

**Case C-660/23****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:**

9 November 2023

**Referring court:**

Hof van Cassatie (Belgium)

**Date of the decision to refer:**

5 October 2023

**Appellant:**

Intervlees NV

**Respondent:**

Sump &amp; Stammer GmbH

**Subject matter of the main proceedings**

The main proceedings concern a dispute between Intervlees NV, a Belgian wholesale importer and exporter of meat products ('the appellant') and Sump & Stammer GmbH, a German food wholesaler ('the respondent'), over an extrajudicial termination of the agreement by the respondent and its refusal to accept deliveries of consignments of meat.

**Subject matter and legal basis of the request for a preliminary ruling**

This application under Article 267 TFEU concerns the question whether the 'stabilisation period' referred to in point 4 of Annex III, Section I, Chapter VII of Regulation No 853/2004 relates only to the short period after slaughter during which the meat is chilled and therefore does not relate to the subsequent chilling period, with the result that meat intended for freezing cannot be frozen after maturation.

## **Question referred for a preliminary ruling**

‘Must the provisions of Annex III, Section I, Chapter VII, point 4, to Regulation No 853/2004 be interpreted as meaning that the stabilisation period relates only to the short period after slaughter during which the meat is chilled in order to achieve the required pH and thermal stabilisation, such that meat intended for freezing must be frozen immediately thereafter, and that it therefore does not relate to the subsequent chilling period for allowing the meat to mature further, such that meat intended for freezing can no longer be frozen after maturation?’

## **Provisions of international law relied on**

The act-of-state-doctrine or the prohibition on the courts of the forum State to assess the validity of governmental acts of another State, as enshrined in customary law as evidence of a general practice that is accepted as law and a source of public international law (‘the act-of-state-doctrine’)

## **Provisions of EU law relied on**

Articles 26 and 28-37 TFEU

Article 3(1) of Regulation No 853/2004 (‘Regulation 853/2004’)

Point 4 of Annex III, Section I, Chapter VII, to Regulation 853/2004

Recitals 2, 4 and 9 of Regulation 853/2004

Recital 4 of Regulation (EC) No 558/2010

Regulation (EC) No 178/2002

Regulation (EC) No 852/2004

Section 5.4 of the Commission Notice on EU guidelines on food donation (2017/C 361/01) (‘Food Donation Notice’)

## **Provisions of national law relied on**

Articles 8.17 and 8.18 of the Burgerlijk Wetboek (Civil Code) (previously Articles 1319, 1320 and 1322 of the Oud Burgerlijk Wetboek (Old Civil Code))

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

- 1 The parties entered into an agreement whereby the appellant was to supply the respondent with large consignments of meat on demand. The meat in question was previously chilled ('ex chilled') to allow it to mature and thus enhance its tenderness and was subsequently frozen after maturation. On 8 May 2019, the appellant delivered to the respondent a consignment of meat intended for the Italian cruise sector. The respondent sold the meat on to a German company that was part of an Italian company. The Italian authorities refused the delivery on the ground that it did not comply with the sanitary standards laid down in point 4 of Section I, Chapter VII of Annex III to Regulation 853/2004, in that the meat had not been frozen immediately after a stabilisation period, but only after chilling for purposes of maturation, and therefore could not be intended for the European market. The respondent then proceeded to terminate the agreement extrajudicially and refused to accept subsequent deliveries of 'ex-chilled' meat. Subsequently, the appellant claimed the payment of damages by the respondent on the ground that it had been obliged to sell the consignments of meat to a third party at a lower price. Conversely, the respondent claimed the payment of damages by the appellant for its non-market-compliant delivery of the goods due to the meat not being fit for human consumption within the European Union.
- 2 By judgment of 17 June 2021, the ondernemingsrechtbank Antwerpen (Antwerp Business Court), Turnhout division, declared both claims unfounded.
- 3 On appeal, the hof van beroep te Antwerpen (Antwerp Court of Appeal) declared the appellant's appeal unfounded and the respondent's cross-appeal well-founded. The court of appeal ruled that the term 'stabilisation period' refers to the period necessary to achieve the required pH stabilisation of the meat before it is frozen, and that the maturation period is the period necessary to tenderise the meat. In its view, the two periods cannot be equated. According to him, Regulation 853/2004 expressly provides that meat intended for freezing must be frozen without delay. According to the letter of 20 June 2019 of the Directoraat-Generaal voor de Gezondheid en de Voedselveiligheid (Directorate-General for Health and Food Safety) of the European Commission, this would mean within 'a few days'. As a specialised company in the wholesale import and export of meat, the appellant knew or ought to have known that 'ex chilled' meat that is subsequently frozen could not be intended for the European market, since such meat would not be fit for human consumption and is expressly prohibited by Regulation 853/2004.

