JUDGMENT OF THE COURT (Second Chamber)

22 January 2009 *

In Case C-473/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 7 May 2007, received at the Court on 25 October 2007, in the proceedings

Association nationale pour la protection des eaux et rivières-TOS,

Association OABA

v

Ministère de l'Écologie, du Développement et de l'Aménagement durables,

* Language of the case: French.

intervening party:

Association France Nature Environnement,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, K. Schiemann, J. Makarczyk, P. Kūris (Rapporteur), and C. Toader, Judges,

Advocate General: P. Mengozzi,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 18 September 2008,

after considering the observations submitted on behalf of:

— Association nationale pour la protection des eaux et rivières-TOS, by P. Jeanson, Vice-President of the Association,

— France Nature Environnement, by R. Léost, Vice-President of the association,

— the French Government, by G. de Bergues and A.-L. During, acting as Agents,

— the Greek Government, by V. Kontolaimos and S. Papaioannou, acting as Agents,

— the Commission of the European Communities, by A. Alcover San Pedro and J.-B. Laignelot, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 November 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of subheading 6.6(a) of Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated

pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1; 'Directive 96/61').

2 The reference was made by the Conseil d'État (Council of State) in the course of proceedings brought by the Association nationale pour la protection des eaux et rivières-TOS (National Association for the Protection of Waters and Rivers) and the OABA association seeking, on grounds of misuse of powers, annulment of Decree No 2005-989 of 10 August 2005 amending the nomenclature of classified installations (JORF, 13 August 2005, Text 52).

Legal context

Community legislation

3 Article 1 of Directive 96/61 provides:

'The purpose of this Directive is to achieve integrated prevention and control of pollution arising from the activities listed in Annex I. It lays down measures designed to prevent or, where that is not practicable, to reduce emissions in the air, water and land from the abovementioned activities, including measures concerning waste, in order to achieve a high level of protection of the environment taken as a whole, without prejudice to [Council] Directive 85/337/EEC [of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment] and other relevant Community provisions.'

4 Article 2 of Directive 96/61 provides:

'For the purposes of this Directive:

…

(3) "installation" shall mean a stationary technical unit where one or more activities listed in Annex I are carried out …

(4) "existing installation" shall mean an installation in operation or, in accordance with legislation existing before the date on which this Directive is brought into effect, an installation authorised or in the view of the competent authority the subject of a full request for authorisation, provided that that installation is put into operation no later than one year after the date on which this Directive is brought into effect;

…

(9) "permit" shall mean that part or the whole of a written decision (or several such decisions) granting authorisation to operate all or part of an installation, subject to certain conditions which guarantee that the installation complies with the requirements of this Directive. …

…'

5 Article 4 of Directive 96/61 states:

'Member States shall take the necessary measures to ensure that no new installation is operated without a permit issued in accordance with this Directive …'

6 Article 9 of Directive 96/61, entitled 'Conditions of the permit', states:

'1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 3 and 10 for the granting of permits in order to achieve a high level of protection for the environment as a whole by means of protection of the air, water and land.

2. In the case of a new installation or a substantial change where Article 4 of Directive 85/337/EEC applies, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of that Directive shall be taken into consideration for the purposes of granting the permit.

3. The permit shall include emission limit values for pollutants, in particular, those listed in Annex III, likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another (water, air and land). If necessary, the permit shall include appropriate requirements ensuring protection of the soil and ground water and

measures concerning the management of waste generated by the installation. Where appropriate, limit values may be supplemented or replaced by equivalent parameters or technical measures.

For installations under subheading 6.6 in Annex I, emission limit values laid down in accordance with this paragraph shall take into account practical considerations appropriate to these categories of installation.

4. Without prejudice to Article 10, the emission limit values and the equivalent parameters and technical measures referred to in paragraph 3 shall be based on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions. In all circumstances, the conditions of the permit shall contain provisions on the minimisation of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole.

…'

7 Article 16(2) of Directive 96/61 provides:

'The Commission shall organise an exchange of information between Member States and the industries concerned on best available techniques, associated monitoring, and

developments in them. Every three years the Commission shall publish the results of the exchanges of information.'

8 Annex I to Directive 96/61 lays down the categories of industrial activities referred to in Article 1. Subheading 2 of the introduction to Annex I states:

'The threshold values given below generally refer to production capacities or outputs. …'

9 In subheading 6.6(a), that annex also mentions, as categories of industrial activities referred to in Article 1 of Directive 96/61:

'Installations for the intensive rearing of poultry … with more than … 40 000 places for poultry'.

