# JUDGMENT OF THE COURT (Third Chamber)
6 April 1995 *

In Case C-315/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by Rechtbank van Eerste Aanleg, Ghent (Belgium), for a preliminary ruling in the proceedings pending before that court between

**1. Flip CV**

**2. O. Verdegem NV,**

and

**Belgian State,**

on the interpretation and validity of Commission Decision 88/529/EEC of 7 October 1988 approving the plan for the eradication of classical swine fever presented by the Kingdom of Belgium (OJ 1988 L 291, p. 78),

* Language of the case: Dutch.

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida and J.-P. Puissochet (Rapporteur), Judges,

Advocate General: G. Tesauro,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— the plaintiffs in the main proceedings, by Luc van Parys, of the Ghent Bar,

— the Commission of the European Communities, by Thomas van Rijn, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiffs in the main proceedings, represented by Luc van Parys, the defendant in the main proceedings, represented by Mr Vastersavendts, of the Brussels Bar, and the Commission of the European Communities, represented by Thomas van Rijn at the hearing on 19 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 16 February 1995,

gives the following

## Judgment

1 By order of 26 May 1993, received at the Court Registry on 14 June 1993, the Rechtbank van Eerste Aanleg (Court of First Instance), Ghent (Belgium), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation and validity of Commission Decision 88/529/EEC of 7 October 1988 approving the plan for the eradication of classical swine fever presented by the Kingdom of Belgium (OJ 1988 L 291, p. 78).

2 Those questions arose in proceedings brought by the agricultural cooperative Flip CV (Flip) and the company O. Verdegem NV (Verdegem) against the Belgian State concerning the compensation they consider payable to them by reason of the slaughter of pigs which they owned by order of the Belgian health authorities acting under measures to control classical swine fever. The dispute relates both to the amount of compensation due and the payment of default interest.

3 Their applications are founded on Article 15(1) of the Royal Decree of 10 September 1981 laying down health inspection measures concerning classical swine fever and African swine fever (*Belgisch Staatsblad* of 11 November 1981, p. 14238), which provides as follows:

Within the limits of the budgetary appropriations there shall be granted to owners whose pigs have been slaughtered by order [of the veterinary authorities] compensation corresponding to:

1. 50% of the estimated value of slaughtered pigs which were infected or suspected of being infected;

2. the total estimated value of slaughtered pigs which were suspected of being contaminated.

4 The Belgian State maintained before the national court that that article required only payment of compensation, excluding any default interest, within the limits of the available budgetary appropriations.

5 Flip and Verdegem objected that the Royal Decree of 10 September 1981 should be interpreted in the light of Community legislation on control of swine fever and, in particular, in the light of Article 2(1)(f) of Council Decision 80/1097/EEC of 11 November 1980 on financial aid from the Community for the eradication of African swine fever in Sardinia (OJ 1980 L 325, p. 8) according to which the plans for the eradication of swine fever must provide for immediate and total compensation for owners whose pigs have been slaughtered under the plan.

6 They maintained that that provision should be considered to be implicitly contained in Decision 88/529 and that the national court should take account of it in the present case when interpreting and applying the Royal Decree of 10 September 1981. They claimed that, if the compensation principle laid down in Article 2 of Decision 80/1097 were not extended to Decision 88/529, Belgian producers would suffer discrimination contrary to Article 7 of the Treaty.

7 The national court had doubts concerning the interpretation and validity of the relevant Community provisions. It decided to stay the proceedings in each of the cases before it and to refer the following questions to the Court of Justice for a preliminary ruling:

1. Interpretation

(a) Must Commission Decision 88/529/EEC of 7 October 1988 approving the plan for the eradication of classical swine fever presented by the Kingdom of Belgium (OJ 1988 L 291, p. 78), which is addressed to the Kingdom of Belgium, be interpreted as also providing for immediate and total compensation for owners whose pigs have been slaughtered under the plan as laid down in Article 2(1)(f) of Commission Decision 80/1097/EEC of 11 November 1980, addressed to the Italian Republic (OJ 1980 L 325, p. 8)?

