

ORDER OF THE COURT  
6 December 1990 \*

In Case C-2/88 Imm.,

REQUEST for judicial cooperation submitted by the rechter-commissaris (examining judge) for criminal cases at the Arrondissementsrechtbank (District Court) Groningen, the Netherlands, in the preliminary investigation concerning

**J. J. Zwartveld and Others,**

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs  
Registrar: J.-G. Giraud

after hearing the views of the Advocate General

makes the following

**Order**

- 1 By a document lodged at the Court Registry on 8 August 1988 under No C-2/88 Imm., the rechter-commissaris at the Arrondissementsrechtbank Groningen submitted to the Court a 'request for judicial cooperation' in which he states as follows:

\* Language of the case: Dutch.

- (i) he is investigating a charge that in 1985 and 1986 the director and members of the management of the fish market in Lauwersoog (the Netherlands) were guilty of forgery, contrary to Article 225 of the Netherlands Penal Code;
  - (ii) it appeared from the investigation that the managers of the fish market had introduced a second market or black market, in addition to the official market, in breach of the national provisions adopted to implement the Community rules on fishing quotas;
  - (iii) it is clear from statements made by witnesses (officials in certain ministries and two members of the Netherlands Government) that those responsible for fisheries policy in the Netherlands were aware of the results of inspections carried out by EEC inspectors in the Netherlands between 1983 and 1986;
  - (iv) it is essential for purposes of the investigation for the rechter-commissaris to obtain the inspection reports in question and documents drawn up on the basis of those reports, and it might be necessary, after he has considered the documents, to take evidence from the inspectors concerned, of whose identity he is unaware;
  - (v) the request for the production of these reports was refused by the Commission on the ground that the documents formed part of a file on legal matters pending in the Commission.
- 2 The rechter-commissaris referred to Articles 1 and 12 of the Protocol on the Privileges and Immunities of the European Communities, annexed to the Treaty establishing a Single Council and Single Commission of the European Communities of 8 April 1965 (hereinafter referred to as 'the Protocol'), in conjunction with the European convention or conventions on mutual assistance, to which, he stated, the Community was not a party but which were incorporated in the Community legal order so that they were to be regarded as an integral part of Community law to which the national authorities were subject. On the basis of those provisions he requested the Court:
- (a) to order the Commission, or at least the Directorate-General concerned, to provide him with the information which he has requested; and,

in the alternative, to grant the competent examining magistrate leave to search premises and to seize:

- (i) (internal) reports and, if necessary, inspection reports drawn up since 1983 by EEC inspectors who have carried out inspections in the Netherlands with regard to sea fisheries,
  - (ii) any documents (which may have been drafted on the basis of the findings of the aforesaid officials) concerning compliance with the Community rules on sea fisheries.
- (b) to order or at least allow the aforesaid EEC inspectors and senior officials in the Directorate-General for Fisheries, if necessary by lifting their immunity, to be examined as witnesses either by the rechter-commissaris or at least in his presence by an examining magistrate within the European Community, concerning both the inspections carried out by them between 1983 and 1987 in the Netherlands and the discussions which they had with Netherlands officials on Netherlands fisheries policy.
- 3 By a document lodged at the Court Registry on 13 October 1988, the Commission contended that the rechter-commissaris's request was inadmissible.
- 4 By an order of 13 July 1990 in Case C-2/88 Imm. *Zwartveld and Others* [1990] ECR I-3365, the Court decided as follows:
- (1) the request by the rechter-commissaris, Groningen, is declared admissible;
  - (2) the Commission is ordered to forward to the Court a list of the reports drawn up between 1983 and 1987 by Commission officials who carried out inspections in the Netherlands with regard to sea fisheries and to submit to the Court in respect of the reports which the Commission refuses to produce to the rechter-commissaris, Groningen, a statement of the imperative reasons relating to the need to avoid any interference with the functioning and independence of the Communities which justify that refusal;

- (3) the reports in respect of which the Commission does not rely on the said imperative reasons are to be transmitted forthwith to the rechter-commissaris, Groningen;
- (4) the Court will rule at a later date on the request for production of the reports in respect of which the Commission relies on the said imperative reasons;
- (5) the Commission is ordered to authorize its officials to be examined as witnesses before the rechter-commissaris, Groningen, with regard to their findings during the inspections carried out in the Netherlands between 1983 and 1987 in the sea fisheries sector, and to submit to the Court in respect of the officials for whom such authorization is refused a statement of the imperative reasons relating to the need to safeguard the interests of the Communities which justify refusal of authorization;
- (6) the Court will rule at a later date on the request concerning the officials whom the Commission refuses to authorize to be examined as witnesses in reliance on the said imperative reasons;
- (7) costs are reserved.

