Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

22 February 2024*

(Reference for a preliminary ruling – Environment – Directive 2010/75/EU – Integrated pollution prevention and control – Article 10 – Annex I, point 6.4(a) – Operating slaughterhouses with a carcass production capacity greater than 50 tonnes per day – Concepts of 'carcass' and 'production capacity per day' – Slaughterhouse without a permit – Actual production must be taken into account)

In Case C-311/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Højesteret (Supreme Court, Denmark), made by decision of 4 May 2022, received at the Court on 10 May 2022, in the proceedings

Anklagemyndigheden

v

PO,

Moesgaard Meat 2012 A/S,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl, J. Passer (Rapporteur) and M.L. Arastey Sahún, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 9 March 2023,

after considering the observations submitted on behalf of:

– PO and Moesgaard Meat 2012 A/S, by K. Cronwald Jensen and M. Honoré, advokater,

– the Danish Government, by M. Jespersen, J.F. Kronborg and C. Maertens, acting as Agents,

– the European Commission, by C. Valero and C. Vang, acting as Agents,

* Language of the case: Danish.

after hearing the Opinion of the Advocate General at the sitting on 29 June 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of point 6.4(a) of Annex I to Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).

2 The request has been made in proceedings between the Anklagemyndigheden (Public Prosecutor's Office, Denmark), on the one hand, and Moesgaard Meat 2012 A/S ('Moesgaard Meat') and PO, the managing director of that company, on the other, concerning the prosecution of Moesgaard Meat and PO for operating a slaughterhouse without an environmental permit between 1 January 2014 and 31 December 2016.

Legal context

European Union law

Directive 2010/75

3 According to recital 2 of Directive 2010/75:

'In order to prevent, reduce and as far as possible eliminate pollution arising from industrial activities in compliance with the "polluter pays" principle and the principle of pollution prevention, it is necessary to establish a general framework for the control of the main industrial activities, giving priority to intervention at source, ensuring prudent management of natural resources and taking into account, when necessary, the economic situation and specific local characteristics of the place in which the industrial activity is taking place.'

4 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive lays down rules on integrated prevention and control of pollution arising from industrial activities.

It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole.'

5 Article 2 of that directive, entitled 'Scope', provides in paragraph 1:

'This Directive shall apply to the industrial activities giving rise to pollution referred to in Chapters II to VI.'

6 Article 3 of Directive 2010/75, entitled 'Definitions', is worded as follows:

'For the purposes of this Directive the following definitions shall apply:

…

(3) "installation" means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution;

…'

7 Article 4 of Directive 2010/75, entitled 'Obligation to hold a permit', provides in paragraph 1:

'Member States shall take the necessary measures to ensure that no installation or combustion plant, waste incineration plant or waste co-incineration plant is operated without a permit.

…'

8 Article 10 of that directive, entitled 'Scope', in Chapter II thereof, entitled 'Provisions for activities listed in Annex I', provides:

'This Chapter shall apply to the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out in that Annex.'

9 Under Annex I to that directive, entitled 'Categories of activities referred to in Article 10':

'The threshold values given below generally refer to production capacities or outputs. Where several activities falling under the same activity description containing a threshold are operated in the same installation, the capacities of such activities are added together. …

…

6. Other activities

…

6.4. (a) Operating slaughterhouses with a carcass production capacity greater than 50 tonnes per day

…

…'

10 Point 6.4(a) of Annex I to Directive 2010/75 is drafted in terms comparable to those of point 6.4(a) of Annex I to the directives applicable previously and which Directive 2010/75 replaced, that is to say, Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26) and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8).

Other relevant acts of European Union law

– *Regulation (EEC) No 3220/84*

11 Council Regulation (EEC) No 3220/84 of 13 November 1984 determining the Community scale for grading pig carcases (OJ 1984 L 301, p. 1), which came into force on 1 January 1985, was repealed, as regards the Community scales for grading carcasses, with effect from 1 January 2009, by Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1). Regulation No 3220/84, as amended by Council Regulation (EC) No 3513/93 of 14 December 1993 (OJ 1993 L 320, p. 5) ('Regulation No 3220/84'), provided as follows in Article 1:

'1. This Regulation lays down the Community scale for grading carcases of pigs other than those which have been used for breeding.