10 Annex III to Directive 96/61, entitled 'Indicative list of the main polluting substances to be taken into account if they are relevant for fixing emission limit values', sets out various air and water pollutants. It thus mentions, in relation to air, inter alia, oxides of nitrogen and other nitrogen compounds, and metals and their compounds. With regard to water, it mentions, inter alia, organophosphorus compounds, metals and their compounds, and substances which contribute to eutrophication (in particular, nitrates and phosphates).

National legislation

11 Annex I to Decree No 2005-989 amending the nomenclature of classified installations, contains, inter alia, the following table:

NUMBER	DESCRIPTION OF THE HEADING	A.D.S. (1)	R (2)
…			

2111	Poultry, game birds (rearing, sale, etc.), excluding the specific activities referred to under other headings:
	1. More than 30 000 animal-equivalents……
	From 5 000 to 30 000 animal-equivalents…….
	Note — Poultry and game birds are counted by using the following values expressed as animal-equivalents:
	quail = 0.125;
	pigeon, partridge = 0.25;
	cockerel = 0.75;
	small chicken = 0.85;
	hen, standard chicken, 'quality label' chicken, organic chicken, pullet, laying hen, breeder hen, pheasant, guinea fowl, mallard duck = 1;
	large chicken = 1.15;
	roasting duck, duck ready for force-feeding, breeder duck = 2;
	small turkey = 2.20;
	medium turkey, breeder turkey, goose = 3;
	large turkey = 3.50;
	force-fed geese or duck = 7;
		
		A
		D
			
			3

…			

(1) A: permit, D: declaration, S: easement in the public interest.
(2) Posting range in kilometres.

The dispute in the main proceedings and the question referred for a preliminary ruling

12 The Association nationale pour la protection des eaux et rivières-TOS and OABA claim, in support of their action before the Conseil d'État for annulment of all or part of Decree No 2005-989, that that decree does not comply with subheading 6.6(a) of Annex I to Directive 96/61. That decree, they argue, provides, under heading 2111 of the nomenclature of classified installations, for a threshold of 30 000 'animal-equivalents' beyond which the rearing of poultry and game cannot be carried out without first obtaining a permit to do so, establishing, inter alia, a conversion coefficient of 0.125 for quail, and 0.25 for partridge and pigeon. Thus, by applying those coefficients, a farm of more than 40 000 quails, partridges or pigeons would not exceed the threshold of 30 000 'animal-equivalents' and could be operated under the declaration system.

13 In the grounds of its decision, the Conseil d'État notes, with regard to subheading 6.6(a) of Annex I to Directive 96/61, that:

— installations for the intensive rearing of poultry with more than 40 000 places are subject to an authorisation requirement;

— that directive does not define the species to be regarded as 'poultry' for the purposes of that annex, whereas directives applicable to poultry under other legislation expressly lay down the species which fall within their scope, either by excluding quail, partridge and pigeon, or by including them.

14 The Conseil d'État accordingly decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must subheading 6.6(a) of Annex I to Directive 96/61 …, which applies to installations for the intensive rearing of poultry with more than 40 000 places, be interpreted:

(i) as including within its scope quails, partridges and pigeons; and if so,

(ii) as authorising a mechanism for calculating authorisation thresholds on the basis of a system of "animal-equivalents", which gives weighting to the number of animals per place according to species so that account may be taken of the amount of nitrogen actually excreted by the various species?'

The question referred for a preliminary ruling

15 At the outset, it should be noted that it is clear from the provisions of Directive 96/61, and subheading 6.6(a) of Annex I thereto, that installations for the intensive rearing of poultry with more than 40 000 places are subject to a system of prior authorisation.

16 The scope of that provision is determined by three cumulative elements, namely that it must be 'intensive' rearing, that it must involve the rearing of poultry, and that the installations concerned must have more than 40 000 places.

17 It is, in addition, common ground that Directive 96/61 does not define the term 'intensive rearing', the term 'poultry' or the term 'places'.

The first part of the question referred

18 In the first part of its question, the referring court asks whether the term 'poultry', used in subheading 6.6(a) of Annex I to Directive 96/61, includes quails, partridges and pigeons.

19 As a preliminary point, the French Government asserts, inter alia, that quails, partridges and pigeons cannot be reared intensively. Subheading 6.6(a) of Annex I to Directive 96/61, it argues, is not therefore intended to apply to those birds.