(b) If Question 1(a) is answered in the affirmative, are default and statutory interest also payable on the principal sum?

2. Validity

If the aforesaid questions must be answered in the negative, is Decision 88/529 then in breach of the principle of non-discrimination laid down in Article 7 of the EEC Treaty, since Italian owners are entitled to immediate and total compensation, whereas Belgian owners would enjoy that right only within the limits of the relevant budget appropriation, notwithstanding the fact that both decisions are expressions of the same Community legislation?

## Community measures on control of swine fever

8 It should be noted at the outset that the decisions relied upon by the plaintiffs in the main proceedings and referred to by the national court in its questions concern, on the one hand, classical swine fever (Decision 88/529) and, on the other, African swine fever (Decision 80/1097), two different animal diseases which are the subject of separate Community measures.

9 The Council has been taking measures against classical swine fever since 1980. First of all, it adopted Directive 80/217/EEC of 22 January 1980 introducing Community measures for the control of classical swine fever (OJ 1980 L 47, p. 11). That directive is intended to harmonize national rules on the prevention and control of classical swine fever. The Royal Decree of 10 September 1981, cited above, is in part intended to transpose that directive into Belgian law.

10 In order to eradicate classical swine fever which, at the time, was prevalent in the Community, the Council next adopted Directive 80/1095/EEC of 11 November 1980 laying down conditions designed to render and keep the territory of the Community free from classical swine fever (OJ 1980 L 325, p. 1). That directive essentially required Member States whose territories were affected by the disease to adopt plans to eradicate it within a period of five years. Council Decision 80/1096/EEC of 11 November 1980 introducing Community financial measures for the eradication of classical swine fever (OJ 1980 L 325, p. 5) provided for Community financial support for the Member States.

11 Since that action proved to be inadequate, in 1987 the Council adopted a new series of measures supplementing and reinforcing its earlier measures. In particular, it required Member States which were not yet free of classical swine fever to draw up new eradication plans to eliminate the disease within a period of four years. Those plans were eligible for Community financial aid.

12 Decision 88/529, cited above, to which the questions from the national court relate, precisely approves the new plan for the eradication of classical swine fever presented by the Kingdom of Belgium. Article 1 of that decision provides that the plan for completing the eradication of classical swine fever presented by the King-

dom of Belgium is hereby approved and Article 2 provides that Belgium shall bring into force by 1 January 1988 the laws, regulations and administrative provisions for implementing the plan referred to in Article 1.

13 In so far as concerns African swine fever, the Community has taken more specific measures limited to the eradication of the disease in certain regions or in certain countries of the Community.

14 First, the Council required certain Member States to prepare plans to eradicate the disease, giving them in return financial assistance from the Community. That is the case, in particular, as regards measures to eradicate African swine fever which appeared in 1977 in Sardinia. After having initially granted financial support to Italy, the Council adopted Decision 80/1097, cited above. That decision required the Italian Republic to prepare an emergency plan for the eradication of African swine fever in Sardinia within a period of five years. It provides that that plan must include rigorous eradication measures and in particular immediate and total compensation for owners whose pigs have been slaughtered under the plan (Article 2(1)(f)). Since the disease remained prevalent, the Italian authorities were obliged to adopt a new plan for the eradication of African swine fever pursuant to Council Decision 90/217/EEC of 25 April 1990 on financial aid from the Community for the eradication of African swine fever in Sardinia (OJ 1990 L 116, p. 24).

15 Secondly, the Community adopted health inspection measures intended to prevent the movement within the Community of animals or animal products coming from areas affected by the disease.

## The questions referred by the national court

16 It is apparent from the grounds of the order for reference that, taking into account the arguments expounded before it, the national court has doubts as to whether Article 15(1) of the Royal Decree of 10 September 1981 is compatible with Community law inasmuch as it does not provide for total and immediate compensation for owners whose pigs have been slaughtered by order of the administration under measures to control classical swine fever.