2. The scale referred to in paragraph 1 above shall be used by all slaughterhouses for grading all carcases in order to enable producers to receive fair payment based on the weight and composition of the pigs they have delivered to the slaughterhouse.

…'

12 Article 2 of that regulation provided:

'1. For the purposes of this Regulation, "pig carcase" shall mean the body of a slaughtered pig, bled and eviscerated, whole or divided down the mid-line, without tongue, bristles, hooves, genital organs, flare fat, kidneys and diaphragm.

With regard to pigs slaughtered in their territory, the Member States may be authorised to provide for a different presentation of pig carcases if one of the following conditions is fulfilled:

– if normal commercial practice in their territory differs from the standard presentation defined in the first subparagraph,

– if technical requirements warrant it,

– if pig carcases are dehided in a uniform manner.

2. For the purposes of this Regulation, the weight shall apply to the cold carcase presented as described in the first subparagraph of paragraph 1.

The carcase shall be weighed as soon as possible after slaughter and not more than 45 minutes after the pig has been stuck. The weight of the cold carcase shall be calculated by applying a conversion coefficient to the result obtained.

If, in a given slaughterhouse, the 45-minute period cannot generally be observed, the conversion coefficient referred to in the second subparagraph shall be adjusted accordingly.

…'

– *Regulation No 1234/2007*

13 Regulation No 1234/2007, which came into force on 23 November 2007, was repealed, with regard to the pigmeat sector, with effect from 1 January 2014, by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671). As was apparent from Article 1(1)(q) thereof, Regulation No 1234/2007 established a common organisation of the markets for the products belonging to the sectors listed in Annex I to that regulation, which included the pigmeat sector.

14 Article 8 of that regulation, entitled 'Reference prices', provided as follows in paragraph 1:

'For products subject to the intervention measures referred to in Article 6(1) the following reference prices shall be fixed:

…

(f) as regards the pigmeat sector, EUR 1 509.39/tonne for pig carcasses of standard quality defined in terms of weight and lean meat content in accordance with the Community scale for the classification of pig carcasses, provided for in Article [42](1)(b) as follows:
   (i) carcasses weighing from 60 to less than 120 kg: grade E as laid down in point B II of Annex V;
   (ii) carcasses weighing from 120 to 180 kg: grade R as laid down in point B II of Annex V.'

15 Annex V to that regulation provided:

'…

B. Community scale for the classification of pig carcasses

I. Definition

"carcass" shall mean the body of a slaughtered pig, bled and eviscerated, whole or divided down the mid-line.

…

III. Presentation

Carcasses shall be presented without tongue, bristles, hooves, genital organs, flare fat, kidneys and diaphragm.

With regard to pigs slaughtered in their territory, the Member States may be authorised to provide for a different presentation of pig carcasses if one of the following conditions is fulfilled:

1. if normal commercial practice in their territory differs from the standard presentation defined in the first subparagraph,

2. if technical requirements warrant it,

3. if carcasses are dehided in a uniform manner.

…’

– *Regulation No 1308/2013*

16 Regulation No 1308/2013 contains Article 7(1)(f), on the one hand, and Article 20(t) and Annex IV, on the other, that are worded in terms comparable to those of Article 8(1)(f) of and Annex V to Regulation No 1234/2007, respectively, which are set out in paragraphs 14 and 15 above.

17 As is apparent from the first paragraph of Article 10 of Regulation No 1308/2013, a Union scale for the classification of carcasses is to apply in accordance with point B of Annex IV to that regulation in the pigmeat sector as regards the carcasses of pigs other than those that have been used for breeding.

Danish law

Law on environmental protection

18 Under Paragraph 33(1) of the Miljøbeskyttelsesloven (Law on environmental protection) of 22 December 2006, in the version applicable to the dispute in the main proceedings (‘the Law on environmental protection’):

‘No undertaking, installation or facility on the list referred to in Paragraph 35 (listed undertakings) may be established or start operating before a permit has been issued for that purpose. Nor may a listed undertaking be extended or modified as regards its built structure or operation – in particular as regards the production of waste – in a way that involves increased pollution, before the extension or modification has been authorised.’