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

- 4 The parties disagree on the interpretation of the term 'stabilisation period'. The appellant submits that the term 'maturation period' is in fact encompassed by the

term ‘stabilisation period’. It is of the view that the term ‘stabilisation period’ is not defined in Regulation 853/2004, which does not contain an express prohibition on the freezing of chilled meat after dry maturation, so that the free movement of goods applies here. By limiting itself to a literal/grammatical interpretation of the term ‘stabilisation period’, the court of appeal violated the hierarchically higher standards of Articles 26 and 28-37 TFEU. Moreover, the aforementioned letter from the Directorate-General for Health and Food Safety post-dates Regulation 853/2004 and therefore cannot be considered to form part of the preparatory work from which the intention of the legislature can be inferred. Moreover, this letter indicates that the stabilisation period of ‘a few days’ does not apply in cases of dry-ageing. By ignoring this, the court of appeal disregarded the probative value of this act. Finally, the court of appeal examined the decision of the Italian authorities in the light of Regulation 853/2004 and – wrongly – held that they had acted in accordance with this regulation. In so doing, it infringed the act-of-state-doctrine, according to which the court of the forum State cannot assess the validity of acts of another State if they are carried out in the exercise of that State’s public authority, fall within its jurisdiction and comply with international law.

- 5 The respondent is of the view that the maturation period is not encompassed by the stabilisation period and, consequently, once meat has matured, it may not be frozen with a view to selling it on the European market. The goods supplied therefore had a hidden defect, so that it lawfully terminated the contract.

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

- 6 According to the referring court, the term ‘stabilisation period’ is not defined either in Regulation 853/2004 or in the preparatory works or in any other relevant EU legislation. There is therefore uncertainty as to whether that stabilisation period relates only to the short period after slaughter during which the meat is chilled in accordance with the requirements of point 1 of Section I, Chapter VII of Annex III to Regulation 853/2004, until pH and thermal stabilisation is achieved, so that the meat must be frozen immediately thereafter, or whether it also relates to the subsequent chilling period necessary for further maturation, so that the meat can still be frozen even after that maturation process.
- 7 Article 3(1) of Regulation 853/2004 requires food business operators to comply, inter alia, with the provisions of Annex III. Recital 2 of Regulation 853/2004 states that 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. It is clear from recital 4 that public health is paramount. According to recital 9, the regulation aims to secure a high level of consumer protection, in particular by making food business operators throughout the Union subject to the same rules, and to ensure the proper functioning of the internal market in products of animal origin. Finally, according to recital 4 of Regulation (EC) No 558/2010, freezing carried out immediately after slaughter and chilling minimises the growth

of bacteria and meat derived from poultry and lagomorphs intended for freezing should also be frozen without undue delay after slaughter and chilling. The Food Donation Notice also refers to the hygienic need to freeze food of animal origin intended for freezing immediately after production.

- 8 In its judgment of 2 May 2019, *T. Boer & Zonen*, C-98/18, EU:C:2019:355, paragraphs 44 and 47, the Court of Justice, in interpreting points 1 and 3 of Annex III, Section I, Chapter VII, to Regulation 853/2004, pointed out that the principal objective of the hygiene rules is to secure a high level of consumer protection with regard to food safety. Having regard to that comment and to the wording of the provisions in question, the Court held that they 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.
- 9 An interpretation according to which the stabilisation period refers exclusively to the short post-mortem chilling period necessary to achieve pH and thermal stabilisation, so that meat intended for freezing must be frozen immediately afterwards and the freezing cannot take place after maturation, would appear to be most in conformity with the principal objective of the aforementioned EU hygiene rules, which is to secure a high level of public health protection. However, it appears that the Netherlands and the Italian food safety authorities hold opposing views on the possibility of freezing chilled meat for purposes of maturation. Having regard to those divergent views, the interpretation of point 4 of Section I, Chapter VII of Annex III to Regulation 853/2004 is not so self-evident that there cannot reasonably be any room for doubt, so that it is necessary to refer the above question for a preliminary ruling.