20 Such reasoning cannot be accepted.

21 The French Government has produced no scientific evidence to demonstrate that it is impossible to rear those birds intensively, and the mere fact that French quail or pigeon farms normally contain an average of 3 000 animals is not such as to establish that farms of more than 40 000 birds are not likely to exist.

22 In addition, it should be noted that the existence of intensive rearing of some of those birds is envisaged by French legislation, as is clear, in particular, from the actual provisions of the Ministerial Decree of 18 September 1985 establishing the equivalence coefficients for battery farming (JORF, 8 October 1985, p. 11683) which lays down, for a farmer, the minimum surface area for battery farming of 200 000 quails sold alive, or 120 000 quails sold dead.

23 Further, as regards the term 'poultry', which is not specifically defined by Directive 96/61, it should be borne in mind that the usual meaning of that word describes all those birds farmed for their eggs or their meat. Quails, partridges and pigeons are species of birds which may be farmed for the consumption of their eggs or their meat.

24 That interpretation can also be based on the general scheme and purpose of the directive (see, by analogy, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 38).

25 In that regard, it must be borne in mind that the purpose of Directive 96/61, as laid down in Article 1, is to achieve integrated prevention and control of pollution by

putting in place measures designed to prevent or reduce the emissions, of the activities listed in Annex I, into the air, water and land in order to achieve a high level of protection of the environment.

26 As the Advocate General states in point 34 of his Opinion, that integrated approach is realised by appropriate coordination of the procedure and authorisation conditions for industrial installations whose potential for pollution is significant, making it possible to achieve the highest level of protection for the environment as a whole, which must in all cases include provisions minimising long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole.

27 Since the purpose of Directive 96/61 has been broadly defined, it cannot be held that subheading 6.6(a) of Annex I could be interpreted in such a way as to exclude quail, partridge and pigeon.

28 The fact, relied upon by the French Government, that point 17(a) of Annex I to Directive 85/337, in the version of that annex resulting from Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5), refers to installations for intensive rearing of poultry containing more than 85 000 places for broiler chickens or more than 60 000 for hens cannot, moreover, affect the interpretation which must be given to subheading 6.6(a) of Annex I to Directive 96/61. The latter is specific legislation which, as is clear from its wording, covers poultry in the broader sense and lays down a threshold which is different to those provided for in point 17(a) of Annex I to Directive 85/337.

29 In addition, the French Government's argument which seeks to restrict the scope of subheading 6.6(a) of Annex I to Directive 96/61 to laying hens, meat chickens, turkey, duck and guinea fowl only, on the basis that such a restriction was imposed in the

document on the best available techniques in intensive rearing of poultry and pigs (BREF), published by the Commission in the course of July 2003 (OJ 2003 C 170, p. 3) pursuant to Article 16(2) of Directive 96/61, must be rejected.

30 It must be pointed out, first, that the BREF document itself states that the interpretation of the term 'poultry' is specific to that document and, second, that such a document has no binding effect or interpretative value for Directive 96/61, as it is limited to providing an inventory of technical knowledge on the best available farming techniques.

31 Consequently, the fact that the BREF document in question does not concern quail, partridge or pigeon does not in any way mean that those three birds are not covered by the term 'poultry' appearing in subheading 6.6(a) of Annex I to Directive 96/61.

32 Lastly, it is necessary to reject the French Government's contention that the proposal for a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), presented by the Commission on 21 December 2007 (COM(2007) 844 final) — designed to revise and to recast a number of Community instruments, including Directive 96/61, into a single legal document — lends support to a narrow interpretation of the term 'poultry' within the meaning of Directive 96/61.

33 A proposal for a directive, even if it does no more than reshape the legislation in force into consistent law, cannot serve as a basis for the interpretation of a directive in force.

34 In the light of those considerations, the answer to the first part of the question referred is that the term 'poultry' which appears in subheading 6.6(a) of Annex I to Directive 96/61 must be interpreted as including quails, partridges and pigeons.

The second part of the question referred

35 By its question, the referring court also wishes to establish whether subheading 6.6(a) of Annex I to Directive 96/61 precludes a Member State from establishing a system, known as 'animal-equivalents', which consists of establishing prior authorisation thresholds for installations for intensive rearing of poultry by weighting the number of animals per place according to species so that account may be taken of the amount of nitrogen actually excreted by the various birds.

36 The applicant associations in the main proceedings claim that the use of a system of 'animal-equivalents' is not prohibited, as long as the authorisation threshold remains at or below 40 000 birds physically present in the installation at any given moment.