19 Paragraph 35(1) of that law provides:

‘The Minister for the Environment and Food shall draw up a list of the particularly polluting undertakings, installations and facilities subject to the requirement to hold a permit under Paragraph 33.’

20 Paragraph 110 of that law provides:

‘1. Unless a greater penalty is justified under other legislation, a fine shall be imposed on any person who

…

(6) establishes, starts or operates an undertaking without having obtained the permit under Paragraph 33;

…

2. The penalty may be increased to imprisonment for a maximum of two years if the offence was committed intentionally or through serious negligence and where, as a result of commission of the offence,

(1) damage to the environment or a risk of such damage was caused; or

(2) the party concerned him or herself or others obtained or sought an economic advantage, including in the form of a cost saving.

…

4. A company or other legal person may incur criminal liability in accordance with the provisions of Chapter 5 of the Criminal Code.'

Executive Order No 1454 on permits for listed undertakings

21 Paragraph 3 of the bekendtgørelse nr. 1454 om godkendelse af listevirksomhed (Executive Order No 1454 on permits for listed undertakings) of 20 December 2012 provided:

'1. No listed undertaking may be established or start operating before the permit provided for in Paragraph 33(1) of the Law on environmental protection has been granted for that purpose.

2. A listed undertaking may not be extended or modified as regards its built structure or operation – in particular as regards the production of waste – in a way that involves increased pollution, before the extension or modification has been authorised under Paragraph 33(1) of the Law on environmental protection.

…

5. Where Annex 1 or Annex 2 sets a minimum threshold for the requirement to hold a permit, the undertaking may not carry out any extension or modification that would result in that threshold being exceeded, until the undertaking as a whole has been authorised.'

22 Annex 1 to that order contained a list of the activities subject to authorisation, which included:

'…

6.4.

(a) Operating slaughterhouses with a production capacity of carcasses or slaughtered poultry greater than 50 tonnes per day. …

…'

23 That order was replaced in the course of 2014 and subsequent years by new versions, without amendment of the essential terms of the provisions cited in paragraphs 21 and 22 above.

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

24 From 2014 to 2016, Moesgaard Meat operated a pig slaughterhouse without holding a permit under the Law on environmental protection.

25 By indictment of 19 July 2017, Moesgaard Meat and its managing director, PO, were prosecuted for infringement of that law, read in conjunction with the Executive Order on permits for listed undertakings, in the version applicable to the alleged acts, on the ground that, during the period referred to in the preceding paragraph, Moesgaard Meat operated a slaughterhouse undertaking whose production of pig carcasses exceeded 50 tonnes per day, without the environmental permit therefore required and causing a risk of damage to the environment.

26 According to that indictment, Moesgaard Meat's average daily carcass production for each month of the period from 1 January 2014 to 31 December 2016 was within a range varying from 53 488 kg of carcasses in January 2014 to 92 334 kg of carcasses in September 2016, with the total excess production over the whole of that period assessed at 17.3 million kg.

27 The calculation of that average daily production was based on the production figures that Moesgaard Meat had declared to the competent authority under the bekendtgørelse om produktionsafgift ved slagtning og eksport af svin (Executive Order on the production levy for the slaughter and export of pigs), according to which the forms had to be completed with an entry relating to 'carcass weight'. In addition, for the purposes of that calculation, only 'slaughter days' were taken into account, excluding days when the slaughterhouse's activity was limited to taking delivery of the animals, placing them in lairage and preparing them for slaughter or completing the processing of the slaughtered animals, in particular by removing the animal's head and neck when it was chilled and preparing it for collection.

28 By judgment of 3 July 2018, the Retten i Holstebro (District Court, Holstebro, Denmark) found Moesgaard Meat and PO guilty of the offences with which they were charged.

29 They lodged an appeal against that judgment to the Vestre Landsret (High Court of Western Denmark, Denmark), which confirmed it by judgment of 4 July 2019.