17 Decision 88/529, which is specifically envisaged by the national court's questions, is a measure implementing Directive 80/1095, cited above, and the directives amending the latter, whereas the Royal Decree of 10 September 1981 transposes into Belgian law Directive 80/217, also cited above. The aim of that decision is therefore different from that of the decree. Moreover, it contains no measure which is binding on the Belgian State other than the obligation to implement, from 1 January 1988, an eradication plan whose provisions are not at issue in the main proceedings.

18 Thus, neither the interpretation of Decision 88/529 nor the assessment of its validity is of any help in replying to the questions actually confronting the national court.

19 In order to give a complete and helpful answer, the Court considers that the questions referred for a preliminary ruling should be understood as concerning, more generally, whether Community rules on control of classical swine fever, as a whole, should be interpreted as providing for complete and immediate compensation for producers whose pigs have been slaughtered by order of the national authorities and, if not, whether those rules should be considered to be compatible with the

principle of non-discrimination laid down in Article 7 of the EEC Treaty, now Article 6 of the EC Treaty.

## Interpretation of the Community rules

20 The plaintiffs in the main proceedings maintain that the Community rules on control of swine fever must be interpreted as providing for immediate and total compensation, thus including default interest, for owners whose pigs have been slaughtered. They claim that those rules constitute a uniform system in which Decisions 88/529 and 80/1097, referred to by the national court in its questions, cannot be read in isolation. According to the plaintiffs, Article 2(1)(f) of Decision 80/1097 lays down a general rule of Community policy in the field which must, in any event, be considered to be implicit in Decision 88/529.

21 The Commission and the Belgian Government contend, on the contrary, that the Community rules on control of classical swine fever do not provide for the principle of immediate and total compensation for owners whose animals have been slaughtered. In their view, the rules on classical swine fever contain no provision in that regard, and compensation of that kind does not constitute a general principle of Community law or even a principle of Community policy in that field. The Commission claims, in particular, that such a principle cannot be inferred from provisions such as Council Decisions 86/649/EEC and 86/650/EEC of 16 December 1986 (OJ 1986 L 382, pp. 5 and 9), Council Decision 89/145/EEC of 20 February 1989 (OJ 1989 L 53, p. 55), Council Decision 90/424/EEC of 26 June 1990 (OJ 1990 L 224, p. 19), or Council Decision 90/638/EEC of 27 November 1990 (OJ 1990 L 347, p. 27), which concern animal diseases other than classical swine fever and provide for different principles of compensation.

22 The Commission's view must be accepted.

23 The principle that owners whose pigs have been slaughtered under measures to control classical swine fever are to be compensated is not apparent either from the scheme or from the wording of the directives and decisions in that field.

24 By adopting Directives 80/217 and 80/1095, the Community legislature merely intended to lay down sanitary and preventive measures which the Member States are required to take in order to prevent and eliminate classical swine fever from their territory. Those measures include in particular vaccination of animals, surveillance of infected holdings, the destruction of potentially infected products, meat or animals, the disinfection of contaminated premises and the drafting and implementation of eradication plans under the Commission's supervision.

25 On the other hand, it is not apparent either from the preambles to the two directives or from their provisions that the Community legislature intended to regulate the financial aspects of implementation of those measures by the owners concerned and, specifically, to prescribe measures to compensate those owners. In particular, the directives do not contain any provision which expressly or even implicitly provides for such compensation.

26 Decision 80/1096 does indeed introduce Community financial aid for Member States which have, in particular, incurred costs in compensating owners whose animals have been slaughtered or destroyed under measures to control classical swine fever. However, although the Community legislature, in the context of its broad discretion in the field of agricultural policy (see, in particular, Case C-311/90 *Hierl* v *Hauptzollamt Regensburg* [1992] ECR I-2061, paragraph 13), may have considered that partial or total compensation of owners whose animals have been slaughtered might be a suitable means of facilitating control of classical swine fever and that any use which the Member States might make of it should be supported, no intention to make compensation for owners of slaughtered animals a principle of

Community policy in that field is apparent either from the preamble to that decision or from its terms. Article 3(2)(a) and Article 3(2a)(a) of Decision 80/1096, as supplemented and amended by Council Decision 87/488/EEC of 22 September 1987 (OJ 1987 L 280, p. 26), merely provide for the possible reimbursement by the EAGGF to Member States of up to 50% of any cost incurred in compensating owners whose animals have been slaughtered.

