JUDGMENT OF THE COURT (Fifth Chamber)
18 May 2000 *

In Case C-301/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the College van Beroep voor het Bedrijfsleven (Netherlands) for a preliminary ruling in the proceedings pending before that court between

KVS International BV

and

Minister van Landbouw, Natuurbeheer en Visserij,

on the interpretation of Article 3 of Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species (OJ 1988 L 194, p. 10) and paragraph 1(b) of Chapter I of Annex B to the same directive, both in its original version and as amended by Council Directive 93/60/EEC of 30 June 1993 amending Directive 88/407/EEC and extending it to cover fresh bovine semen (OJ 1993 L 186, p. 28), and the validity of the latter directive,

* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: L. Sevón (Rapporteur), President of the First Chamber, acting for the President of the Fifth Chamber, P.J.G. Kapteyn, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: A. Saggio,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— KVS International BV, by P.E. Mazel, of the Leeuwarden Bar, and T. Knoop, of the Groningen Bar,

— the Netherlands Government, by M.A. Fierstra, Legal Adviser acting as Head of the European Law Department at the Ministry of Foreign Affairs, acting as Agent,

— the French Government, by K. Rispal-Bellanger, Head of Subdirectorate at the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Vasak, Assistant Secretary for Foreign Affairs in that directorate, acting as Agents,

— the Council of the European Union, by M. Sims and G. Houttuin, Legal Advisers, acting as Agents,

— the Commission of the European Communities, by T. van Rijn, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of KVS International BV, represented by P.E. Mazel and T. Knoop, of the Netherlands Government, represented by M.A. Fierstra and J. van Bakel, Assistant Legal Adviser at the European Law Department at the Ministry of Foreign Affairs, acting as Agent, of the French Government, represented by C. Vasak, of the Council, represented by M. Sims and G. Houttuin, and the Commission, represented by T. van Rijn, at the hearing on 18 November 1999,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2000,

gives the following

Judgment

1 By order of 17 July 1998, received at the Court on 31 July 1998, the College van Beroep voor het Bedrijfsleven referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 324 EC) four questions on the interpretation of Article 3 of Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species (OJ 1988 L 194, p. 10) and paragraph 1(b) of Chapter I of Annex B to the same directive, both in its original version and as amended by Council Directive 93/60/EEC of 30 June 1993 amending Directive 88/407/EEC and extending it to cover fresh bovine semen (OJ 1993 L 186, p. 28), and the validity of the latter directive.

2 Those questions arose in proceedings between KVS International BV (hereinafter 'KVS') and the Minister van Landbouw, Natuurbeheer en Visserij (Netherlands Minister for Agriculture, Nature Management and Fisheries) concerning the procurement of a certificate for the purpose of exportation of the deep-frozen semen of a bull to other Member States.

The applicable legislation

3 Article 1 of Directive 88/407 lays down the animal-health conditions applicable, in particular, to intra-Community trade in deep-frozen semen of domestic animals of the bovine species. To that end, it provides, in Article 3(b), that 'each Member State shall ensure that only semen' which has 'been collected from domestic animals of the bovine species whose health status complies with Annex B' is dispatched.

4 Annex B to Directive 88/407 lays down the conditions applying to the movement of animals into approved semen collection centres. In order to be admitted, all animals must, pursuant to paragraph 1(b) of Chapter I, in the original version of that annex, have belonged to herds which are, in particular, officially brucellosis free or brucellosis free and could not 'previously have been kept in other herds of a lower status'.

5 According to the transitional provisions set out in Article 20(1), Directive 88/407 is not applicable to semen collected and processed in a Member State before 1 January 1990.

6 The fourth recital in the preamble to Directive 88/407 states in particular that, in the context of intra-Community trade in semen, the Member State where the

semen is collected should be under an obligation to ensure that such semen 'has been obtained from animals whose health status is such as to ensure that the risk of spread of animal disease is eliminated'.

7 Directive 93/60, which amends Directive 88/407, states in its fourth recital that it was adopted in particular 'to clarify certain issues and to take account of technical progress ... and to align the rules with respect to brucellosis, tuberculosis and leucosis on those laid down in Directive 64/432/EEC'.

8 Article 1(8) of Directive 93/60 amends paragraph 1(b) of Chapter I of Annex B by providing that, in order to be admitted into approved semen collection centres, the animals must have belonged only to a herd which is officially free of brucellosis in particular and that they 'may not previously have been kept in one or more herds of a lower status'.

9 Under Article 3(1) of Directive 93/60, Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the abovementioned directive before 1 July 1994. No transitional period was provided for the marketing of semen obtained before that date.

Facts in the main proceedings and the questions referred for a preliminary ruling

10 On 7 June 1996, that is to say, after the expiry of the period prescribed for transposing Directive 93/60, KVS applied for certification with a view to the exportation of deep-frozen semen, collected prior to that date, to other Member States.

