JUDGMENT OF THE COURT (Sixth Chamber)
16 October 2003 *

In Case C-423/01,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgericht Neustadt an der Weinstraße (Germany) for a preliminary ruling in the proceedings pending before that court between

Emil Färber GmbH & Co.

and

Stadt Neustadt/Weinstraße,

on the interpretation of the second paragraph of Annex A, Chapter I, point 2, to Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (OJ 1985 L 32, p. 14), as amended and consolidated by Council Directive 96/43/EC of 26 June 1996 (OJ 1996 L 162, p. 1),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen (Rapporteur), C. Gulmann, V. Skouris and N. Colneric, Judges,

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

after considering the written observations submitted on behalf of:

— Emil Färber GmbH & Co., by M. Stephani, Rechtsanwalt,

— the Swedish Government, by A. Kruse, acting as Agent,

— the Commission of the European Communities, by G. Braun, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Emil Färber GmbH & Co., represented by M. Stephani and L. Liebenau, Rechtsanwalt; the Swedish Government, represented by A. Falk, acting as Agent; and the Commission, represented by G. Braun, at the hearing on 21 November 2002,

after hearing the Opinion of the Advocate General at the sitting on 27 February 2003,

gives the following

Judgment

1 By order of 30 July 2001, received at the Court on 26 October 2001, the Verwaltungsgericht (Administrative Court) Neustadt an der Weinstraße referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of the second paragraph of Annex A, Chapter I, point 2, to Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (OJ 1985 L 32, p. 14), as amended and consolidated by Council Directive 96/43/EC of 26 June 1996 (OJ 1996 L 162, p. 1) ('Directive 85/73').

2 Those questions were raised in proceedings between Emil Färber GmbH & Co. ('Färber') and Stadt Neustadt/Weinstraße concerning the recovery of fees claimed by the latter from Färber for health inspections and controls of meat carried out in the cutting plant Färber operates in Neustadt an der Weinstraße (Germany).

Legal background

Community legislation

3 With the aim of promoting intra-Community trade in fresh meat, Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production

and marketing of fresh meat (OJ, English Special Edition 1963-1964, p. 185), in the version codified by Council Directive 91/497/EEC of 29 July 1991 (OJ 1991 L 268, p. 69), as amended by Council Directive 95/23/EC of 22 June 1995 (OJ 1995 L 243, p. 7) ('Directive 64/433'), approximates the provisions of the Member States on health and intends in particular to standardise health requirements for meat in slaughterhouses and cutting plants and during storage and transportation (see the second, third and fourth recitals in the preamble to Directive 64/433).

4 Article 2 of Directive 64/433 reads as follows:

'For the purposes of this Directive:

...

(k) "establishment" means an approved slaughterhouse, an approved cutting plant, an approved cold store or a unit grouping together several such establishments;

...'

5 Article 3(1)(A) and (B) of Directive 64/433 prescribes *inter alia* that Member States are to ensure that slaughtering and cutting operations respectively take place in approved slaughterhouses and cutting plants in accordance with the rules and under the health conditions defined in more detail in Annex I to that directive.

6 To avoid distortions of competition liable to occur as a result of differences between the various Member States in the field of financing of health inspections and controls, Directive 85/73 lays down harmonised rules on the financing of those inspections and controls (see the fifth and seventh recitals in the preamble to Directive 96/43).

7 For that purpose, Directive 85/73 provides *inter alia*, in Article 1, that Member States are to ensure, in accordance with the arrangements laid down in Annex A to that directive, that a Community fee is collected to cover the costs occasioned by inspections of and controls on the products listed in that annex.

8 Under Article 5(1) of Directive 85/73:

'The Community fees shall be set at a level which covers the costs borne by the competent authority in respect of:

— salary costs and social-security costs involved in the inspection service,

— administrative costs incurred in carrying out controls and inspections, which may include the expenditure required for in-service training of inspectors,

for the controls and inspections referred to in Articles 1, 2 and 3.'

9 Chapter I of Annex A to Directive 85/73 fixes, in accordance with Article 5(1) of that directive, the fees applicable to meat covered *inter alia* by Directive 64/433. In point 1 of Chapter I, standard amounts are thus laid down according to animal species for inspection costs relating to slaughter.