27 Nor, as the Commission rightly points out in its observations, can the principle of compensating owners whose animals have been slaughtered in the context of measures to control classical swine fever be inferred from Article 2(1)(f) of Decision 80/1097, referred to by the national court in its questions, or from comparable provisions in the Community rules on control of animal diseases.

28 Decision 80/1097 seeks the eradication of an animal disease which is different from classical swine fever, namely, African swine fever. Furthermore, as is apparent from the second and third recitals of its preamble, it is designed to reinforce national measures taken against that disease in a particular region of the Community in order to ensure its total and urgent eradication. In that context, immediate and total compensation for owners whose pigs are slaughtered or destroyed may be seen as an important or even decisive element in controlling the disease because it encourages the elimination of animals which are infected or merely suspected of being infected by the disease. Finally, it should be pointed out that Article 2(1)(c) of Decision 90/217, which requires the Italian Republic to draw up a new plan for the eradication of African swine fever in Sardinia, lays down the principle only of immediate and adequate compensation for the owners concerned.

29 Likewise, the other Council decisions referred to by the Commission in its observations, namely 86/649, 86/650, 89/145, 90/424 and 90/638, cited above, which provide for compensation for owners whose animals have been slaughtered by

order of the veterinary authorities, concern animal diseases other than classical swine fever and require merely fair and adequate compensation for owners whose animals have been slaughtered.

0 In the absence of Community provisions on the matter, compensation of owners whose pigs have been slaughtered by order of the national authorities under measures to control classical swine fever falls within the competence of each Member State.

1 It follows that the applicable Community rules on control of classical swine fever must be interpreted as not requiring Member States to provide for a system of compensation for owners whose pigs have been slaughtered by order of the national authorities.

## Validity of the Community rules

2 The national court nonetheless has doubts, in that event, concerning the validity of the Community rules in view of the principle that there should be no discrimination on grounds of nationality laid down in Article 7 of the Treaty.

3 On that point, contrary to the argument of the plaintiffs in the main proceedings, the Community rules on control of classical swine fever do not disregard the principle of non-discrimination laid down in that article.

Those rules do not provide for a system of compensation which differs according to the nationality of the owners whose animals have been slaughtered since, as has

been stated above, they do not regulate the compensation of those owners. Neither can the fact that certain Member States, in the context of the competence they retain, have adopted a system of compensation for those owners whereas other Member States have not done so constitute infringement of the rules of the Treaty.

35 Finally, the fact that the Community has prescribed total or partial compensation for owners of animals slaughtered in order to control animal diseases other than classical swine fever breaches neither the principle of non-discrimination nor even the principle of equal treatment laid down in Article 40(3) of the Treaty, since the situations at issue are objectively different.

36 The answers to the questions referred for a preliminary ruling should therefore be, first, that the applicable Community rules on control of classical swine fever must be interpreted as not requiring Member States to provide for a system of compensation for owners whose pigs have been slaughtered by order of the national authorities and, secondly, that examination of the Community rules on the matter has not revealed any factor of such a kind as to affect their validity.

## Costs

37 The costs incurred by the Belgian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Third Chamber),

in answer to the questions referred to it by the Rechtbank van Eerste Aanleg, Ghent (Belgium), by order of 26 May 1993, hereby rules:

1. **The applicable Community rules on control of classical swine fever must be interpreted as not requiring Member States to provide for a system of compensation for owners whose pigs have been slaughtered by order of the national authorities.**

2. **Examination of the Community rules on the matter has not revealed any factor of such a kind as to affect their validity.**

Gulmann Moitinho de Almeida Puissochet

Delivered in open court in Luxembourg on 6 April 1995.

R. Grass
Registrar

C. Gulmann
President of the Third Chamber