11 The bull in question from which the semen was obtained was born in 1988 on a holding in Belgium, for which the status of a herd officially free of brucellosis was not accorded until 1 January 1991. It remained there until it was exported to the Netherlands in October 1991 where it was admitted, after a period of isolation and after testing negative for brucellosis, to an approved semen collection centre run by KVS.

12 When the bull was imported into the Netherlands, the Netherlands Minister for Agriculture took the view that it satisfied all the conditions for admission into the approved semen collection centres laid down in Annex B to Directive 88/407. However, subsequently, the Belgian authorities informed their counterparts in the Netherlands that the bull in question should not be admitted into an approved semen collection centre and that its semen should not be placed on the market, on the ground that the herd in which it was and had been kept had been, during a certain time, a centre of brucellosis.

13 According to the Belgian inspectorate, for those reasons, the abovementioned bull did not fulfil the conditions laid down in Directive 88/407 for admission into an approved semen collection centre; Annex B, Chapter 1, paragraph 1(b), of that directive was to be interpreted in such a way as to eliminate any health risk, in particular the potential risk from a breeding bull which, during a period of its life, had belonged to a 'non-qualifying herd' within the meaning of that legislation.

14 On 7 June 1996, KVS applied to the competent Netherlands authority, the Rijksdienst voor de Keuring van Vee en Vlees (Netherlands Meat and Livestock Inspectorate) for certification of the deep-frozen semen of the bull, collected before the expiry of the deadline for the implementation of Directive 93/60, with a view to its export to Belgium and France.

15 By decision of 10 June 1996, the Netherlands Minister for Agriculture rejected the application on the ground that, at the time of the planned exportation of its deep-frozen semen, the bull did not fulfil the requirement of not having previously been kept in one or more herds of a status lower than that of officially brucellosis free, laid down in Directive 88/407, as amended. A complaint lodged by KVS against that decision was also rejected.

16 KVS having then brought an action against the refusal to issue the export certificate before the College van Beroep voor het Bedrijfsleven, that court decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 3(b) of Directive 88/407/EEC be construed as meaning that semen from a bull which was admitted to an approved semen collection centre before the adoption of amending Directive 93/60/EEC on the ground that it satisfied the admission requirements in force at that time does not (any longer) satisfy the condition set out in Article 3(b) of the directive if the animal in question fails, at the time when certification of the semen is applied for, to satisfy the amended requirement governing admission to a semen collection centre as laid down in paragraph 1(b) of Chapter I of Annex B to Directive 88/407/EEC?

If the answer to Question (1) is affirmative:

(2) Should the transitional rule set out in Article 20 of Directive 88/407/EEC be construed as meaning that it is applicable by analogy to semen which was collected and processed prior to 1 July 1994?

If the answer to Question (1) is affirmative and the answer to Question (2) negative:

(3) Is Directive 93/60/EEC invalid as being contrary to general principles of law, in particular the principle of the protection of legitimate expectations and the principle of proportionality, in so far as that directive does not provide for transitional measures to counter obstacles to intra-Community trade in the semen of bulls which had already, in accordance with the provisions then in force, been admitted to an approved semen collection centre before Directive 93/60 was adopted?

If the answer to Question (1) is negative:

(4) The provision in Article 1(8) of Directive 93/60/EEC amended the second subparagraph of paragraph 1(b) of Chapter I of [Annex B to] Directive 88/407/EEC ("The animals may not previously have been kept in other herds of a lower status") to read "The animals may not previously have been kept in one or more herds of a lower status". Must this amendment be construed as being exclusively a clarification of or as a substantive amendment to the requirements applying in regard to the admission of bovine animals to an approved semen collection centre?'

17 By its fourth question, which it is appropriate to consider first, the national court is essentially asking whether Article 3(b) of Directive 88/407, read in conjunction with paragraph 1(b) of Chapter I of Annex B to that directive, in its original version and as amended by Directive 93/60, must be interpreted as meaning that semen from a bull which, before its admission to an approved semen collection centre, belonged to a herd which was not officially brucellosis free is precluded from intra-Community trade, if only on account of the change in the health status of the herd in the period during which the animal was kept in that herd.

18 In that regard, KVS and the Netherlands Government argue that Directive 93/60 made the conditions for admission of animals in an approved semen collection centres more stringent and thus constitutes a substantive amendment to Directive 88/407 by requiring henceforth that the condition relating to the absence of brucellosis be applied not only to herds which are physically different to those in which the animal had previously been kept, but also to the very herd from which the animal directly comes at the time of its arrival at an approved semen collection centre.