30 The Højesteret (Supreme Court, Denmark), before which PO and Moesgaard Meat have brought an appeal against that judgment, is uncertain as to the interpretation adopted by the Public Prosecutor's Office and the lower courts with respect to the concepts of 'carcass production', 'per day' and 'capacity' contained in point 6.4(a) of Annex I to Directive 2010/75 and reproduced in the applicable Danish legislation. The Højesteret (Supreme Court) observes in that regard that according to the defendants, contrary to what those lower courts held, a 'carcass' is a carcass without the head, bled and in a frozen state and that, for the purpose of calculating Moesgaard Meat's capacity, account must also be taken of the dressing of animals that takes place at weekends. Furthermore, they submit that the 'capacity' of an installation may be less than its actual production where, for example, actual production has been achieved in disregard of the physical, technical or legal constraints on production, as is the case in the situation at issue in the main proceedings, in which the actual production taken into account by the Public Prosecutor's Office was achieved using illegally installed refrigerated containers.

31 In those circumstances, the Højesteret (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is point 6.4(a) of Annex I to Directive [2010/75] to be interpreted as meaning that "carcass production" covers the slaughter process, which begins when the animal is removed from lairage, stunned and killed and ends when the large standard cuts are produced, so that the weight of the slaughter animal is to be calculated before the neck and head as well as the organs and entrails are removed, or does "carcass production" mean the production of pig carcasses after the organs and entrails as well as the neck and head have been removed, and after exsanguination and chilling, so that the weight of the slaughter animal should only be calculated at this point in time?

(2) Is point 6.4(a) of Annex I to Directive [2010/75] to be interpreted as meaning that when determining the number of production days included in the capacity "per day", this should take into account only the days when stunning, killing and immediate cutting up of the slaughter pig are carried out, or should this take into account the days when the operations for dressing the slaughter pigs are carried out, which includes preparing the animal for slaughter, chilling the slaughtered animal and removing the animal's head and neck?

(3) Is point 6.4(a) of Annex I to Directive [2010/75] to be interpreted as meaning that the "capacity" of a slaughterhouse is to be calculated as the maximum production per day within 24 hours, subject to the physical, technical or legal constraints actually complied with by the slaughterhouse, but not lower than its achieved production, or can the slaughterhouse's "capacity" be lower than its achieved production, for example, where the production achieved by a slaughterhouse has been carried out in disregard of the physical, technical or legal constraints on production that are assumed when calculating the slaughterhouse's "capacity"?'

Consideration of the questions referred

The first question

32 By its first question, the referring court asks, in essence, whether point 6.4(a) of Annex I to Directive 2010/75 must be interpreted as meaning that, for the purpose of calculating the pig carcass production capacity of a slaughterhouse, account must be taken of the weight of animals immediately after they are killed or of their weight after exsanguination, removal of viscera and intestines, removal of the head and neck and chilling.

33 It follows from a combined reading of Article 2(1), Article 3, point (3), Article 4(1) and Article 10 of Directive 2010/75 and point 6.4(a) of Annex I thereto that any installation in which the activity of 'operating slaughterhouses with a carcass production capacity greater than 50 tonnes per day' is carried on falls within the scope of that directive and is subject under it to a requirement to hold a permit.

34 According to settled case-law, both the uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union. In addition, the meaning and scope of terms for which EU law provides no definition must be determined by

reference to their usual meaning, while also taking into account the context in which they occur and the purposes of the rules of which they are part (judgment of 13 October 2022, *Gemeinde Bodman-Ludwigshafen*, C-256/21, EU:C:2022:786, paragraph 32 and the case-law cited).

35 In that regard, it should be noted that the concept of 'carcass' in point 6.4(a) of Annex I to Directive 2010/75 is not defined by that directive, which makes no express reference to national law for the purpose of determining the meaning and scope of that term.

36 As regards the context in which that provision occurs, it must, however, be pointed out that the concept of 'carcass' is defined in other relevant EU acts for the purposes of the activity of a slaughterhouse consisting of producing pig carcasses, including in particular Regulation No 1308/2013, which establishes a common organisation of the markets for products belonging, inter alia, to the pigmeat sector. That regulation lays down, in point B of Annex IV, rules applying to the Union scale for the classification of carcasses in the pigmeat sector, for the purpose of recording prices and applying the intervention arrangements in that sector.

