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Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

2 May 2019(*)

(Reference for a preliminary ruling — Protection of health — Hygiene package — Regulation (EC) No 853/2004 — Hygiene of food of animal origin — Rules for food business operators — Specific requirements — Meat of domestic ungulates — Storage and transport — Requirements for the temperature of the meat)

In Case C-98/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), made by decision of 6 February 2018, received at the Court on 12 February 2018, in the proceedings

T. Boer & Zonen BV

v

Staatssecretaris van Economische Zaken,

THE COURT (Ninth Chamber),

composed of K. Jürimäe, Present of the Ninth Chamber, D. Šváby (Rapporteur) and S. Rodin, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- T. Boer & Zonen BV, by K.J. Defares, advocaat,
- the Netherlands Government, by M.K. Bulterman and M.L. Noort, acting as Agents,

- the French Government, by D. Colas, S. Horrenberger and A.-L. Desjonquères, acting as Agents,
- the Hungarian Government, by M.Z. Fehér, G. Koós and M.M. Tátrai, acting as Agents,
- the Romanian Government, by C.-R. Canțăr, C.-M. Florescu and A. Wellman, acting as Agents,
- the European Commission, by A. Bouquet, W. Farrell and B. Eggers, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Annex III, Section I, Chapter VII, points 1 and 3, to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55, and corrigendum OJ 2004 L 226, p. 22).

2 The request has been made in proceedings between T. Boer & Zonen BV, a food business operator established in the Netherlands, and the Staatssecretaris van Economische Zaken (State Secretary for Economic Affairs, Netherlands, ‘the Secretary of State’) concerning administrative fines imposed on the applicant in the main proceedings by the Secretary of State for having loaded meat and certain processed meat into a refrigerated truck at temperatures of more than 7 °C and 11 °C respectively.

Legal context

European Union law

Regulation No 853/2004

3 Recitals 1, 2, 4 and 9 of Regulation No 853/2004 read as follows:

‘(1) Pursuant to Regulation (EC) No 852/2004 [of 29 April 2004 on the hygiene of foodstuffs (OJ 2004 L 139, p. 1 and corrigendum OJ 2004 L 226, p. 3)], the European Parliament and the Council laid down general rules for food business operators on the hygiene of foodstuffs.

(2) Certain foodstuffs may present specific hazards to human health, requiring the setting of specific hygiene rules. This is particularly the case for food of animal origin, in which microbiological and chemical hazards have frequently been reported.

...

(4) With regard to public health, these rules contain common principles, in particular in relation to the manufacturers’ and competent authorities’ responsibilities, structural, operational and hygiene requirements for establishments, procedures for the approval of establishments, requirements for storage and transport and health marks.

...

(9) The principal objectives of the recasting are to secure a high level of consumer protection with regard to food safety, in particular by making food business operators throughout the Community subject to the same rules, and to ensure the proper functioning of the internal market in products of animal origin, thus contributing to the achievement of the objectives of the common agricultural policy.'

4 Under the heading 'Definitions', Article 2 of Regulation No 853/2004 provides:

'The following definitions shall apply for the purposes of this Regulation:

1. the definitions laid down in Regulation (EC) No 178/2002;
2. the definitions laid down in Regulation (EC) No 852/2004;
3. the definitions laid down in Annex I; and
4. any technical definitions contained in Annexes II and III.'

5 Under the heading 'General obligations', Article 3(1) of Regulation No 853/2004 provides:

'Food business operators shall comply with the relevant provisions of Annexes II and III.'

6 Under the heading 'Registration and approval of establishments', Article 4 of Regulation No 853/2004 provides:

'1. Food business operators shall place products of animal origin manufactured in the Community on the market only if they have been prepared and handled exclusively in establishments:

- (a) that meet the relevant requirements of Regulation (EC) No 852/2004, those of Annexes II and III of this Regulation and other relevant requirements of food law; and
- (b) that the competent authority has registered or, where required in accordance with paragraph 2, approved.

