

**Case C-7/23****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

10 January 2023

**Referring court:**

Raad van State (Belgium)

**Date of decision to refer:**

22 December 2022

**Applicant:**

Marvesa Rotterdam NV

**Defendant:**

Federaal Agentschap voor de veiligheid van de voedselketen (FAVV)

**Subject matter of the main proceedings**

The main proceedings concern a dispute between Marvesa Rotterdam NV ('applicant') and the Federaal Agentschap voor de veiligheid van de voedselketen (Federal Agency for the Safety of the Food Chain; 'defendant') concerning the latter's decisions refusing the applicant's importation of two consignments of fish oil intended for the production of animal feed.

**Subject matter and legal basis of the request**

This request pursuant to Article 267 TFEU concerns whether fish oil intended for animal consumption can be regarded as a 'fishery product' within the meaning of Commission Decision 2002/994/EC of 20 December 2002 concerning certain protective measures with regard to the products of animal origin imported from China ('Decision 2002/994/EC'), and on that basis may be imported from China, or whether that term covers only products for human consumption. If the latter is the case, the question arises as to whether that difference in the treatment of

products for human consumption and products for animal consumption is justified.

### **Questions referred for a preliminary ruling**

1. Is Part I of the Annex to Decision 2002/994/EC concerning certain protective measures with regard to the products of animal origin imported from China, as amended by Implementing Decision (EU) 2015/1068 amending Decision 2002/994/EC concerning certain protective measures with regard to the products of animal origin imported from China, to be interpreted as meaning that the term ‘fishery products’ covers both products intended for human consumption and products intended for animal consumption, and that, therefore, fish oil intended for animal feed use can be regarded as a ‘fishery product’ within the meaning of the abovementioned annex?

2. If the answer to the first question is in the negative, does Part I of the Annex to Decision 2002/994/EC concerning certain protective measures with regard to the products of animal origin imported from China, as amended by Implementing Decision (EU) 2015/1068 amending Decision 2002/994/EC concerning certain protective measures with regard to the products of animal origin imported from China, infringe Article 22(1) of Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries, where appropriate read in conjunction with Article 1 of Protocol (No 2) to the TFEU on the application of the principles of subsidiarity and proportionality, in that fishery products for human consumption originating from China are exempt from the import ban laid down in Article 2 of Decision 2002/994/EC, whereas fishery products for animal consumption originating from China are subject to that import ban?

### **Provisions of European Union law relied on**

Article 2 of Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products (‘Directive 91/493/EEC’), Articles 1 and 2 of Decision 2002/994/EC, point 3.1 of the Annex 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 (‘Regulation No 853/2004’), 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 (‘Regulation No 854/2004’), and Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (‘Regulation No 1379/2013’).

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 The applicant is a wholesaler and distributor of, inter alia, fish oil intended for animal feed use. On 23 February 2018, two consignments of fish oil which it had imported from China were refused by the Antwerp border control post on the grounds that the fish oil was intended for animal consumption. As a result, it was not covered by the term ‘fishery products’ and thus not exempt from the restrictions on imports of animal products from China.
- 2 The parties agreed that the applicant should communicate its arguments to the European Commission and request that an exceptional import be authorised. The Directorate-General for Health and Food Safety replied that the Commission’s position is that fish oil for animal feed from China is not permitted under Decision 2002/994/EC, and that in that regard the same reasoning was adopted as was adopted in respect of fishmeal. This is indeed clear from the Commission’s website.
- 3 On 23 March 2018, the applicant again requested that an exceptional import be authorised in view of the value of the cargo. Upon enquiry by the defendant, it was confirmed by the Danish border inspection that a consignment of identical fish oil intended for animal feed use had in fact been allowed into Denmark. On 9 April 2018, the issue was discussed at the Commission’s ‘Expert Group on veterinary import controls’. It concluded that fish oil for non-human consumption could not be imported from China because fishery products listed in the Annex to Decision 2002/994/EC did not fall within the scope of Regulation (EC) No 1069/2009. This position was communicated to the applicant, following which the two cargoes of fish oil were refused with final effect on 20 and 24 April 2018. Subsequently, on 21 June 2018, the applicant brought an action before the referring court requesting that those final decisions refusing import be annulled.

