JUDGMENT OF THE COURT (Sixth Chamber)
15 April 1997 *

In Case C-27/95,

REFERENCE to the Court by the High Court of Justice (Bristol Mercantile Court, United Kingdom) for a preliminary ruling under Article 177 of the EC Treaty in the proceedings pending before that court between

Woodspring District Council

and

Bakers of Nailsea Ltd

on the validity of Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-1964, p. 185), as amended and consolidated by Council Directive 91/497/EEC of 29 July 1991 (OJ 1991 L 268, p. 69), having regard to Articles 39 and 40(3) of the EC Treaty and the general principles of proportionality and non-discrimination,

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: J. L. Murray (Rapporteur), President of the Fourth Chamber, acting as President of the Sixth Chamber, C. N. Kakouris, P. J. G. Kapteyn, G. Hirsch and H. Ragnemalm, Judges,

Advocate General: A. La Pergola,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Woodspring District Council, by G. Barling QC and T. E. J. Simpkins, Barrister,

— Bakers of Nailsea Ltd, by K. P. E. Lasok QC and A. Lindsay, Barrister,

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and by D. Anderson, Barrister,

— the Greek Government, by V. Kontolaimos, Legal Adviser to the State Legal Council, and D. Tsangkaraki, Adviser to the Minister for Foreign Affairs, acting as Agents,

— the Council of the European Union, by M. Sims-Robertson, Legal Adviser, acting as Agent,

— the Commission of the European Communities, by J. L. Iglesias Buhigues, Legal Adviser, and J. Macdonald Flett, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Woodspring District Council, represented by G. Barling; Bakers of Nailsea Ltd, represented by K. P. E. Lasok QC and A. Lindsay; the United Kingdom Government, represented by J. E. Collins, assisted by P. Watson, Barrister; the Greek Government, represented by K. Grigoriou, Legal Agent for the State Legal Council, acting as Agent; the Council, represented by M. Sims-Robertson; and the Commission, represented by J. Macdonald Flett, at the hearing on 21 May 1996,

after hearing the Opinion of the Advocate General at the sitting on 4 July 1996,

gives the following

Judgment

1 By order of 20 January 1995, received at the Court Registry on 6 February 1995, the High Court of Justice (Bristol Mercantile Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the validity of Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-1964, p. 185), as amended and consolidated by Council Directive 91/497/EEC of 29 July 1991 (OJ 1991 L 268, p. 69), having regard to Articles 39 and 40(3) of the EC Treaty and the general principles of proportionality and non-discrimination.

2 Those questions were raised in proceedings between Woodspring District Council (hereinafter 'Woodspring') and Bakers of Nailsea Ltd (hereinafter 'Bakers'). Woodspring is a local authority in the South West of England. Bakers, which owns and

operates a slaughterhouse in Nailsea, a small town in the district of Woodspring, maintains that Directive 64/433, as amended and consolidated by Directive 91/497, is invalid on the ground that it requires *ante-mortem* inspections to be carried out and/or requires and/or permits Member States to require health inspections at slaughterhouses to be carried out by official veterinarians. Consequently, Bakers refuses to pay the costs of veterinary inspection services provided by Woodspring and invoiced between 1 January 1993, the date of entry into force of Directive 64/433, as amended and consolidated by Directive 91/497, and 4 March 1994.

3 It is apparent from the documents forwarded by the national court that, under the applicable rules, an official veterinary surgeon regularly conducted health inspections at Bakers' premises. The charges for that service were then invoiced to Woodspring, which passed them on to Bakers. Bakers objects to paying those charges, contending that it is illegal for the official veterinarian to undertake the inspections, for him to carry out *ante-mortem* inspections, and for the charges of the official veterinarian to be passed on to the operator of the slaughterhouse.

4 According to the second and third recitals in the preamble to Directive 64/433, it is necessary in order to eliminate the differences between the health requirements of the Member States concerning meat to approximate the health provisions of those States, in line with the regulations already adopted. The sixth recital states: 'health marking of meat and the authorization of the transport document by the official veterinarian of the establishment of origin is the best way of satisfying the competent authorities of the place of destination that a consignment of meat complies with the provisions of this directive'.

Article 3(1)(A)(b), (d) and (e) of Directive 64/433 provide as follows:

'1. Each Member State shall ensure that:

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

(a) ...

(b) come from a slaughter animal inspected *ante mortem* by an official veterinarian in accordance with Chapter VI of Annex I and passed fit, as a result of such inspection, for slaughter for the purposes of this directive;

(c) ...