2. Without prejudice to Article 6(3) of Regulation (EC) No 852/2004, establishments handling those products of animal origin for which Annex III to this Regulation lays down requirements shall not operate unless the competent authority has approved them in accordance with paragraph 3 of this Article, with the exception of establishments carrying out only:

...

- (b) transport operations;

...

3. An establishment subject to approval in accordance with paragraph 2 shall not operate unless the competent authority has, in accordance with Regulation (EC) No 854/2004 of the European

Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption:

(a) granted the establishment approval to operate following an on-site visit; or

...

4. Food business operators shall cooperate with the competent authorities in accordance with Regulation (EC) No 854/2004. In particular, food business operators shall ensure that an establishment ceases to operate if the competent authority withdraws its approval or, in the case of conditional approval, fails to prolong it or to grant full approval.

...'

7 Under the heading 'Definitions', Annex I to Regulation No 853/2004 provides, in point 1.16, that a 'slaughterhouse' means 'an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption'.

8 Under the heading 'Requirements for slaughterhouses', Annex III, Section I, Chapter II, to that regulation lays down several requirements for the construction, layout and equipment of slaughterhouses with which food business operators must comply.

9 Chapter VII, headed 'Storage and Transport', in Annex III, Section I, to that regulation provides:

'CHAPTER VII: STORAGE AND TRANSPORT

Food business operators must ensure that the storage and transport of meat of domestic ungulates takes place in accordance with the following requirements:

1. (a) Unless other specific provisions provide otherwise, post-mortem inspection must be followed immediately by chilling in the slaughterhouse to ensure a temperature throughout the meat of not more than 3 °C for offal and 7°C for other meat along a chilling curve that ensures a continuous decrease of the temperature. However, meat may be cut and boned during chilling in accordance with Chapter V, point 4;

(b) During the chilling operations, there must be adequate ventilation to prevent condensation on the surface of the meat.

2. Meat must attain the temperature specified in point 1 and remain at that temperature during storage;

3. Meat must attain the temperature specified in point 1 before transport, and remain at that temperature during transport. However, transport may also take place if the competent authority so authorises to enable the production of specific products, provided that:

(a) such transport takes place in accordance with the requirements that the competent authority specifies in respect of transport from one given establishment to another;

and

(b) the meat leaves the slaughterhouse, or a cutting room on the same site as the slaughter premises, immediately and transport takes no more than two hours;

4. Meat intended for freezing must be frozen without undue delay, taking into account where necessary a stabilisation period before freezing;

5. Exposed meat must be stored and transported separately from packaged meat, unless stored or transported at different times or in such a way that the packaging material and the manner of storage or transport cannot be a source of contamination for the meat.'

Regulation No 852/2004

10 Under the heading 'Definitions', Article 2(1)(c) of Regulation No 852/2004 states that, for the purposes of that regulation, an 'establishment' means 'any unit of a food business'.

11 Under the heading 'Hazard analysis and critical control points', Article 5(1) of the regulation provides:

'Food business operators shall put in place, implement and maintain a permanent procedure or procedures based on the [*Hazard Analysis Critical Control Point (HACCP)*] principles.'

Regulation (EC) No 178/2002

12 Article 3(2) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1) defines a 'food business' as 'any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food'.

13 Under the heading 'Risk analysis', Article 6(1) of that regulation states:

'In order to achieve the general objective of a high level of protection of human health and life, food law shall be based on risk analysis except where this is not appropriate to the circumstances or the nature of the measure.'

14 Under the heading 'Precautionary principle', Article 7 of the regulation provides:

'1. In specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the Community may be adopted, pending further scientific information for a more comprehensive risk assessment.

2. Measures adopted on the basis of paragraph 1 shall be proportionate and no more restrictive of trade than is required to achieve the high level of health protection chosen in the Community, regard being had to technical and economic feasibility and other factors regarded as legitimate in the matter under consideration. The measures shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment.'