10 Annex A, Chapter I, point 2, to Directive 85/73 provides:

'The controls and inspections connected with the cutting operations referred to in, *inter alia*, Article 3(1)(B) of Directive 64/433/EEC and Article 3(1)(B) of Directive 71/118/EEC must be covered

(a) either: at a standard rate by the addition of a standard amount of ECU 3 per tonne on meat entering a cutting plant.

That amount is added to the amounts referred to in 1 above;

(b) or: by charging the actual costs of inspection per hour worked.

Where the cutting operations are carried out in the establishment where the meat is obtained, the amounts laid down in the first subparagraph shall be reduced by up to 55%.

A Member State which opts to levy fees by the hour worked must be able to demonstrate to the Commission that the actual costs cannot be covered by charging fees in accordance with (a).'

11 Annex A, Chapter I, points 4 and 5, to Directive 85/73 provides:

'4. In order to cover increased costs, Member States may:

(a) either: increase the standard amounts of fees as laid down in points 1 and 2(a) for individual establishments.

Apart from that laid down in point 5(a), the conditions to be met might be the following:

— higher inspection costs due to a particular lack of uniformity in the animals for slaughter from the point of view of age, size, weight and state of health,

— longer waiting and otherwise non-productive periods for inspection staff owing to inadequate advance planning by the establishment of animal deliveries or technical inadequacies or failures, for example in older establishments,

— frequent delays in the slaughtering process, e.g. as a result of insufficient slaughter staff and hence under-employment of inspection staff,

— higher costs due to special travelling times,

— more time taken up on inspections due to frequently changing slaughter periods beyond the control of inspection staff,

— frequent interruptions in the slaughtering process to meet cleaning and disinfecting requirements,

— inspections of animals which, at the request of the owner, are slaughtered outside normal slaughtering hours.

The amount of the increases in the central standard rate for fees depends on the level of the costs to be covered;

(b) or: charge a special fee covering actual costs.

5. Member States in which salary costs, the structure of establishments and the relationship between veterinarians and inspectors diverge from the Community average taken as a basis for calculation of the standard amounts fixed in points 1 and 2(a) may exceptionally reduce them to meet the real costs of inspection:

(a) in general, where there are substantial differences in the cost of living and salary costs;

(b) for individual establishments, where the following conditions are met:

— a minimum daily slaughter rate enabling the deployment of the relevant inspection staff to be planned in advance,

— the number of slaughtered animals is constant, so that animal deliveries may be planned in advance, thus enabling rational use to be made of the inspection staff,

— strict organisation and planning within the establishment together with a rapid slaughter rate, permitting optimum use of inspection staff,

— no waiting or otherwise non-productive periods for inspection staff;

— the animals for slaughter are as far as possible uniform in age, size, weight and state of health.

In no case should the application of these exemptions result in reductions of more than 55% of the levels indicated in points 1 and 2(a).'

National legislation

12 Paragraph 24 of the Fleischhygienegesetz (Law on meat hygiene) of 8 July 1993, as amended by the Law of 17 July 1996 (BGBl. 1996 I, p. 991), provides:

'1. Fees shall be levied to cover the cost of official acts under this law and the legislative provisions enacted to implement this law.

2. The situations giving rise to fees under paragraph 1 shall be determined by the laws of the *Länder*. Fees shall be assessed in accordance with the legal provisions adopted by the European Community concerning the financing of inspections and health controls on meat...'

13 Directive 85/73 was transposed into the law of the *Land* of Rhineland-Palatinate by the Landesgesetz zur Ausführung fleisch- und geflügelfleischhygienerechtlicher Vorschriften (*Land* law implementing provisions concerning meat and poul-

trymeat hygiene) of 17 December 1998 (GVBl. 1998, p. 422) and the Landesverordnung über die Gebühren und Auslagen für Untersuchungen und Hygienekontrollen nach fleisch- und geflügelfleischhygienerechtlichen Vorschriften (*Land* regulation on fees and expenses for inspections and hygiene controls under provisions concerning meat and poultrymeat hygiene) of 17 February 1999 (GVBl. 1999, p. 32, 'the *Land* regulation').