5 By a document lodged at the Court Registry on 21 September 1990, the Commission transmitted to the Court the reports of inspections carried out in the Netherlands by the Commission's fishery inspectors between 1983 and 1987. The Commission considers, however, that imperative reasons relating to the need to avoid any interference with the functioning and independence of the Communities preclude the individual facts contained in those reports from being communicated to the rechter-commissaris and its officials from giving evidence on those facts.

6 The first reason put forward by the Commission is based on the need to respect the division of powers between the Commission, which is entrusted with the task of monitoring the actions of the national authorities, and those authorities, which are responsible for investigations and prosecutions of fishermen and other persons subject to supervision or of national officials responsible for supervision. The second reason put forward by the Commission is that it must not, by the

communication of private information, jeopardize the rights of third parties who might be liable to disciplinary or legal proceedings under national law.

- 7 Before considering the validity of the imperative reasons relating to the need to avoid interference with the functioning and the independence of the Communities which the Commission pleads in order to justify its refusal to communicate all the documents to the rechter-commissaris and to permit its officials to give evidence, it is necessary to determine the reports which could be produced to the national court.
- 8 It is clear from the rechter-commissaris's request that it is conducting a preliminary investigation of a charge that the managers of the fish market at Lauwersoog were guilty of forgery. A reading of the reports of inspections carried out in the Netherlands by the Commission's fishery inspectors between 1983 and 1987 which have been produced to the Court reveals that only four of those reports concern inspections carried out in the Port of Lauwersoog.
- 9 In these circumstances the only reports which may be produced to the rechter-commissaris and the only facts on which the Commission's officials may give evidence are those concerning the inspections in the port in which the fish market managed by the persons against whom the national court is conducting its investigation is situated.
- 10 As regards the imperative reason put forward by the Commission relating to the need to avoid any interference with the functioning and independence of the Communities, namely the need to respect the division of powers between the Community authorities and the national authorities, it must be stated that the risk of such interference has not been established. The national court's request is intended solely to obtain the communication of certain information in the Commission's possession which it requires in order to exercise the powers conferred upon it by national law and does not involve any risk that the Commission will encroach upon the powers of the national authorities. As the Court stressed in its order of 13 July 1990 *Zwartveld and Others*, cited above, the Community institutions are under a duty of sincere cooperation with the judicial

authorities of the Member States, which are responsible for ensuring that Community law is applied and respected in the national legal system.

- 11 Although the Commission may justify a refusal to produce documents to a national judicial authority on legitimate grounds connected with the protection of the rights of third parties or where the disclosure of this information would be capable of interfering with the functioning and independence of the Community, in particular by jeopardizing the accomplishment of the tasks entrusted to it, it must be stated that the Commission has not adduced any evidence to show that the production to the rechter-commissaris of the individual particulars, more specifically those concerning boats, contained in reports on the inspections carried out in the Port of Lauwersoog and the granting of permission to Commission officials to give evidence thereon would be likely adversely to affect all those interests.
  
- 12 Consequently, it must be stated that the Commission has failed to establish the imperative reasons which would justify the refusal to produce to the rechter-commissaris the reports or parts of the reports on inspections carried out by the Commission's fishery inspectors in the Port of Lauwersoog in the Netherlands between 1983 and 1987 and the refusal to permit its officials to be examined as witnesses on the information contained in those reports.
  
- 13 It follows from the foregoing that the Commission must be ordered to produce to the rechter-commissaris in Groningen the reports or parts of the reports drawn up by Commission officials who carried out inspections with regard to sea fisheries in the Port of Lauwersoog in the Netherlands and to permit its officials to be examined as witnesses before the rechter-commissaris in Groningen exclusively on the information contained in those reports.
  
- 14 Since none of the parties has asked for costs, the Commission, the Council, the European Parliament and the Member States which have submitted observations must be ordered to pay their own costs.

On those grounds,

THE COURT

hereby orders as follows:

- (1) **The Commission shall produce to the rechter-commissaris in Groningen the reports or parts of the reports drawn up between 1983 and 1987 by Commission officials who carried out inspections in the Netherlands with regard to sea fisheries concerning the port of Lauwersoog.**
- (2) **The Commission shall authorize its officials to be examined as witnesses before the rechter-commissaris in Groningen exclusively with regard to the information contained in the reports on the inspections carried out in the port of Lauwersoog.**
- (3) **The Commission shall inform the Court within a period of one month of the action taken pursuant to this order.**
- (4) **The Commission, the Council, the European Parliament and the Member States which have submitted observations to the Court shall bear any costs which they have incurred.**

Luxembourg, 6 December 1990.

J.-G. Giraud  
Registrar

O. Due  
President