### **The essential arguments of the parties in the main proceedings**

- 4 The applicant claims, in particular, infringement of Articles 1 and 2 of Decision 2002/994/EC. It maintains that fish oil intended for animal feed use is covered by the term ‘fishery products’ within the meaning of Part I of the Annex to that decision.
- 5 This is evident, first, from the wording of the decision. Under Article 1, the decision is to apply to ‘all products of animal origin imported from China and intended for human consumption or animal feed use.’ Under Article 2 of the decision, Article 1 is also to apply to the products listed in the annex. All the more compelling, in the view of the applicant, is the heading of Part I of the Annex to Decision 2002/994/EC, which reads as follows: ‘List of products of animal origin intended for human consumption or animal feed use authorised to be imported into the Community without testing’. Consequently, the products on that list – including fishery products – can be intended for both human and animal

consumption. In the view of the applicant, that interpretation is confirmed by the other products on that list, such as gelatine and pet food.

- 6 Moreover, the defendant's interpretation is inconsistent with the purpose and context of Decision 2002/994/EC. It is apparent from recitals 1 and 2 of that decision that its purpose is to protect both human and animal health. In addition, it is evident from recitals 4 and 5 that the decision is part of a development whereby measures against China in the field of food safety are being eased. An interpretation which undermined the exemption contained in Part I of the Annex to that decision would not be consistent with that development.
- 7 A distinction between fish oil intended for human consumption and fish oil intended for animal feed use is also contrary to the logic and scheme of EU law on food safety, which regulates food for human consumption more strictly than animal feed. The defendant's interpretation has the effect of permitting the importation of fish oil for human consumption, whilst prohibiting fish oil for animal feed even if that oil complies with all the applicable standards and requirements and it is established that it can pose no threat to the safety or health of humans or animals. Moreover, the fish oil imported in this case was approved by the EU in accordance with Regulation No 854/2004 for the processing of Category 3 material, the highest category of animal by-products that may be used as a raw material for animal feed. Both the product and the producer therefore comply with EU legislation, as is also demonstrated by the fact that the import of an identical consignment of fish oil was permitted in Denmark.
- 8 Finally, according to the case-law of the Court of Justice, concepts of EU law have an autonomous meaning and must be interpreted in a consistent manner, taking into account the context and purpose of the legislation in question. That context is not limited to the act containing the legislation. In any event, Decision 2002/994/EC does not itself contain a definition of the term 'fishery products'.
- 9 The applicant therefore refers to the definition in point 3.1 of the Annex to Regulation No 853/2004, under which all fish-derived products are fishery products. Furthermore, fish oil is also listed in Annex I to Regulation No 1379/2013 as a fishery product. Furthermore, the definitions in Article 2 of Directive 91/493/EEC make no distinction according to whether the fishery products are intended for human or for animal consumption.
- 10 This shows that the concept of 'fishery products' is defined in a similar way in EU legislation and that no distinction is drawn between fishery products intended for human or for animal consumption. The defendant's interpretation is therefore inconsistent with the definitions of that term in other EU legislation, especially when it results in fish oil intended for animal consumption being regulated more strictly than fish oil for human consumption.
- 11 By contrast, the defendant contends that it must relate to fish oil for human consumption because the definition of fishery products in Annex I to Regulation

No 853/2004 uses the word ‘edible’, which clearly implies being intended for human consumption. This is particularly evident from the use of the word ‘comestible’ in the French text of the regulation, which, according to ‘the authoritative “Trésor de la langue Française”’, indicates something ‘that can be eaten by humans’. In addition, the defendant relies on the assessment of the European Commission.

**Succinct presentation of the reasoning in the request for a preliminary ruling**

- 12 Given the absence of a definition of the term ‘fishery products’ in Decision 2002/994/EC and the parties’ differing positions in that regard, the question arises as to whether the term ‘fishery products’ is to be understood as limited to products for human consumption and whether the contested decision pursuant to which the goods were returned was taken on the correct grounds. The latter turns on the interpretation of the term ‘fishery products’ in the Annex to Decision 2002/994/EC. Furthermore, the defendant’s interpretation results in the applicant being treated differently from importers of fish oil intended for human consumption. For those reasons, the referring court considers it necessary to refer the above questions to the Court of Justice for a preliminary ruling.