(d) 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 occurs shortly before slaughter or localized 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;

(e) bear a health mark in accordance with Chapter XI of Annex I'.

6 Chapter VI of Annex I to Directive 64/433, entitled '*Ante-mortem* health inspection', specifies the inspections that must be carried out by the official veterinarian on the day of the arrival of the animals at the slaughterhouse or before the beginning of daily slaughtering. Chapter VIII of that annex, entitled '*Post-mortem* health inspection', specifies the inspections that must be carried out by the official veterinarian immediately after slaughter in order to determine whether the meat is fit for human consumption. Chapter XI of Annex I, entitled 'Health marking', states in particular that health marking must be carried out under the responsibility of the official veterinarian. The second paragraph of Article 9 of Directive 64/433 provides that auxiliaries under the authority and responsibility of the official veterinarian may assist him during the *ante-mortem* inspection by making an initial check on the animals and carrying out purely practical tasks, and during the *post-mortem* inspection provided that the official veterinarian is actually able to supervise the work of the auxiliaries on the spot.

7 In order to ensure freedom of movement within the Community of products subject to the common organization of the markets and avoid distortions of competition, 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/EEC, in respect of the inspection of such meat (OJ 1988 L 194, p. 28) extended the requirements of Directive 64/433 to meat reserved for the domestic market of the Member States in order to guarantee to consumers uniform conditions of health protection. It also applied, for meat intended for local consumption, the same level of fees as that set in Council Decision 88/408/EEC of 15 June 1988 on the levels of the fees to be charged for health inspections and controls of fresh meat pursuant to Directive 85/73/EEC (OJ 1988 L 194, p. 24) in respect of meat to be exported. Article 6(1) of Decision 88/408 provides that the fees in respect of inspections carried out in slaughterhouses are to be payable by the person who has the slaughtering, cutting or storage operations carried out. The first sentence of Article 6(2) of that decision states that the total amount of the fee is in principle to be collected at the slaughterhouse.

8 As is apparent from the sixth recital in its preamble, the change made by Directive 91/497 became necessary following the abolition of veterinary checks at the frontiers of Member States and the introduction of more stringent guarantees at origin when it was no longer possible to distinguish between products for the domestic market and products to be exported to another Member State.

9 Council Directive 93/118/EC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1993 L 340, p. 15) repealed Decision 88/408 with effect from 1 January 1994.

10 Pursuant to Article 2(1) of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), as amended by Directive 93/118, Member States are to ensure, as from 1 January 1994, for the purpose of financing the controls carried out pursuant in particular to Directive 64/433, collection of the Community fees in accordance with the procedures laid down in the annex to Directive 93/118. Article 4 of Directive 85/73, as amended by Directive 93/118, provides that the fees are to be payable by the operator or owner of the establishment carrying out the operations referred to in the directives listed in Annex A to 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), the operator or owner having the option of passing on the cost of the fee for the operation concerned to the natural or legal person on whose behalf the said operations are carried out.

11 The requirement of an *ante-mortem* inspection for all animals was introduced in the United Kingdom with effect from 1 January 1991 following the amendment of SI 1987/2236 (Meat Inspection Regulations).

12 The participation of the official veterinarian in *ante-mortem* and *post-mortem* inspections in slaughterhouses was extended with effect from 1 January 1993 when SI 1992/2037 (Fresh Meat (Hygiene and Inspection) Regulations 1992), the particular purpose of which was to transpose Directive 91/497 into national law, entered into force.

13 The authority to charge fees for *ante-mortem* veterinary inspections is contained in the Fresh Meat and Poultry Meat (Hygiene, Inspection and Examinations for Residues) (Charges) Regulations 1990 (SI 1990/2494).

14 Considering that the decision to be given in the proceedings depended on an interpretation of Community law, the High Court of Justice referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is a private party in the circumstances of this case entitled to rely in the national court upon Articles 39 and 40(3) of the EC Treaty, and/or the general principles of proportionality and equal treatment, as grounds for challenging the validity of Community legislation?

2. Is Directive 64/433/EEC as amended and replaced by Directive 91/497/EEC invalid, having regard to Articles 39 and 40(3) of the EC Treaty and the general principle of proportionality, in so far as it requires and/or permits Member States to require health inspections at slaughterhouses to be carried out by veterinary surgeons and/or in so far as it requires *ante-mortem* inspections to be carried out?

3. If the answer to Question 2 is in the affirmative:

(a) What if any temporal limitation is to be placed upon such invalidity and/or upon its effects?