15 Under the heading ‘Protection of consumers’ interests’, Article 8(1) of the regulation provides:

‘Food law shall aim at the protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume. ...’

16 Under the heading ‘General requirements of food law’, Article 14 of Regulation No 178/2002 states:

‘1. Food shall not be placed on the market if it is unsafe.

...

5. In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.’

17 Article 17 of that regulation concerning ‘Responsibilities’ provides:

‘1. Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.

2. Member States shall enforce food law, and monitor and verify that the relevant requirements of food law are fulfilled by food and feed business operators at all stages of production, processing and distribution.

For that purpose, they shall maintain a system of official controls and other activities as appropriate to the circumstances, including public communication on food and feed safety and risk, food and feed safety surveillance and other monitoring activities covering all stages of production, processing and distribution.

Member States shall also lay down the rules on measures and penalties applicable to infringements of food and feed law. The measures and penalties provided for shall be effective, proportionate and dissuasive.’

Dutch Law

18 Article 6.2(1) of the Wet houdende een integraal kader voor regels over gehouden dieren en daaraan gerelateerde onderwerpen (Law containing an integral framework for rules on kept animals and related subjects) of 19 May 2011 (Stb. 2011, No 345) (‘Law on animals’) provides:

‘It is forbidden to act contrary to the provisions of EU regulations concerning matters governed by this Law designated by or pursuant to a general administrative order or ministerial order.’

19 Article 8.7 of the Law on animals provides:

‘The Minister can impose an administrative fine on a person who commits an infringement.’

20 Article 2.4(1)(d) of Regeling van de Minister van Economische Zaken, nr. WJZ/12346914, houdende regels met betrekking tot dierlijke producten (Order of the Minister for Economic Affairs No WJZ/12346914 containing rules relating to animal products) of 7 December 2012 (Stcrt. 2012, No 25949) provides:

‘The provisions of EU regulations as referred to in Article 6.2(1) of the Law on animals are:

...

(d) Articles 3, 4(1) to (4), 5 and 7(1) of Regulation (EC) No 853/2004’.

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

21 T. Boer & Zonen operates a slaughterhouse primarily processing and bringing onto the market veal, meat products and by-products. It applies a slaughter process according to which, after slaughtering and dressing, the carcasses and carcass parts are progressively cooled in a cold store next to the slaughtering and dressing area. The cooling process is then continued in a refrigerated truck located at the dock of the slaughterhouse, into which the meat is loaded for transport from the cold store.

22 In order to determine whether the prescribed chilling temperature of 7 °C in Annex III, Section I, Chapter VII, to Regulation No 853/2004, has been reached throughout the meat, T. Boer & Zonen uses a rule of thumb, according to which the temperature of the meat decreases by 1 °C per hour. During the progressive chilling process, the refrigerated truck remains within the slaughterhouse, after which the transport documents are drawn up and issued. The meat is then transported in that vehicle.

23 In the course of investigations conducted on 16 and 30 December 2014 by the Nederlandse Voedsel-en Warenautoriteit (Netherlands Food and Consumer Products Authority, Netherlands, ‘the NVWA’) on T. Boer & Zonen’s premises, it was found that the meat had been loaded into refrigerated trucks at a temperature exceeding 7 °C and, in certain cases, exceeding 11 °C. It was also found that that process was structural in nature.

24 On the basis of those findings, in two separate decisions of 27 March 2015, the Secretary of State imposed administrative fines on T. Boer & Zonen of EUR 20 000 in total, first, for having infringed Article 3(1) of Regulation No 853/2004 and Annex III, Section I, Chapter VII, point 3, thereto (breach of the maximum temperature during loading) and, second, for having infringed Article 5(1) of Regulation No 852/2004 on food hygiene (infringement of the procedures based on the HACCP principles).

25 T. Boer & Zonen challenged those decisions. By decision of 1 October 2015, the Secretary of State partially upheld T. Boer & Zonen’s complaints and reduced the amount of those fines.