37 Under that Annex IV, in the case of pigs, the concept of 'carcass' denotes the body of a slaughtered pig, bled and eviscerated, whole or divided down the mid-line. It is also apparent from the rules on the presentation of carcasses, set out in that Annex IV, that, in the case of pigs, the tongue, bristles, hooves, genital organs, flare fat, kidneys and diaphragm must be removed.

38 It should be noted, furthermore, that substantially identical definitions and rules on standard presentation applicable to pig carcasses in the field of the common organisation of the markets were already in force at the time of the adoption of Directive 96/61, which for the first time introduced the requirement to hold a permit in order to operate slaughterhouses which now exists under Directive 2010/75, as was also the case at the time directives 2008/1 and 2010/75 were adopted.

39 Furthermore, as is apparent from paragraph 10 above, point 6.4(a) of Annex I to directives 96/61 and 2008/1 was drafted in terms comparable to those of point 6.4(a) of Annex I to Directive 2010/75.

40 The definitions and the rules on standard presentation referred to in paragraph 38 above were laid down first of all in Article 2(1) of Regulation No 3220/84 and subsequently in Annex V to Regulation No 1234/2007.

41 It can be seen from Regulation No 1308/2013 and the regulations mentioned in the preceding paragraph, in particular from Article 7(1)(f) of Regulation No 1308/2013, Article 8(1)(f) of Regulation No 1234/2007 and Article 2(2) of Regulation No 3220/84, that the weight of the carcasses defined in those provisions has, since Regulation No 3220/84, constituted a benchmark, when applying that legislation, for the purposes of the calculation of reference prices.

42 Furthermore, it is apparent from Article 2(2) of Regulation No 3220/84, which was in force at the time of adoption of the first directive to introduce a requirement to hold a permit in order to operate slaughterhouses with a carcass production capacity greater than 50 tonnes per day, that is to say, Directive 96/61, that, in respect of the weighing of pig carcasses after slaughter, the applicable weight was that of carcasses in the standard presentation provided for by that regulation, even though the Member States could be authorised, under certain conditions, to provide for a different presentation.

43 In those circumstances, in view of the degree of clarity and precision in the definition of the concept of 'carcass' that flows from those acts, this must be found to be the concept of 'carcass' to which the EU legislature intended to refer when it adopted Directive 2010/75 and its predecessors, even though other definitions of that concept exist in the EU legislation on public health.

44 It follows that, for the purpose of calculating the pig carcass production capacity of a slaughterhouse under point 6.4(a) of Annex I to Directive 2010/75, the weight to be taken into consideration is not that of the animals immediately after they are killed but their weight following exsanguination and evisceration and after removal of the tongue, bristles, hooves, genital organs, flare fat, kidneys and diaphragm.

45 That interpretation is also borne out by the fact that the concept of 'carcass' is used in point 6.4(a) of Annex I to Directive 2010/75 in conjunction with the word 'production' ('carcass production'), in line with the first sentence of the introductory wording of Annex I, according to which 'the threshold values given [in this annex] generally refer to production capacities or outputs'. The concept of 'production' applied to animal carcasses is, a priori, more in keeping with a process at the end of which the meat product from the animal undergoes initial processing or packaging with a view to its future marketing than with an isolated act such as the act of slaughter, which consists purely of ushering the animal in question from life to death.

46 An interpretation of point 6.4(a) of Annex I to Directive 2010/75 in the light of the definition and the rules on the standard presentation of pig carcasses in Regulation No 1308/2013 is not called into question by the fact that a number of language versions of that directive do not refer literally to the concept defined in Regulation No 1308/2013.

47 First, the concepts used in the Bulgarian ('*трупно месо*'), Hungarian ('*vágott súly*') and Swedish ('*slaktvikt*') language versions of that directive, that is to say, 'carcass meat' in the Bulgarian version and 'carcass weight' in the other two versions, appear to be conceptually very close to the terms used, in those three versions of Regulation No 1308/2013 ('*кланичен труп*', '*hasított test*' and '*slaktkropp*'), that is to say, 'slaughter carcass' as regards the first and 'carcass' as regards the others.