(b) In the circumstances of this case, is a national competent authority prohibited by Community law from enforcing a provision of domestic legislation requiring health inspections at slaughterhouses to be carried out by or under the supervision of veterinary surgeons when that provision purports to implement Directive 64/433/EEC as amended but which also has or purports to have another, independent legal basis in national law?

4. Is it contrary to Articles 39 and/or 40(3) of the EC Treaty, or the general principles of equality and/or proportionality, for the costs of health inspections by veterinary surgeons of animals intended for slaughter to be borne by the slaughterhouse at which the animals are to be slaughtered?'

The first question

15 By its first question, the national court seeks to determine whether a private individual may plead in proceedings before a national court an infringement of Articles 39 and 40(3) of the Treaty and of the general principles of proportionality and non-discrimination in order to challenge the validity of a provision of Community law.

16 As is clear from Case 114/76 *Bela-Mühle* v *Grows-Farm* [1977] ECR 1211, an individual may rely before a national court on Articles 39 and 40(3) of the Treaty to challenge the validity of Community provisions on the ground that they contravene the rules of the Treaty.

17 Moreover, since the principles of proportionality and non-discrimination have been recognized by the Court as forming part of the general principles of Community law (see, in particular, Joined Cases 117/76 and 16/77 *Ruckdeschel and Others* v *Hauptzollamt Hamburg-St Annen* [1977] ECR 1753, paragraph 7, and Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 15), the validity of acts of the Community institutions may be reviewed on the basis of those general principles of law.

18 In those circumstances, the national court may, and in certain circumstances must, seek a preliminary ruling from the Court on the validity of those provisions in the light of the Treaty rules.

19 According to settled case-law, national courts may consider the validity of a Community act and, if they consider that the grounds put forward before them by the parties in support of invalidity are unfounded, they may reject them, concluding that the measure is completely valid. In so doing, they are not calling into question the existence of the Community measure (Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 14).

20 On the other hand, those courts do not have the power to declare acts of the Community institutions invalid. The main purpose of the powers accorded to the Court by Article 177 of the Treaty is to ensure that Community law is applied uniformly by the national courts. That requirement of uniformity is particularly

imperative when the validity of a Community act is in issue. Divergences between courts in the Member States as to the validity of Community acts would be liable to place in jeopardy the very unity of the Community legal order and detract from the fundamental requirement of legal certainty (*Foto-Frost*, cited above, paragraph 15).

21 The answer to the first question must therefore be that a private individual may plead in proceedings before a national court an infringement of Articles 39 and 40(3) of the Treaty and of the general principles of proportionality and non-discrimination in order to challenge the validity of an act of the Community institutions.

The second question

22 By its second question, the national court seeks to determine whether Directive 64/433 may be invalid, having regard to Articles 39 and 40(3) of the Treaty and the general principle of proportionality, in so far as it requires and/or permits Member States to require health inspections at slaughterhouses to be carried out by official veterinarians and/or in so far as it requires *ante-mortem* inspections to be carried out.

23 According to Bakers, neither the status of official veterinarian nor the obligation to undertake an *ante-mortem* inspection is intended to serve the objectives laid down in Article 39 of the Treaty. It also considers that the provisions of the directive create an inspection system which is discriminatory, contrary to Article 40(3) of the Treaty.

24 So far as Articles 39 and 40(3) of the Treaty are concerned, the first point to note is that, according to Article 39, the common agricultural policy is intended in particular to ensure the rational development of agricultural production, to ensure a fair standard of living for the agricultural community, to stabilize markets, to assure the availability of supplies and to ensure that supplies reach consumers at reasonable prices. Article 39 goes on to set out the factors to be taken into account in working out that policy and the special methods for its application.

25 The first subparagraph of Article 40(3) of the Treaty provides that the common organization established in accordance with paragraph 2 may include all measures required to attain the objectives set out in Article 39. Nevertheless, the second subparagraph of Article 40(3) makes it clear that that organization 'shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Community'.

26 In that connection, the second recital in the preamble to Directive 91/497, which amends Directive 64/433, expressly refers to the need to ensure the rational development of the agricultural sector and to increase productivity, these being objectives laid down in Article 39(1)(a) of the Treaty. Thus, Directive 64/433 is intended to facilitate trade between the Member States and accordingly to promote the availability of supplies, an objective set out in Article 39(1)(d), to guarantee that supplies reach consumers at reasonable prices, as indicated in Article 39(1)(e), to stabilize markets, an objective contained in Article 39(1)(c), and to ensure a fair standard of living for the agricultural community, as specified in Article 39(1)(b) of the Treaty. The latter objective is indicated in the first recital in the preamble to Directive 91/497.