26 It then brought an action against the decision of 1 October 2015 before the Rechtbank Rotterdam (District Court, Rotterdam, Netherlands) which was dismissed on 14 July 2016.

27 T. Boer & Zonen appealed against the judgment at first instance before the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands).

28 In support of its appeal, T. Boer & Zonen claims that meat may also be chilled after loading into a refrigerated truck until it reaches the prescribed temperature of 7 °C, provided that that vehicle does not leave the premises of the slaughterhouse before that temperature is regarded as having been reached according to the rule of thumb that the temperature of meat decreases by 1 °C per hour. The Secretary of State contends, however, that the cooling process applied by T. Boer & Zonen is clearly not in accordance with the provisions and aim of Regulation No 853/2004, on the ground that it does not guarantee food safety. The Secretary of State maintains that the cooling process must take place in the slaughterhouse in accordance with the requirements laid down in Annex III, Section I, Chapter VII, point 1, to that regulation, and that a refrigerated truck cannot be regarded as a slaughterhouse within the meaning of that provision. Furthermore, the prescribed cooling must be reached before the meat is loading into that vehicle.

29 The referring court states that it is common ground, first, that meat inspected by the Netherlands Food and Consumer Products Authority had a temperature of higher than 7 °C at the time of loading into the refrigerated truck and, second, that the facts of the case before it are not analogous to the situation described in Annex III, Section I, Chapter VII, point 3, second sentence, (a) and (b), to Regulation No 853/2004.

30 The referring court considers, first, that a refrigerated truck cannot be regarded as a ‘slaughterhouse’ in the light of the definition of that establishment laid down in paragraph 1.16 of Annex I to Regulation No 853/2004. Second, it considers that such a refrigerated truck is not a unit of a food business and thus not an establishment within the meaning of Article 2(1)(c) of Regulation No 852/2004. In that regard, the referring court considers that the transport of the meat commences when it is loaded into a refrigerated truck and that the meat must be completely cooled before it is loaded into that vehicle.

31 However, in view of contradictory judgments given by the Dutch courts as to the interpretation of the chilling requirement laid down in Annex III, Section I, Chapter VII, points 1 and 3, to Regulation No 853/2004, the referring court recognises that the interpretation of EU law at issue is not so obvious as to leave no scope for any reasonable doubt.

32 In those circumstances, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Should the provisions of Annex III, Section I, Chapter VII, points 1 and 3, to Regulation No 853/2004 be interpreted as meaning that the cooling of meat must take place in the slaughterhouse itself — such that the loading of the meat into a refrigerated truck may commence once that meat has attained a maximum temperature of 7 °C — or may the cooling of the meat also take place in the refrigerated truck, provided that the truck does not leave the premises of the slaughterhouse?’

Consideration of the question referred

33 By its question, the referring court asks, in essence, whether Annex III, Section I, Chapter VII, points 1 and 3, to Regulation No 853/2004 must be interpreted as meaning that the chilling of meat after slaughter must be carried out solely in the slaughterhouse until the meat has reached a temperature throughout of not more than 7 °C or that it may also be carried out in a refrigerated truck located on the premises of that slaughterhouse.

34 As a preliminary matter, it should be made clear that Regulation No 853/2004 provides, in Section I, Chapter VII, point 3, the second sentence, of that annex, for a derogation from the requirement to chill the meat to a temperature of 7 °C before transport for specific products under certain conditions. Such a derogation was not considered in the present case and the referring court has not sought the Court's interpretation of that provision in so far as it lays down such a derogation.

35 In accordance with Annex I, Section I, Chapter VII, points 1 and 3, to Regulation No 853/2004, post-mortem inspection of animals must be followed immediately by chilling in the slaughterhouse to ensure a temperature throughout the meat of not more than 7 °C. In addition, meat must attain and remain at that temperature both before and during transport.

36 It is clear from the wording of those provisions that chilling must be carried out in the slaughterhouse itself. It must therefore be considered whether a refrigerated truck, such as that at issue in the case in the main proceedings, may be regarded as part of a 'slaughterhouse' within the meaning of Regulation No 853/2004 used for the chilling of meat.

37 Point 1.16 of Annex I to that regulation defines a 'slaughterhouse' as an 'establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption'. Under Article 2(1)(c) of Regulation No 852/2004, an 'establishment' means 'any unit of a food business'.

38 Furthermore, as has been found in paragraph 34 above, such an establishment must ensure that the meat is immediately chilled throughout before transport.

39 In that regard, as the European Commission correctly notes, a refrigerated vehicle such as that at issue in the main proceedings is, by its very nature, intended to be used for the transport of meat and is not involved in the slaughtering, dressing or chilling process of the meat before its storage or transport. The purpose of such vehicles principally lies in transporting meat rather than chilling it, since their chilling equipment is designed to maintain a low temperature during transport.

40 In addition, as the French Government observed in its written observations, chilling in a slaughterhouse cold store allows cold to be applied immediately in optimal conditions, for the purposes of preventing the spread of bacteria and therefore of ensuring a high level of food safety, contrary to that which can be attained in a refrigerated truck, in the course of which temperature is checked by rule of thumb only.

41 Those findings cannot be called into question by the fact that the refrigerated truck is located in the slaughterhouse during the chilling process.

42 In addition, under Article 4(1)(b) of Regulation No 853/2004, food business operators are to place products of animal origin manufactured in the [European Union] on the market only if they have been prepared and handled exclusively in establishments that the competent authority has registered or, where required in accordance with paragraph 2, approved. Article 4(2) provides that establishments handling those products of animal origin for which Annex III to that regulation lays down requirements are not to operate unless the competent authority has granted them the approval enabling those establishments to operate following an on-site visit. The grant of that approval to food business operators is subject to compliance with certain requirements relating to the premises of the establishment where the slaughtering and dressing activities are conducted, as set out in Annex III, Section I, Chapter II, to the regulation.

43 The means of transporting meat, although subject to a certain number of requirements, such as those set out in Annex II, Chapter IV under the heading ‘Transport’, to Regulation No 852/2004, are exempt from such an approval procedure by the competent authority and are not covered by the slaughterhouse operator’s approval.

44 Lastly, an interpretation of Annex III, Section I, Chapter VII, points 1 and 3, to Regulation No 853/2004 to the effect that food business operators may chill, in a refrigerated truck in a slaughterhouse, meat intended for human consumption from animals which have just been slaughtered until that meat reaches 7 °C cannot be in conformity with the principal objective pursued by those hygiene rules, which, as appears from recital 9 of that regulation, is to secure a high level of consumer protection with regard to food safety.

45 It is clear from recital 2 of Regulation No 853/2004 that food of animal origin may present specific hazards to human health, requiring the setting of specific hygiene rules.

46 In that regard, as stated in recital 4 of Regulation No 853/2004, the aim of ensuring a high level of protection of public health led the EU legislature to emphasise the responsibility of food business operators to ensure food safety and to impose the obligation to slaughter animals in slaughterhouses which comply with the technical specifications relating to the construction, layout and equipment mentioned, in particular, in Annex III to Regulation No 853/2004.

47 In the light of all of the foregoing considerations, the answer to the question referred is that Annex III, Section I, Chapter VII, points 1 and 3, to Regulation No 853/2004 must be interpreted as meaning that the chilling of meat after slaughter must be carried out in the slaughterhouse itself until the meat has reached a temperature throughout of not more than 7 °C before any loading of the meat into a refrigerated truck.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Annex III, Section I, Chapter VII, points 1 and 3, to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin must be interpreted as meaning that the chilling of meat after slaughter must be carried out in the slaughterhouse itself until the meat has reached a temperature throughout of not more than 7 °C before any loading of the meat into a refrigerated truck.

[Signatures]

* Language of the case: Dutch.