48 Secondly, the fact that the concepts used in the Dutch ('*geslachte dieren*'), Czech ('*kapacita porážky*'), Slovak ('*kapacita zabitia*') and Slovenian ('*zmogljivostjo zakola*') language versions of Directive 2010/75, that is to say, 'slaughtered animals' as regards the first and 'slaughter capacity' as regards the others, do not include the word 'carcass' does not preclude an interpretation based on that term as it is defined in that regulation.

49 The fact that Regulation No 1308/2013 pursues objectives distinct from those of Directive 2010/75 is not sufficient, in itself, to justify giving different interpretations to the same term used in two sets of legislation relating to the same sector.

50 Although the objective pursued by Directive 2010/75 consists, according to Article 1 thereof, of the integrated prevention and control of pollution arising from industrial activities, there is nothing to suggest that in the present case the EU legislature exceeded the limits of the broad discretion available to it where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations by referring, for the

purpose of calculating the production capacity of slaughterhouses within the meaning of point 6.4(a) of Annex I to Directive 2010/75, to the weight of animal carcasses as defined in Regulations No 3220/84, No 1234/2007 and No 1308/2013 in turn.

51 Lastly, as the Advocate General observed in points 66 and 67 of her Opinion, it is apparent from the best available techniques reference document for slaughterhouses, produced by the European Commission under Article 16(2) of Directive 96/61, that, since that directive came into force, the relevant economic sector, and most particularly the actors in that sector that are subject to the requirement to hold the necessary permit, on pain of incurring penalties, have come to assume that a carcass is to be construed as referring to the processed dead body of an animal after substantial parts of it have been removed.

52 In the light of all the foregoing considerations, the answer to the first question is that point 6.4(a) of Annex I to Directive 2010/75 must be interpreted as meaning that, for the purpose of calculating the pig carcass production capacity of a slaughterhouse, it is necessary to take into consideration the weight of the slaughtered pigs after exsanguination and evisceration and without the tongue, bristles, hooves, genital organs, flare fat, kidneys and diaphragm.

The second and third questions

53 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether point 6.4(a) of Annex I to Directive 2010/75 must be interpreted as meaning that, where the daily carcass production capacity of an operating slaughterhouse that does not have the permit required under Article 4(1) of that directive is calculated on the basis of the actual monthly production volumes of the slaughterhouse concerned:

– that calculation must include, in addition to the days on which animals are slaughtered, days when other steps in the carcass production are carried out; and

– account must be taken of the physical, technical and legal constraints that could restrict the production capacity of that slaughterhouse, with the effect that its production capacity may be less than its actual production, in particular where the actual production has been achieved in disregard of those constraints.

54 In the usual meaning of the expression, the ‘production capacity’ of a slaughterhouse refers to the quantity of carcasses that the slaughterhouse is capable of producing.

55 As a rule, assessment of a slaughterhouse’s capacity, for the purpose of determining whether it must have a permit, must therefore be carried out *ex ante* in the light of the capacity of the operating facilities at its disposal. In that context, as the Advocate General observed in points 28 and 29 of her Opinion (referring to the Commission’s guidance document of 1 April 2007, *Guidance on Interpretation and Determination of Capacity under the IPPC Directive [Directive 96/61]*, which, although not binding, may serve to clarify the general scheme of that directive and therefore also that of Directive 2010/75 (see, by analogy, judgment of 16 December 2021, *Apollo Tyres (Hungary)*, C-575/20, EU:C:2021:1024, paragraph 38 and the case-law cited), it is necessary to take into account the relevant physical, technical and legal constraints and also the capacity of the part of the installation or the step in its production which most limits the overall capacity of the slaughterhouse concerned. If those constraints were not

taken into account, the capacity of the installation thus determined would not correspond to what is achievable in practice in accordance with the legal rules applicable to the activity in question.