14 Under Paragraph 1(1)(3) of the *Land* regulation read in conjunction with point 6.3 of Part 3 of the Annex to the *Land* regulation, the fee for 'inspections and controls in approved cutting plants, including marking and issuing of certificates, per tonne of unboned meat delivered and intended for cutting' amounted for the period from 1 January to 31 December 1999 to DEM 5.76, the equivalent at the rate of conversion in force at the time, according to the findings of the national court, to ECU 3.

15 Point 6.4 of Part 3 of the Annex to the *Land* regulation provides:

'Where official acts within the meaning of point 6 are carried out in the establishment where the meat is obtained, the fees under points 6.1 to 6.3 are to be reduced appropriately, but by a maximum of 55%.'

The main proceedings and the questions referred for a preliminary ruling

16 Färber operates an approved cutting plant on the territory of the town of Neustadt an der Weinstraße. In the same building is the slaughterhouse of

Schlachthof-Betriebs-GmbH, a company legally distinct from Färber, which supplies Färber with part of the meat it cuts in its cutting plant.

17 For health inspections and controls carried out at Färber's cutting plant in 1999, Stadt Neustadt/Weinstraße claimed from Färber fees calculated in accordance with the provisions of Paragraph 1(1)(3) of the *Land* regulation in conjunction with point 6.3 of Part 3 of the Annex to the *Land* regulation.

18 After its complaint against the payment notice was rejected by Stadt Neustadt/Weinstraße, Färber brought an action for annulment in the Verwaltungsgericht Neustadt an der Weinstraße, arguing that part of the meat cut in its establishment came from the slaughterhouse of Schlachthof-Betriebs-GmbH in the same building and that consequently, in accordance with Paragraph 1(1)(3) of the *Land* regulation in conjunction with point 6.4 of Part 3 of the Annex to the *Land* regulation, the fees corresponding to those quantities of meat should be reduced by 55%. In support of its claim, Färber also submitted that its cutting plant and that slaughterhouse should be regarded as a single 'establishment' within the meaning of Article 2(k) of Directive 64/433.

19 Stadt Neustadt/Weinstraße rejected that argument, submitting that a slaughterhouse and a cutting plant may be regarded as a single 'establishment' within the meaning of the relevant Community legislation only if they are operated by the same natural or legal person.

20 Since it considered that in those circumstances the outcome of the dispute before it depended on the interpretation of the second paragraph of Annex A, Chapter I,

point 2, to Directive 85/73, the Verwaltungsgericht Neustadt an der Weinstraße decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Must the second paragraph of Annex I, Chapter I, point 2, to Directive 85/73/EEC in the version of Directive 96/43/EC be interpreted as meaning that an establishment which is situated in the same building as a cutting plant but whose owner is a natural or legal person other than the owner of the cutting plant is also to be regarded as the "establishment where the meat is obtained"?

2. Which criteria are relevant to the decision of the authority to which the fee is owed regarding the extent to which it grants a reduction of the fees of up to 55% as provided for in the second paragraph of Annex A, Chapter I, point 2, to the abovementioned directive?

In that regard, may in particular the fact that staff need less time to carry out the controls or inspections also be taken into consideration where the fees in respect of such controls and inspections are fixed by the addition of a standard amount in accordance with Annex A, Chapter I, point 2, indent (a), to the abovementioned directive?

Moreover, if Question 1 is answered in the affirmative, when reducing the fee, may account nevertheless be taken of the fact that the establishments situated in one building are attributable to owners who are distinct in law, and may this in principle lead to a smaller reduction being granted in such cases than in cases where the slaughterhouse and cutting plant are not only situated in the same building but are also operated by the same natural or legal person?'

The first question

21 By its first question, the national court essentially asks whether the second paragraph of Annex A, Chapter I, point 2, to Directive 85/73 is to be interpreted as meaning that the reduction it lays down of the amounts of the fees payable in respect of the health controls and inspections connected with cutting operations applies also where the cutting plant and the establishment where the meat is obtained, which are situated in the same place, belong to two different natural or legal persons.