19 The French Government, the Council and the Commission point out first of all the extremely contagious nature of brucellosis, a disease which is transmitted not only sexually but also affects the eyes and mouth. In particular, they point out that neither a negative result from a bacteriological test of the semen nor a negative blood test make it possible, as scientific knowledge now stands, to rule out the risk that at some time in its life, a bull born in a centre of brucellosis might secrete brucellosis in its semen. Moreover, the bacteria is able to survive freezing. The fact that a breeding bull was kept in a herd contaminated by brucellosis should therefore be considered to be an absolute bar to admission of its semen to intra-Community trade.

20 The health risk posed by the animal coming into contact with brucellosis would be the same irrespective of whether the bull was kept in another herd of lower status or the herd to which it belonged had had a lower health status during part of the period during which it was kept in that herd. Accordingly, the French Government, the Council and the Commission submit that the original wording of paragraph 1(b) of Chapter I of Annex B to Directive 88/407 should be understood to cover both cases. Directive 93/60 does not therefore make any substantive amendment but constitutes, rather, a clarification of the existing wording, as is clear moreover from the fourth recital of the preamble to that directive.

Findings of the Court

21 It should be recalled, at the outset, that according to the settled case-law of the Court, in interpreting a provision of Community law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, in particular, Case 292/82 *Merck* v *Hauptzollamt Hamburg-Jonas* [1983] ECR 3781, paragraph 12, and C-223/98 *Adidas* [1999] ECR I-7081, paragraph 23).

22 As for its wording, paragraph 1(b) of Chapter I of Annex B, as amended by Directive 93/60, which bars from approved semen collection centres any animals which have previously been kept 'in one or more herds of a lower status', is not ambiguous but refers incontestably to any herd physically different to that in which the animal is currently kept as well as to that latter herd in its previous state, at a time when it had only a health status lower than that of officially brucellosis free.

23 It is therefore appropriate to consider whether, in view of the context in which it occurs and of the objectives of Directive 88/407, that provision, in its original wording, which used the expression 'other herds of a lower status', had already to be construed to the same effect.

24 In that connection, it should be borne in mind that Directive 88/407 lays down the animal-health requirements applicable, in particular, to intra-Community trade in deep-frozen semen of domestic animals of the bovine species and that the fourth recital of its preamble stresses how important it is, for that trade, that the product should have been obtained from animals whose health status is such as to ensure that the risk of spread of animal disease is eliminated.

25 Thus, Directive 88/407 aims in particular at removing from the market any semen from animals of the bovine species which is likely to pose a risk of spreading zoonoses, including brucellosis.

26 To that end, Article 3(b) of Directive 88/407, read in conjunction with paragraph 1(b) of Chapter I of Annex B to that directive, provides that only the product obtained from animals belonging to brucellosis-free herds has access to that market.

27 Given the highly contagious nature of that disease and the manifold ways in which it is transmitted, factors mentioned by the French Government, the Council and the Commission in their observations, the safety of the product can only be guaranteed if the animal from which it is obtained has never in its life been in contact with animals whose health status is lower than that of brucellosis free.

28 It follows that the objective of fighting against brucellosis pursued by Directive 88/407 requires that the expression 'other herds of a lower status' which appears in paragraph 1(b) of Chapter I of Annex B, as originally worded, should be understood as referring to any herd of a lower health status in which the animal has been kept.

29 That interpretation is borne out in particular by the reference, in the fourth recital of Directive 93/60, to the simple intention to clarify certain issues and to take

account of technical progress and to align the rules with respect to brucellosis on extant provisions.

30 In view of the foregoing, the answer to the fourth question must be that Article 3(b) of Directive 88/407, read in conjunction with paragraph 1(b) of Chapter I of Annex B to that directive, in its original version and as amended by Directive 93/60, must be interpreted as meaning that semen from a bull which, before its admission to an approved semen collection centre, belonged to a herd which was not officially brucellosis free is precluded from intra-Community trade, if only on account of the change in the health status of the herd in the period during which the animal was kept in that herd.

31 In view of the answer given to the fourth question, it is not necessary to give an answer to the other questions referred to the Court

Costs

32 The costs incurred by the Netherlands and French Governments, the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of 17 July 1998, hereby rules:

Article 3(b) of Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species, read in conjunction with paragraph 1(b) of Chapter I of Annex B to that directive, in its original version and as amended by Council Directive 93/60/EEC of 30 June 1993 amending Directive 88/407/EEC and extending it to cover fresh bovine semen, must be interpreted as meaning that semen from a bull which, before its admission to an approved semen collection centre, belonged to a herd which was not officially brucellosis free is precluded from intra-Community trade, if only on account of the change in the health status of the herd in the period during which the animal was kept in that herd.

Sevón Kapteyn Jann

Ragnemalm Wathelet

Delivered in open court in Luxembourg on 18 May 2000.

R. Grass D.A.O. Edward

Registrar President of the Fifth Chamber