27 In paragraph 7 of *Ruckdeschel*, cited above, the Court held that the prohibition of discrimination between producers or consumers within the Community laid down in Article 40(3) of the Treaty is merely a specific enunciation of the general

principle of equality which is one of the fundamental principles of Community law. By virtue of that principle, similar situations must not be treated differently unless differentiation is objectively justified.

28 As far as producers are concerned, it is incontestable that the abolition of veterinary checks at frontiers between Member States necessitated the prior extension of the obligations under Directive 64/433 so as to include all economic agents operating in the meat production industry in the Community. As regards checks in the Member State of origin, fresh meat is therefore treated in the same way, from the veterinary point of view, whether it is intended for intra-Community trade or for the domestic market. Thus, all meat, whatever its destination, undergoes the same inspections under the same conditions.

29 Accordingly, all fresh meat products have, since the abolition of frontier checks, been in a comparable situation and are subject without distinction to the same rules and veterinary requirements.

30 Bakers' allegation that the objectives laid down in Article 39 of the Treaty and the principle of non-discrimination within the meaning of Article 40(3) of the Treaty were infringed must therefore be rejected.

31 Bakers also claims that Directive 64/433 contravenes the principle of proportionality in that recourse to an official veterinarian and the obligation of an *ante-mortem* inspection are both unjustified and excessive.

32 The Court has already held that, in determining their policy in matters of agriculture, the Community institutions enjoy a wide discretionary power regarding not only establishment of the factual basis of their action but also definition of the objectives to be pursued, within the framework of the provisions of the Treaty, and choice of the appropriate means of action (see, in particular, Joined Cases 197/80, 198/80, 199/80, 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle Erling and Others* v *Council and Commission* [1981] ECR 3211, paragraph 37).

33 It is in the light of those principles that the obligations deriving from Directive 64/433 must be considered.

34 As regards, first, recourse to an official veterinarian, it is clear from the sixth recital in the preamble to Directive 64/433 that 'health marking of meat and the authorization of the transport document by the official veterinarian of the establishment of origin is the best way of satisfying the competent authorities of the place of destination that a consignment of meat complies with the provisions of this directive'.

35 In that connection, the provisions of Directive 64/433 requiring supervision of health inspections in the Member State of dispatch to be exercised on a uniform basis by a person who can reasonably be regarded, in view of his status and professional experience, as the person best qualified to undertake those operations and the proper person to do so, namely an official veterinarian, came into being as a result of the correct exercise of that discretionary power.

36 As a result of the abolition of veterinary checks at frontiers, the official veterinarian carrying out the checks, who exists in all the Member States, offers appropriate guarantees of competence and of uniformity of health requirements for fresh meat, whether it is intended for intra-Community trade or for the domestic market.

Accordingly, the provisions of Directive 64/433 under which inspections must be carried out by an official veterinarian cannot be regarded as reflecting any abuse of the discretionary power available to the Community legislature.

37 As regards, secondly, the *ante-mortem* inspection provided for by Directive 64/433, it is intended to protect public health in accordance with the principle recognized by the Court that the Community institutions must, when exercising their powers, take account of the requirements relating to the public interest such as the protection of consumers or the protection of the health and life of humans and animals (Case 68/86 *United Kingdom* v *Council* [1988] ECR 855, paragraph 12).

38 By virtue of that principle, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution intends to pursue (*Schräder*, cited above, paragraph 22).

39 Chapter VI of Annex I to Directive 64/433 clearly mentions the specific reasons for the carrying out of *ante-mortem* health inspections. It need merely be pointed out that the checks referred to concerning the wellbeing of the animals cannot be carried out after slaughter since certain illnesses can be efficiently diagnosed only if the animal is alive. That objective is legitimate and therefore the requirement of an *ante-mortem* inspection must be regarded as falling within the discretionary power available to the Community legislature.

40 Consequently, Bakers' allegation that the principle of proportionality has been contravened must also be rejected.

41 It must therefore be stated that Directive 64/433, as amended and consolidated by Directive 91/497, is not invalid having regard to Articles 39 and 40(3) of the Treaty and the general principle of proportionality, in so far as it requires and/or permits Member States to require health inspections at slaughterhouses to be carried out by official veterinarians and/or in so far as it requires *ante-mortem* inspections to be carried out.