56 However, where the production data of a slaughterhouse that does not have such a permit show that the slaughterhouse in question produces quantities of carcasses exceeding the quantities referred to in point 6.4(a) of Annex I to Directive 2010/75, that fact alone must lead to the conclusion that the slaughterhouse has, at least, production capacity equivalent to those quantities and, therefore, that the production in question took place in disregard of the requirement to hold a permit under Article 4(1) of that directive.

57 In that context, the argument put forward by PO and Moesgaard Meat in their written observations cannot succeed, asserting as it does that the actual level of carcass production achieved by Moesgaard Meat cannot be taken into account in calculating the production capacity of the slaughterhouse concerned where that actual level of production was achieved in disregard of the constraints arising from the legal rules applicable to the activity in question, in this case by virtue of the illegally installed refrigerated containers.

58 As is apparent from Article 1 of Directive 2010/75, read in the light of recital 2 thereof, that directive seeks to prevent, reduce and, as far as possible, eliminate pollution from the main industrial activities. Therefore, since it is the actual production that gives rise to the pollution that the directive seeks to prevent, reduce and eliminate, a slaughterhouse whose actual carcass production is above the threshold laid down in point 6.4(a) of Annex I to that directive must in any event be regarded as an installation carrying on such industrial activities and, therefore, subject to the requirement to hold a permit under that directive, regardless of how that level of production has been achieved, whether legally or illegally.

59 Furthermore, the fact that it produced quantities exceeding those referred to in point 6.4(a) of Annex I to Directive 2010/75 during a given period must, in the absence of any modification of the operating facilities available to the slaughterhouse concerned or of the physical, technical and legal constraints applicable to the activity in question, prima facie be regarded as indicative of the existence of at least such capacity in relation also to other periods of operation of that slaughterhouse, during which, as the result, for example, of a decrease in current demand, the production capacity of that slaughterhouse may not have been fully utilised and the quantities it produced may therefore have been lower than those referred to in point 6.4(a).

60 Finally, in the event that there are no data for the actual daily carcass production of the slaughterhouse concerned, and the daily carcass production capacity was not duly assessed *ex ante* in order to determine whether the permit under Directive 2010/75 was required, in accordance with what has been stated in paragraph 55 above, but was inferred from average daily production data, calculated on the basis of its actual monthly production volumes, the calculation of average daily production must take into account not only 'slaughter days' but also days when other steps in carcass production, that is to say, those referred to in paragraph 44 above and preceding steps, are carried out.

61 In the present case, that situation would require the calculation to take account of Saturdays and Sundays, when, according to the information provided by PO and Moesgaard Meat, which it is for them to substantiate and for the referring court to verify, the activity of the slaughterhouse at issue in the main proceedings consisted of taking delivery of the animals, placing them in lairage and preparing them for slaughter and, after slaughter, completing the operations referred to in paragraph 52 above.

62 In the light of all the foregoing considerations, the answer to the second and third questions is that point 6.4(a) of Annex I to Directive 2010/75 must be interpreted as meaning that, where the daily carcass production capacity of an operating slaughterhouse that does not have the permit required under Article 4(1) of that directive is calculated on the basis of its actual monthly production volumes, that calculation must include, in addition to the days on which animals are slaughtered, the days on which other steps in carcass production are carried out. By contrast, it is not necessary in that context to take into account any physical, technical or legal constraints that could restrict the production capacity of the slaughterhouse.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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. **Point 6.4(a) of Annex I to Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)**

   must be interpreted as meaning that for the purpose of calculating the pig carcass production capacity of a slaughterhouse, it is necessary to take into consideration the weight of the slaughtered pigs after exsanguination and evisceration and without the tongue, bristles, hooves, genital organs, flare fat, kidneys and diaphragm.

2. **Point 6.4(a) of Annex I to Directive 2010/75**

   must be interpreted as meaning that where the daily carcass production capacity of an operating slaughterhouse that does not have the permit required under Article 4(1) of that directive is calculated on the basis of its actual monthly production volumes, that calculation must include, in addition to the days on which animals are slaughtered, the days on which other steps in carcass production are carried out. By contrast, it is not necessary in that context to take into account any physical, technical or legal constraints that could restrict the production capacity of the slaughterhouse.

[Signatures]