TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA

CVRIA

LUXEMBOURG

EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTIEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 28/05

7 April 2005

Advocate General's Opinion in Case C-453/03, Joined Cases C-11/04 and C-12/04, and Case C-194/04

ABNA Ltd, Fratelli Martini SpA, Ferrari Mangimi srl, Nevedi

ADVOCATE GENERAL TIZZANO SETS OUT HIS VIEWS ON THE VALIDITY OF THE DIRECTIVE ON COMPOUND ANIMAL FEEDINGSTUFFS WHICH WAS ADOPTED FOLLOWING THE BSE AND DIOXIN CRISES

The obligation to provide quantitative information on the feed materials used in feedingstuffs contributes to traceability and increases the protection of public health; however, it is valid only in so far as it does not oblige manufacturers to disclose the exact formulas of the feedingstuffs

With a view to providing adequate safeguards for public health in the event of food-related crises, the Community legislature adopted a directive designed to amend the rules governing compound animal feedingstuffs. [1] The previous Community rules, which required merely a listing on the labelling of the feed materials used without any indication of quantity, had proved to be inadequate for dealing with the crises precipitated by bovine spongiform encephalopathy (BSE) and dioxin. The present system, which is more stringent than that hitherto, imposes an obligation on manufacturers to indicate, on the labelling of their feedingstuffs, the specific names of the feed materials used, their respective percentages in relation to the overall weight of the product, with a margin of tolerance of 15%, as well as the batch reference number of those feed materials. Manufacturers are also required to indicate, at the request of customers, the exact percentages of those ingredients.

The High Court of Justice of England and Wales, the Italian Consiglio di Stato and the Rechtbank te 's-Gravenhage in the Netherlands, before which a number of companies manufacturing feedingstuffs have brought proceedings challenging the respective national implementing rules, have requested the Court of Justice to give a ruling on the validity and interpretation of the directive. In particular, the Court is being asked to determine whether the obligation to provide quantitative information on the composition of feedingstuffs is compatible with the principle of proportionality and the fundamental right to property, in

[1] Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 (OJ 2002 L 63, p. 23).

conjunction with the precautionary principle and the principles of equality and freedom to pursue a trade or profession. Finally, the Court is also being asked whether the directive can apply in the absence of an appropriate list of the feed materials which may be used in compound feedingstuffs. [2]

In the Opinion delivered today, Advocate General Antonio Tizzano stresses, in the first place, the overriding importance which public health is recognised as having within the Community system, and to which priority must be given over economic and commercial interests. Second, within an area such as that of the common agricultural policy, which calls for complex political, economic and social appraisals, the Community legislature enjoys a broad discretion and review by the Court must for that reason be confined to determining whether there are any manifest defects.

The obligation to set out quantitative information on labelling

On that basis, the Advocate General first of all states that the obligation to set out quantitative information on labelling with a margin of tolerance is legitimate as being appropriate and adequate for safeguarding public health.

The purpose of the contested provisions is to increase the protection of public health by introducing more stringent rules governing the information on the composition of feedingstuffs to be provided to stock farmers and public authorities. The Advocate General notes that, while traceability [3] of products is guaranteed primarily by the indication of batch numbers, quantitative information on the labelling enables stock farmers and the authorities to speed up the reconstruction of the course taken by a contaminated substance and makes it possible to adopt whatever measures may be necessary to deal with food-related crises, while at the same time avoiding disruptions that are unjustified and go beyond what is necessary.

The obligation to inform customers of the exact composition

By contrast, the further obligation to inform customers of the exact quantities of ingredients used in feedingstuffs is, in the view of the Advocate General, disproportionate.

Without serving any separate purpose, that obligation merely replicates the obligation to provide information on the labelling. It also forces manufacturers to disclose the exact formulas of their feedingstuffs to their own customers, with resultant serious prejudice for their undertakings. For that reason the Advocate General finds that the Community legislature exercised its own discretion in matters of agricultural and health policy in a manifestly erroneous manner and accordingly proposes that the Court should declare that second obligation to be invalid.

The absence of a positive list of feed materials which may be used in compound feedingstuffs

The Advocate General then goes on to state that the obligation to indicate the feed materials used by their specific names is not conditional on the compilation by the Commission of a

[2] Observations have been submitted in the proceedings by the Governments of Denmark, France, Greece, Italy, the Netherlands, the United Kingdom and Spain, as well as by the European Parliament, the Council and the Commission of the European Communities.

[3] That is to say, the ability to reconstruct the course taken by a foodstuff through the production, processing and distribution stages, as set out in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 (OJ 2002 L 31, p. 1).

'positive list' of feed materials which may be used in the manufacture of feedingstuffs. Although the compilation of that list would have facilitated Member States in transposing the directive, it is for the Member States themselves to adopt the measures necessary for them to comply with the obligations set out therein. The Advocate General adds that States cannot meet that obligation by referring to a list containing generic designations of feed materials.

The Advocate General concludes by examining whether national administrative authorities have the power to suspend, by way of interim relief, national measures implementing Community provisions of questionable validity. He states that administrative authorities do not have such a power even where a court of another Member State has already requested the Court of Justice to give a ruling on the validity of those Community provisions. In the case of an administrative authority, there is no requirement to guarantee the coherence of the Community judicial system such as that which, by contrast, justifies the power to suspend measures being recognised as vested in national courts, which are independent and impartial third parties (something which cannot, however, be said of an administrative authority).

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in these cases. Judgment will be given at a later date.

For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731