37 The French Government contends that the French legislation provides that a permit is necessary for poultry or game bird farming of more than 30 000 'animal-equivalents', and sets a weighting coefficient of 0.125 for quail and 0.25 for partridge and pigeon. Those coefficients were calculated in such a way as to reflect not only the amount of nitrogen excreted by the different species on the basis of data published by the Policy Committee on environmentally-friendly agricultural practices (Corpen), a body under the supervision of the Ministry of Agriculture and the Ministry of the Environment, but also all the other effects on the environment such as the amount of effluent produced in a year and the nuisance linked to noise and smell.

38 The Commission argues that, while the interpretation given by the French Government may appear justified, it is, in the current state of Community law, tantamount to an interpretation *contra legem*. According to the Commission, the expression 'more than … 40 000 places for poultry' contained in subheading 6.6(a) of Annex I to Directive 96/61 refers to a simultaneous production capacity of more than 40 000 game birds, and not to an authorisation threshold which depends on the pollution generated by each bird species.

39 In that regard, while it is not in dispute that the term 'place' is not defined by Directive 96/61, it should nevertheless be noted that subheading 2 of the introduction to Annex I to that directive states that '[t]he threshold values given below generally refer to production capacities or outputs'. Directive 96/61 does not therefore envisage, without at the same time excluding it, establishment of the authorisation threshold in accordance with a system of 'animal-equivalents'.

40 As the purpose of Directive 96/61 is the prevention and control of pollution arising from certain activities, including intensive rearing of poultry, the use of a method of 'animal-equivalents' should be permitted only if it is fully consistent with that objective.

Use of that method must not, by contrast, have the effect of excluding from the system established by that directive installations set up under that method in relation to their total number of places.

41 In the present case, the link that might exist between the content of the French legislation and the taking into account of the level of nitrogen actually excreted by those birds has, moreover, not been proved by the French Government.

42 Suffice it to state that the information contained in the annexes to the circular of the ministère de l'Écologie, du Développement et de l'Aménagement durables (Ministry for Ecology, Sustainable Development and Planning) of 7 September 2007 on classified installations (farms, poultry) use of new references for waste material (Bulletin officiel, 30 October 2007, MEDAD 2007/20, Text 15, p. 1) shows that the level of nitrogen waste from a quail, a partridge or a pigeon in comparison with that of a standard chicken does not correspond to the weighting selected in Decree No 2005-989. The latter provides that a standard chicken is equivalent to eight quails, four partridges or four pigeons, even though the aforementioned information shows that excretions from a quail or a partridge contain a level of nitrogen equal to one half of that of a standard chicken, while a pigeon produces five times more. According to that same information, the level of phosphorous, copper and zinc in the waste of quails, partridges or pigeons is also greater than that contained in the waste of standard chickens.

43 At the hearing, with a view to justifying that lack of proportionality, the French Government asserted that other effects on the environment were taken into account, without, however, providing any scientific evidence establishing the nature and scale of those other effects on the environment.

44 In those circumstances, and as the Advocate General stated in point 54 of his Opinion, it appears that Decree No 2005-989 leads to intensive rearing installations consisting of 40 001 to 240 000 quails, or 40 001 to 120 000 partridges or pigeons, being exempted from the prior authorisation procedure laid down by Directive 96/61, notwithstanding

the fact that those installations are liable to produce an amount of nitrogen, phosphorous, copper and zinc greater than that produced by installations for the intensive rearing of 40 000 standard chickens.

45 Having regard to all of the foregoing, the reply to the second part of the question is that subheading 6.6(a) of Annex I to Directive 96/61 precludes national legislation, such as that at issue in the main proceedings, which calculates the thresholds for authorisation of installations for intensive rearing on the basis of a system of 'animal-equivalents' founded on a weighting of animals by places according to species so that account may be taken of the amount of nitrogen actually excreted by the various bird species.

Costs

46 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. The term 'poultry', which appears in subheading 6.6(a) of Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution

prevention and control, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as including quails, partridges and pigeons.

2. **Subheading 6.6(a) of Annex I to Directive 96/61, as amended by Regulation No 1882/2003, precludes national legislation, such as that at issue in the main proceedings, which calculates the thresholds for authorisation of installations for intensive rearing on the basis of a system of 'animal-equivalents' founded on a weighting of animals by places according to species so that account may be taken of the amount of nitrogen actually excreted by the various bird species.**

[Signatures]