

Provisional text

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 30 November 2017(1)

Case C-426/16

Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen, VZW and Others
v
Vlaams Gewest

(Request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Dutch-language Court of First Instance, Brussels, Belgium))

(Reference for a preliminary ruling — Protection of animals at the time of killing — Particular methods of slaughter — Islamic Feast of the Sacrifice — Regulation (EC) No 1099/2009 — Article 4(4) — Obligation for ritual slaughtering without stunning to be carried out in approved slaughterhouses — Regulation (EC) No 835/2004 — Conditions for the approval of slaughterhouses — Validity — Article 13 TFEU — Respect for national customs with regard to religious rites — Article 10 of the Charter of Fundamental Rights of the European Union — Freedom of religion — Limitation — Justification)

1. Ritual slaughtering has long been recognised in EU legislation governing the killing of animals as a corollary of religious freedom. The EU legislature's wish to reconcile protection of the freedom to practise a religion with the protection of animal welfare has been apparent since the adoption of Directive 74/577/EEC (2) and is still evident in Regulation (EC) No 1099/2009, (3) currently in force.

2. This request for a preliminary ruling concerns the validity of Article 4(4) read together with Article 2(k) of Regulation No 1099/2009. It invites the Court to rule on the validity, with regard to the fundamental right to freedom of religion, of the provision which stipulates that the slaughter of animals without stunning, which is required by certain religious precepts, may take place only in approved slaughterhouses (4) that meet all applicable requirements in the area.

3. This request has been made in the context of a dispute between various Muslim associations and umbrella organisations of mosques as well as certain individuals ('the applicants in the main proceedings') and the Vlaams Gewest (Flemish Region, Belgium) concerning the decision adopted by the Flemish Minister responsible for animal welfare no longer to authorise, during the Islamic Feast of the Sacrifice (Eid al-Adha), (5) from 2015 onwards, the ritual slaughter of animals without stunning in temporary slaughterhouses in the communes of that region.

4. I must immediately clarify what precise question is being asked in the present case, inasmuch as the issue here is not that of a total ban on the killing of animals without stunning, which is a current topic of debate in several Member States, (6) but rather what material conditions, in terms of equipment and operating obligations, must accompany such slaughtering in order for it to comply with the relevant EU rules. Thus, the question that must be answered is whether the requirement that slaughtering be carried out in a slaughterhouse as defined in Article 2(k) of Regulation No 1099/2009 — which is a rule of general application regardless of the type of slaughter — is a constraint on religious freedom.

5. I do not think that any of the arguments put forward in the present case can impinge on the validity of Regulation No 1099/2009. The rule that slaughtering can, in principle, only be carried out in approved slaughterhouses is a perfectly neutral rule that applies regardless of the circumstances and of the type of slaughtering chosen. To my mind, the problem submitted to the Court relates more to a temporary difficulty with the capacity of slaughterhouses in certain geographic areas at the time of the Islamic Feast of the Sacrifice, and ultimately with the costs engendered by the observance of a religious practice, than to requirements which arise from EU rules, which strike a balance between the right to freedom of religion, on the one hand, and the requirements which flow from the protection of human health, animal welfare and food safety, on the other.

I. Legal context

A. Regulation No 1099/2009

6. Regulation No 1099/2009 lays down the common rules for the protection of animal welfare at the time of slaughter or killing in the European Union.

7. It is clear from Article 2(k) of Regulation No 1099/2009 that, for the purposes of that regulation, ‘slaughterhouse’ means any establishment used for slaughtering terrestrial animals which falls within the scope of Regulation (EC) No 853/2004.

8. Article 4 of Regulation No 1099/2009 provides:

‘1. Animals shall only be killed after stunning in accordance with the methods and specific requirements related to the application of those methods set out in Annex I. The loss of consciousness and sensibility shall be maintained until the death of the animal.

...

4. In the case of animals subject to particular methods of slaughter prescribed by religious rites, the requirements of paragraph 1 shall not apply provided that the slaughter takes place in a slaughterhouse.’

B. Regulation No 853/2004

9. Article 4 of 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 (7) provides:

‘1. Food business operators shall place products of animal origin manufactured in the Community on the market only if they have been prepared and handled exclusively in establishments:

- (a) that meet the relevant requirements of Regulation (EC) No [852]/2004, those of Annexes II and III of this regulation and other relevant requirements of food law; and
- (b) that the competent authority has registered or, where required in accordance with paragraph 2, approved.

...’

10. Paragraphs 4 to 8 of Article 10 of Regulation No 853/2004, entitled ‘Amendment and adaptation of Annexes II and III’, provide that the Member States may, on certain conditions and in accordance with a certain procedure, adopt national measures adapting the requirements laid down in Annex III, which include, in Chapter II thereof, ‘Requirements for slaughterhouses’.

II. The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

11. The Islamic Feast of the Sacrifice is celebrated every year over a period of three days. (8) Practising Muslims regard it as their religious duty to slaughter an animal, or to have an animal slaughtered, preferably on the first day of the feast. (9) Part of the meat of the slaughtered animal is then eaten by the family, with the remainder being given to the poor and needy and to neighbours and more distant family relatives.

12. As is apparent from the case file submitted to the Court, there is a consensus among the majority of Muslims in Belgium, voiced by the Council of Theologians within the Muslim Executive of Belgium, that the ritual slaughter must be carried out without stunning and in observance of other ritual requirements.