The third question

42 Since the third question was dependent on an affirmative answer to the second, it need not be considered.

The fourth question

43 By its fourth question, the national court seeks essentially to ascertain whether the obligation under Directive 64/433 for the costs of health inspections by official veterinarians to be borne by the slaughterhouse at which the animals are to be slaughtered is contrary to Articles 39 and 40(3) of the Treaty, or to the general principles of equality and/or proportionality.

44 Bakers maintains that the charging of the costs of veterinary inspections to the slaughterhouse operator runs counter to the case-law of the Court, according to which such costs must, on the contrary, be met by the general public which

benefits from the free movement of goods (Case 87/75 *Bresciani* [1976] ECR 129 and Joined Cases C-277/91, C-318/91 and C-319/91 *Ligur Carni and Others* [1993] I-6621).

45 It must be pointed out that the judgments cited by Bakers concerned pecuniary charges unilaterally imposed by the Member State in order to finance veterinary inspections. The Court held that such charges constituted obstacles to the free movement of goods. Moreover, in *Ligur Carni*, cited above, the Court considered that only the costs of health inspections and checks undertaken by the competent authority of the importing Member State in the event of a serious presumption of irregularity, which are authorized by Directive 64/433, must be borne by the general public.

46 The present case is not concerned with pecuniary charges unilaterally imposed by a Member State since they specifically derive from rules adopted by the Community which apply uniformly in all the Member States. The judgments relied on by Bakers are not therefore applicable to this case.

47 As regards the validity, in relation to Article 39 of the Treaty, of the obligation to bear the costs of veterinary inspections, as provided for by Decision 88/408, it has already been stated, in paragraph 32 of this judgment, that the Community institutions enjoy a wide discretionary power in relation to the common agricultural policy. Thus, like those of Directive 64/433, the provisions of Decision 88/408 are a matter within the discretion of the Community legislature, provided that such discretion is not exercised in a manifestly inappropriate manner.

48 In that regard, the Community legislature cannot be considered to have exceeded its discretion by making economic agents who prepare goods intended for sale in the Community responsible, in particular from the financial point of view, for guaranteeing compliance with the safety requirements applicable to such products.

49 Furthermore, there is nothing in Article 6 of Decision 88/408 to prevent slaughterhouses from passing health inspection costs on to the owners of the meat. Article 6(1) of Decision 88/408 provides that the fees are to be payable by the natural or legal person who has the slaughtering, cutting or storage operations carried out, but that does not mean that the person concerned must be the owner of the slaughterhouse. Article 6(2) of the decision merely provides that the full amount of the fees is, in principle, to be collected at the slaughterhouse.

50 Finally, it must be borne in mind that Article 4 of Directive 85/73, as amended by Directive 93/118, expressly provides that, despite being charged to the operator or owner of the slaughterhouse, the fees to be collected may be passed on to the natural or legal person on whose behalf the slaughtering, cutting or storage operations are carried out. In those circumstances, there is no reason to conclude that slaughterhouses were precluded, before Directive 93/118 became applicable, that is to say on 1 January 1994, from passing on the costs of health inspections to the owners of the meat.

51 It must therefore be stated that the obligation under Directive 64/433 for the costs of health inspections by official veterinarians to be borne by the slaughterhouse at which the animals are to be slaughtered is not contrary either to Articles 39 and 40(3) of the Treaty or to the general principles of equal treatment and/or proportionality.

Costs

52 The costs incurred by the United Kingdom and Greek Governments, and by the Council of the European Union and the Commission of the European Communi-

ties, 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 (Sixth Chamber),

in answer to the questions referred to it by the High Court of Justice (Bristol Mercantile Court) by order of 20 January 1995, hereby rules:

1. **A private individual may plead in proceedings before a national court an infringement of Articles 39 and 40(3) of the EC Treaty and of the general principles of proportionality and non-discrimination in order to challenge the validity of an act of the Community institutions.**

2. **Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat, as amended and consolidated by Council Directive 91/497/EEC of 29 July 1991, is not invalid having regard to Articles 39 and 40(3) of the EC Treaty and the general principle of proportionality, in so far as it requires and/or permits Member States to require health inspections at slaughterhouses to be carried out by official veterinarians and/or in so far as it requires *ante-mortem* inspections to be carried out.**

3. **The obligation under Directive 64/433 for the costs of health inspections by official veterinarians to be borne by the slaughterhouse at which the animals are to be slaughtered is not contrary either to Articles 39 and 40(3) of the EC Treaty or to the general principles of equal treatment and/or proportionality.**

Murray Kakouris Kapteyn

Hirsch Ragnemalm

Delivered in open court in Luxembourg on 15 April 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber