

## Case C-156/91

Hansa Fleisch Ernst Mundt GmbH&Co. KG

v

Landrat des Kreises Schleswig-Flensburg

(Reference for a preliminary ruling  
from the Verwaltungsgericht, Schleswig-Holstein)

(Health inspections — Fees — Directive 85/73/EEC —  
Decision 88/408/EEC — Direct effect)

Report for the Hearing .....	I - 5568
Opinion of Advocate General Jacobs delivered on 25 June 1992 .....	I - 5578
Judgment of the Court (Second Chamber), 10 November 1992 .....	I - 5589

### Summary of the Judgment

- Acts of the institutions — Decision — Direct effect — Conditions — Power of Member States to derogate from provisions which may have direct effect — Consequences (EEC Treaty, Art. 189, fourth para.)*
- Agriculture — Approximation of laws concerning health controls — Financing of health inspections and controls of fresh meat — Directive 85/73 — Levels of fees fixed by Decision 88/408 — Power of Member States to set higher fees by way of derogation — Power amenable to delegation to regional or local authorities — Power not precluding, as a result of objective conditions applicable to its exercise, individuals from relying on the decision in order to contest the level of the fee invoiced (Council Directive 85/73; Council Decision 88/408, Arts 2 and 11)*

- By virtue of the binding effect attributed to Community decisions by Article 189 of the Treaty, a provision of such a decision addressed to a Member State may be relied on as against that Member

State where the provision in question imposes on its addressee an obligation which is unconditional and sufficiently clear and precise. Where it must be implemented within a specified period, the

provision may be relied on by individuals as against a Member State only after that period has expired if the Member State fails to implement the decision or does so incorrectly.

The fact that the decision allows its addressees to derogate from clear and precise provisions in it cannot in itself deprive those provisions of direct effect. In particular, such provisions may have direct effect where recourse to the possibilities of derogation thereby granted may be reviewed by the Court.

Member State in order to oppose the collection of fees in excess of the amount provided for by that provision where the conditions to which Article 2(2) of the decision subjects the possibility of increasing the level of fees laid down by Article 2(1) are not satisfied, namely where the circumstances prevailing in the Member State concerned diverge from the Community average and the fees do not exceed the actual costs of the inspection. However, Article 2(1) of the decision may be relied on only in order to challenge demands for the payment of fees issued after the expiry of the period laid down by Article 11 of that decision.

2. Article 2(1) of Decision 88/408 on the levels of the fees to be charged for health inspections and controls of fresh meat pursuant to Directive 85/73 may be relied on by a private individual as against a

Article 2(2) of Decision 88/408 must be interpreted as allowing a Member State to delegate to regional or local authorities the exercise of the power conferred on it by that provision.

## REPORT FOR THE HEARING in Case C-156/91 \*

### I — Facts and procedure

#### 1. *Community legal background*

Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections

and controls of fresh meat and poultry meat (OJ 1985 L 32, p. 14) harmonizes the rules for the financing of such inspections and controls. The object pursued is to prevent the functioning of the common organizations of the market from being affected by distortions of competition resulting from

\* Language of the case: German.