Decision 88/408, which was adopted pursuant to Article 2(1) of Directive 85/73, fixes the levels of the fees to be collected by the Member States for health inspections and controls in respect of fresh meat as provided for, *inter alia*, by Directive 64/433 and lays down the rules for implementing Directive 85/73. Article 2(1) of Decision 88/408 provides that the fees are fixed at the standard levels of ECU 2.5 per animal for young bovine animals and ECU 1.3 per animal for pigs.

18 Under Article 2(2) of Decision 88/408, Member States where salary costs, the structures of establishments and the ratio between veterinarians and inspectors differ from the Community average adopted for the calculation of the standard amounts laid down in Article 2(1) may depart from them through increases or reductions up or down to the real figure for inspection costs. Member States are to have recourse to those exemptions on the basis of the principles set out in the annex to Decision 88/408.

19 Article 5(1) of Decision 88/408 provides that the amount referred to in Article 2 of that directive is to replace all other health inspection charges or fees levied by the national, regional or local authorities of the Member States for the inspection and control of fresh meat referred to in Article 1 and the certification thereof.

20 By virtue of Article 4 of Directive 88/409, the level of fees resulting from Article 2 of Decision 88/408 is applicable in respect of fresh meat which is produced in the territory of a Member State for marketing there and on that basis must likewise be inspected in accordance with the inspection rules laid down by Directive 64/433.

Directive 85/73, as amended by Directive 93/118

21 Under the first indent of Article 1(1) of Directive 85/73, as amended by Directive 93/118, the Member States are to ensure the collection of a Community fee for the costs occasioned by health inspections and controls in respect of the meat referred to in various directives, including Directive 64/433.

22 Article 2 of Directive 85/73, as amended by Directive 93/118, provides:

'1. The 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

— for the types of meat referred to in Directives 64/433/EEC..., with effect from 1 January 1994, of the Community fees following the procedures laid down in the annex,

...

...

3. 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.

4. The Community fees shall replace all other health inspection charges or fees levied by the national, regional or local authorities of the Member States for the

inspections and controls referred to in Article 1 and the certification thereof. However, until 31 December 1995, the Member States shall be authorised to collect registration costs for establishments approved in accordance with the rules referred to in Annex A to Directive 89/662/EEC.

...'

23 Point 1 of Chapter I of the annex to Directive 85/73, as amended by Directive 93/118, provides that, without prejudice to the application of points 4 and 5, the Member States are to collect for inspection costs relating to slaughter a standard amount of ECU 2.5 per animal for young bovine animals and ECU 1.3 per animal for pigs. Under point 4(a) and (b) of Chapter I of the annex, the Member States may, in order to cover increased costs, increase the standard amounts for fees for individual establishments on the conditions set out or collect a special fee covering actual costs.

24 Article 2 of Directive 93/118 repealed Decision 88/408 with effect from 1 January 1994.

25 Under the first subparagraph of Article 3(1) of Directive 93/118, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive no later than 31 December 1993 as regards the requirements in the annex and in Article 5, and no later than 31 December 1994 as regards the other provisions.

Relevant national provisions

26 Paragraph 24 of the Fleischhygienegesetz (Law on Meat Hygiene; 'the FlHG'), in the version of 24 February 1987 (BGBl. I, p. 649), provides:

'(1) For official acts performed pursuant to the present Law and the provisions adopted for its implementation, fees and disbursements shall be charged to cover costs.

(2) The matters giving rise to recovery of costs under subparagraph 1 shall be determined by the laws of the *Länder*. Fees shall be calculated in accordance with Directive 85/73...'

27 The Gesetz zur Änderung veterinärrechtlicher, lebensmittelrechtlicher und tierzuchtrechtlicher Vorschriften (Law amending legal provisions relating to veterinary practices, foodstuffs and the raising of livestock) of 18 December 1992 (BGBl. I, p. 2022), which entered into force on 1 January 1993, added the following words to Paragraph 24(2) of the FlHG:

'and the legal measures adopted on the basis of that directive by the institutions of the European Communities'.