22 To answer that question, it must be noted, first, that the wording of that provision of Annex A to Directive 85/73 does not contain any condition or restriction under which the reduction it lays down of the amounts of the fees applies only where the cutting plant and the establishment where the meat is obtained belong to the same natural or legal person.

23 Second, the application of that reduction where the cutting plant and the establishment where the meat is obtained do not belong to the same natural or legal person is not capable of affecting the aim pursued by Directive 85/73, which, as follows from paragraph 6 above, is intended to avoid distortions of competition liable to occur as a result of differences between the various Member States in the field of financing of health inspections and controls.

24 On the contrary, realisation of that aim is made easier if the grant of that reduction does not depend on factors relating to the circumstances of ownership of the plants in which the cutting operations are carried out and the establishments where the meat is obtained.

25 In those circumstances, the answer to the first question must be that the second paragraph of Annex A, Chapter I, point 2, to Directive 85/73 must be interpreted as meaning that the reduction it lays down of the amounts of the fees payable in respect of the health controls and inspections connected with cutting operations applies also where the cutting plant and the establishment where the meat is obtained, which are situated in the same place, belong to two different natural or legal persons.

The second question

26 By its second question, the national court essentially asks what criteria should govern the determination, by the authority to which the fee is owed in respect of the health controls and inspections connected with cutting operations, of the extent of the reduction referred to in the second paragraph of Annex A, Chapter I, point 2, to Directive 85/73.

27 In the absence of any express indication in Directive 85/73, the scheme of the directive must be taken into consideration in order to answer the second question.

28 It must be recalled, first of all, that under Article 5(1) of Directive 85/73, the fees it provides for are to be set at a level which covers the costs borne by the competent authority in respect of the salary costs and social security costs involved in the inspection service and the administrative costs incurred in carrying out the controls and inspections.

29 The conclusion therefore follows that the extent of the reduction granted under the second paragraph of Annex A, Chapter I, point 2, to Directive 85/73 must depend on the savings made as regards the salary and social security costs of the inspection staff and the administrative costs incurred in carrying out the controls and inspections as a result of the fact that the cutting operations take place in the establishment where the meat is obtained.

30 It should be observed here, in particular, that, in accordance with Annex A, Chapter I, point 5, to Directive 85/73, the absence of waiting and other non-productive periods for inspection staff is taken into account for the purpose of reducing the standard amounts of the fees as fixed in point 1 and point 2, indent (a) of the said Chapter I.

31 Moreover, since the extent of the reduction to be granted under the second paragraph of Annex A, Chapter I, point 2, to Directive 85/73 depends on the actual savings made in salary and social security costs and administrative costs as a result of the fact that the cutting operations take place in the establishment where the meat is obtained, the circumstance that that establishment and the cutting plant belong to the same natural or legal person cannot in itself justify an additional reduction.

32 Accordingly, the answer to the second question must be that the extent of the reduction to be granted under the second paragraph of Annex A, Chapter I, point 2, to Directive 85/73 depends on the savings made as regards the salary and social security costs of the inspection staff and the administrative costs incurred in carrying out the controls and inspections as a result of the fact that the cutting operations take place in the establishment where the meat is obtained.

Costs

33 The costs incurred by the Swedish Government and by 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 proceedings 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 Verwaltungsgericht Neustadt an der Weinstraße by order of 30 July 2001, hereby rules:

1. **The second paragraph of Annex A, Chapter I, point 2, to Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC, as amended and consolidated by Council Directive 96/43/EC of 26 June 1996, must be interpreted as meaning that the**

reduction it lays down of the amounts of the fees payable in respect of the health controls and inspections connected with cutting operations applies also where the cutting plant and the establishment where the meat is obtained, which are situated in the same place, belong to two different natural or legal persons.

2. The extent of the reduction to be granted under the second paragraph of Annex A, Chapter I, point 2, to Directive 85/73, as amended and consolidated by Directive 96/43, depends on the savings made as regards the salary and social security costs of the inspection staff and the administrative costs incurred in carrying out the controls and inspections as a result of the fact that the cutting operations take place in the establishment where the meat is obtained.

Puissochet Schintgen Gulmann

Skouris Colneric

Delivered in open court in Luxembourg on 16 October 2003.

R. Grass

Registrar

V. Skouris

President