28 The nordrheinwestfälisches Gesetz über die Kosten der Fleisch- und Geflügelfleischhygiene (Law of North Rhine-Westphalia on meat and poultrymeat

hygiene costs) of 16 December 1998 (GV. NRW, p. 775; 'the FlGFlHKostG NW'), which entered into force with retroactive effect from 1 January 1991 as regards the by-laws to be adopted concerning official acts performed pursuant to the FlHG, provides, in Paragraph 1, that districts, and towns and cities not forming part of a district, are to adopt by-laws governing the levying of fees under, *inter alia*, Paragraph 24 of the FlHG.

29 The Verordnung zur Ausführung des nordrheinwestfälischen Gesetzes über die Kosten der Fleisch- und Geflügelfleischhygiene (Regulation implementing the FlGFlHKostG NW) of 6 May 1999 (GV. NRW, p. 156), as amended by a regulation of 27 September 1999 (GV. NRW, p. 563) which, so far as concerns the provisions relevant to the main proceedings, also entered into force with retroactive effect from 1 January 1991, lays down, in Paragraph 1(1), the matters giving rise to fees for which Directive 85/73, in the applicable version, prescribes — according to the author of the regulation — a Community fee and, in Paragraph 1(2), the matters giving rise to fees for which no Community fee is envisaged. The latter category includes examinations for trichinae and bacteriological examinations.

30 The Satzung des Kreises Wesel über die Erhebung von Gebühren und Auslagen für Amsthandlungen nach dem Fleischhygienegesetz (By-laws of the District of Wesel on the levying of fees and disbursements for official acts performed pursuant to the FlHG) of 16 August 1999 (Abl. des Kreises Wesel, No 21; 'the Wesel by-laws'), which entered into force with retroactive effect from 1 January 1991 but contains transitional provisions for earlier periods, prescribes, in accordance with previous by-laws, in addition to the standard fee for post mortem inspections, a special fee in respect of examining pigmeat for trichinae, whose amount in 1992 differs from that in 1993 and 1994.

31 The Satzung des Kreises Neuss über die Erhebung von Gebühren für Amsthandlungen nach dem Fleischhygienerecht (By-laws of the District of Neuss on the

levying of fees for official acts performed under the law on meat hygiene) of 10 June 1999 (notified in the press on 16 June 1999; 'the Neuss by-laws') which, so far as concerns the provisions relevant to Case C-288/00, also entered into force with retroactive effect from 1 January 1991 while laying down transitional provisions for earlier periods, prescribes for 1991, in accordance with previous by-laws, a fee for bacteriological examinations of DEM 45 per animal in addition to the standard fee for post mortem inspections.

The main proceedings

Case C-284/00

32 Stratmann is an undertaking which runs a slaughtering business. Between 1992 and 1994 the Landrätin, acting on the basis of the version of the Wesel by-laws applicable at the time, issued Stratmann with several notices for the recovery of fees due in respect of ante and post mortem health inspections carried out on cattle, sheep, goats and pigs and in respect of examining pigmeat for trichinae.

33 Stratmann brought an action challenging those various payment notices. After winning the case before the Verwaltungsgericht Düsseldorf (Administrative Court, Düsseldorf) (Germany) and then being partially successful before the Oberverwaltungsgericht für das *Land* Nordrhein-Westfalen (Higher Administrative Court for the *Land* North Rhine-Westphalia) (Germany), it brought before the Bundesverwaltungsgericht an application for review on a point of law in which the only issue remaining was whether the Landrätin was entitled to levy a special fee in respect of examining pigmeat for trichinae.

34 Since the Bundesverwaltungsgericht considered that it could not be concluded with certainty from the applicable Community legislation that the standard fee, possibly increased, provided for by that legislation also covered costs occasioned by examining for trichinae, it decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does the standard fee applicable under

(a) Council Directive 85/73/EEC of 29 January 1985 in conjunction with Council Decision 88/408/EEC of 15 June 1988; and

(b) Council Directive 85/73/EEC, as amended by Council Directive 93/118/EC of 22 December 1993,

for the inspection of fresh meat intended for the domestic market in accordance with Council Directive 64/433/EEC of 26 June 1964 (which is applicable pursuant to Council Directive 88/409/EEC of 15 June 1988),

(a) as amended by Directive 89/662/EEC of 11 December 1989; and

(b) as amended by Directive 91/497/EEC of 29 July 1991,

also cover the costs of carrying out examinations of fresh pigmeat for trichinae?'

Case C-288/00

35 In January 1991 Fleischversorgung Neuss had young cattle slaughtered in the abattoirs of Kreis Neuss. By notice of 1 February 1991 the Landrat demanded under the Neuss by-laws from Fleischversorgung Neuss, in addition to the general fees for conducting ante and post mortem inspections, fees amounting to DEM 1 350 for the carrying out of 30 bacteriological examinations.

36 After the appellate court dismissed the action challenging that payment notice brought by Fleischversorgung Neuss, the latter brought an application for review on a point of law before the Bundesverwaltungsgericht which, faced with the issue whether the Landrat was entitled to levy special fees for such bacteriological examinations, decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does the standard fee applicable under Council Directive 85/73/EEC of 29 January 1985, in conjunction with Council Decision 88/408/EEC of 15 June 1988, for the inspection of fresh meat intended for the domestic market in accordance with Council Directive 64/433/EEC of 26 June 1964, as amended by Directive 89/662/EEC of 11 December 1989 and applicable pursuant to Council Directive 88/409/EEC of 15 June 1988, also cover the costs of carrying out a bacteriological examination required in an individual case?'

37 By order of the President of the Court of 21 September 2000, Cases C-284/00 and C-288/00 were joined for the purposes of the written and oral procedure and judgment.

Consideration of the questions referred for a preliminary ruling

38 By its questions, the national court essentially seeks to ascertain whether costs of bacteriological examinations and investigations for trichinae carried out in accordance with Directive 64/433, both in the version resulting from Directive 89/662 and in that resulting from Directive 91/497, are covered by the Community fee levied by the Member States for health inspections and controls in respect of fresh meat pursuant to, first, Directive 85/73 and Decision 88/408 and, secondly, Directive 85/73 as amended by Directive 93/118.

39 Under Article 1 of Directive 85/73, the Member States are to ensure as from 1 January 1986 that fees are collected for the costs occasioned by health inspections and controls carried out on the slaughter of domestic animals of several species including bovine animals and swine.

40 Decision 88/408, which was adopted pursuant to Directive 85/73, states in Article 1 that it fixes the levels of the fees to be collected by the Member States for health inspections and controls provided for, *inter alia*, by Directive 64/433.

41 It likewise follows from Article 1 of Directive 85/73, in the version resulting from Directive 93/118, which was applicable from 1 January 1994, that that Community fee is to be collected by the Member States for the costs occasioned by health inspections and controls in respect of the meat referred to in, *inter alia*, Directive 64/433.

42 It is clear from the terms in which Directive 64/433 is couched, both in the version resulting from Directive 89/662 and in that resulting from Directive 91/497, that those health inspections and controls may, indeed in certain cases must, include bacteriological examinations and examinations of pigmeat for trichinae.

43 First, under both paragraph 39(e) of Chapter VII of Annex I to Directive 64/433, in the version resulting from Directive 89/662, and paragraph 40(e) of Chapter VIII of Annex I to Directive 64/433, in the version resulting from Directive 91/497, the post mortem inspection which the Member States are required to carry out immediately after the animals concerned have been slaughtered must where necessary include laboratory tests.

44 It is apparent from Article 3(1)(A)(d) of Directive 64/433, in both those versions, that the Member States may be obliged to carry out such laboratory tests in order to ensure that lesions, malformations or changes which the carcases of the animals concerned might show do not render the carcases or offal unfit for human consumption or dangerous to human health.

45 It is likewise apparent from Article 5(1)(a)(ii) of Directive 64/433, in the version resulting from Directive 91/497, that bacteriological examinations might have to

take place where meat from animals which show certain lesions confirmed by a detailed inspection is involved.

46 Secondly, in accordance with both paragraph 41(D) of Chapter VII of Annex I to Directive 64/433, in the version resulting from Directive 89/662, and paragraph 42(A)(3) of Chapter VIII of Annex I to Directive 64/433, in the version resulting from Directive 91/497, at the time of the post mortem inspection the official veterinarian must systematically carry out an investigation for trichinosis in the case of fresh meat from swine which contains skeletal muscles (striated muscles).

47 Moreover, it is apparent from Article 5(f) of Directive 64/433, in the version resulting from Directive 89/662, that there can be no intra-Community trade in fresh meat from swine which have been found to have trichinae, and from Article 5(1)(a)(iii) of Directive 64/433, in the version resulting from Directive 91/497, that fresh meat from animals affected by trichinosis must be declared unfit for human consumption.

48 In accordance with Article 4(1)(a) of Directive 64/433, in the version resulting from Directive 89/662, and Article 6(1)(a) of Directive 64/433, in the version resulting from Directive 91/497, only fresh pigmeat which has undergone cold treatment in accordance with Directive 77/96 is not subject to mandatory examination for trichinae.

49 It follows from the foregoing findings that both bacteriological examinations and examinations for trichinae in pigmeat form part of the health inspections and controls envisaged by Directive 64/433, the costs of which are covered by the Community fee imposed by Directive 85/73 and Decision 88/408 and then by Directive 85/73 as amended by Directive 93/118.

50 There is nothing in the latter enactments to indicate that that fee is not deemed to cover the costs of such examinations or investigations on the ground that they do not take place in every case or, therefore, that those costs could be covered by a special fee.

51 First, it is apparent from Article 2(1) of Decision 88/408 and point 1 of Chapter I of the annex to Directive 85/73, as amended by Directive 93/118, that the amount of the Community fee is fixed at a standard level for each species.

52 As the Advocate General has pointed out at point 58 of his Opinion, a standard fee by its very nature exceeds the actual cost of the measures which it is intended to finance in certain cases and is lower than that cost in other cases.

53 Secondly, under Article 5(1) of Decision 88/408 and Article 2(4) of Directive 85/73, as amended by Directive 93/118, the Community fee replaces all other national, regional or local charges or fees levied by the Member States for health inspections and controls carried out under, *inter alia*, Directive 64/433.

54 It is true that, first, under Article 2(2) of Directive 85/73 and Article 2(2) of Decision 88/408 and, second, under Article 2(3) of Directive 85/73, as amended by Directive 93/118, the Member States have the power to charge an amount exceeding the level of the Community fees provided that that amount does not exceed the actual inspection costs.

55 However, none of those provisions authorises a special fee to be charged on top of the Community fee in order to cover certain costs incurred in respect of measures of inspection and control which do not take place in every case.

56 On the contrary, it is evident both from the annex to Decision 88/408 and from point 4(a) and (b) of Chapter I of the annex to Directive 85/73, as amended by Directive 93/118, that any increase decided on by a Member State must relate to the standard amount of the Community fee itself and take the form of an increase in the standard amount and that a special fee exceeding the levels of the Community fees must cover the entire actual costs.

57 Finally, as is apparent from the fifth and sixth recitals in the preamble to Directive 85/73 and the fourth and sixth recitals in the preamble to Directive 93/118, the adoption of harmonised rules concerning the financing of health inspections and controls in respect of fresh meat is intended to remedy the distortions of competition which differences existing in this regard between the Member States would be bound to create.

58 This objective might not be achieved if certain health inspection and control measures laid down by Directive 64/433 could fall outside that harmonised system of Community financing and be subject to special national fees.

59 In view of all of the foregoing considerations, the answer to the questions submitted must be that costs of bacteriological examinations and examinations for trichinae carried out in accordance with Directive 64/433, both in the version

resulting from Directive 89/662 and in that resulting from Directive 91/497, are covered by the Community fee levied by the Member States for health inspections and controls in respect of fresh meat pursuant to, first, Directive 85/73 and Decision 88/408 and, secondly, Directive 85/73 as amended by Directive 93/118.

Costs

60 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Bundesverwaltungsgericht by orders of 27 April 2000, hereby rules:

Costs of bacteriological examinations and examinations for trichinae carried out in accordance with Council Directive 64/433/EEC of 26 June 1964 on health

problems affecting intra-Community trade in fresh meat, both in the version resulting from Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market and in that resulting from Council Directive 91/497/EEC of 29 July 1991 amending and consolidating Directive 64/433 to extend it to the production and marketing of fresh meat, are covered by the Community fee levied by the Member States for health inspections and controls in respect of fresh meat pursuant to, first, Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat and 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 and, secondly, Directive 85/73 as amended by Council Directive 93/118/EC of 22 December 1993.

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 30 May 2002.

R. Grass

Registrar

N. Colneric

President of the Second Chamber