13. In implementation of Article 16(2) of the loi du 14 août 1986 relative à la protection et au bien-être des animaux (Law of 14 August 1986 on the welfare and protection of animals), the Royal Decree of 11 February 1988 as amended by the Royal Decree of 25 March 1998, provided that, in Belgium, slaughter prescribed by a religious rite could be carried out only in appropriate slaughterhouses (‘approved slaughterhouses’) or in ‘establishments approved by the Minister responsible for agriculture, after consultation with the Minister responsible for public health’. (10)

14. In accordance with that legislation, the Belgian Federal Minister had, since 1998, approved each year temporary slaughter plants which, together with approved slaughterhouses, catered for ritual slaughtering during the Islamic Feast of the Sacrifice, thus making good the lack of capacity in approved slaughterhouses resulting from the increase in demand at such times. (11) After consulting the Muslim community, the Federal Public Service for Public Health, Food-Chain Safety and the Environment had, on various dates up to 2013, published a manual on the organisation of the Islamic Feast of the Sacrifice (‘*Handleiding voor de Organisatie van het Islamitisch Offerfeest*’), setting out detailed recommendations for the opening and operation of temporary slaughter plants other than approved slaughterhouses.

15. Following the Sixth State Reform, competence in matters of animal welfare was transferred on 1 July 2014 to the regions. Accordingly, in order to manage the organisation of the Islamic Feast of the Sacrifice in its territory that year, the Flemish Region adopted its own manual, similar to the federal manual of 2013, which stated that temporary slaughter plants could be authorised for a given period of time by individual approval on the part of the competent Minister, provided that there was insufficient capacity at approved slaughterhouses in the vicinity and provided that the temporary slaughter plants satisfied a series of conditions relating to equipment and operational obligations.

16. On 12 September 2014, the Flemish Minister responsible for animal welfare announced that, from 2015 onwards, he would no longer issue approvals for temporary slaughter plants at which ritual slaughtering could be practised during the Islamic Feast of the Sacrifice because such approvals were contrary to EU legislation, in particular the provisions of Regulation No 1099/2009. (12)

17. On 4 June 2015, the same Minister sent the mayors of Flemish municipalities a circular (‘the contested decision’) informing them that, from 2015 onwards, all animal slaughtering without stunning, even if performed in the context of the Islamic Feast of the Sacrifice, must be carried out solely in approved slaughterhouses.

18. It is in that context that the applicants in the main proceedings commenced various legal actions, including proceedings issued on 5 February 2016 against the Flemish Region before the *Nederlandstalige*

rechtbank van eerste aanleg Brussel (Dutch-language Court of First Instance, Brussels, Belgium).

19. The applicants in the main proceedings have argued that, even assuming that Regulation No 1099/2009 is held to apply to the ritual slaughtering of animals during the Islamic Feast of the Sacrifice — which they dispute (13) — the validity of the rule laid down in Article 4(4) read together with Article 2(k) of the regulation is questionable, inasmuch as, first of all, it infringes the right to freedom of religion protected by Article 10 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’) and, secondly, it does not respect Belgian customs relating to the religious rites of the Islamic Feast of the Sacrifice, which are guaranteed by Article 13 TFEU.

20. The Nederlandstalige rechtbank van eerste aanleg Brussel (Dutch-language Court of First Instance, Brussels) considers that, by implementing the rule laid down in Article 4(4) read together with Article 2(k) of Regulation No 1099/2009, the contested decision creates a limitation on the exercise of freedom of religion and undermines Belgian customs relating to religious rites, since it obliges Muslims to perform the ritual slaughter of the Islamic Feast of the Sacrifice in slaughterhouses that have been approved in accordance with Regulation No 853/2004. In the opinion of that court, this limitation is neither relevant nor proportionate in order to attain the legitimate objective of protecting the welfare of animals and human health.

21. It was in those circumstances that the Nederlandstalige rechtbank van eerste aanleg te Brussel (Dutch-language Court of First Instance, Brussels) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 4(4), read in conjunction with Article 2(k) of [Regulation No 1099/2009] invalid due to the infringement of Article 9 [ECHR], Article 10 of the [Charter] and/or Article 13 [TFEU], in that it provides that animals may be slaughtered in accordance with special methods required by religious rites without being stunned only if such slaughter takes place in a slaughterhouse falling within the scope of Regulation [No 853/2004], whereas there is insufficient capacity in the Flemish Region to meet the annual demand for the ritual slaughter of unstunned animals on the occasion of the Islamic Festival of the Sacrifice, and the costs of converting temporary slaughter plants, approved and monitored by the authorities, for the purpose of the Islamic Festival of the Sacrifice, into slaughterhouses falling within the scope of Regulation [No 853/2004] do not appear relevant to achieving the objectives pursued of animal welfare and public health and do not appear proportionate thereto?’

22. Written observations have been lodged by the associations Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW and Others and Global Action in the Interest of Animals VZW (‘GAIA’), the Flemish Region, the Estonian, Netherlands and United Kingdom Governments and the Council and the European Commission.

23. A hearing took place on 18 September 2017, in which the applicants in the main proceedings, GAIA, the Flemish Region, the United Kingdom Government, the Council and the Commission participated.

III. Analysis

24. The referring court asks about the validity of Article 4(4) read together with Article 2(k) of Regulation No 1099/2009 in view of an alleged infringement of Article 10 of the Charter, Article 9 ECHR and Article 13 TFEU. A limitation on the exercise of the freedom of religion and on national customs relating to religious rites is alleged to flow from the fact that the provisions in question require that animals ritually slaughtered on the occasion of the Islamic Feast of the Sacrifice be slaughtered only in *approved slaughterhouses*. These are slaughterhouses which have been approved by the competent national

authorities and which, to that end, must comply with all ‘specific requirements’ relating to construction, layout and equipment laid down in Annex III to Regulation No 853/2004.

25. The doubts which the referring court has arise from the fact that, if the capacity of the existing approved slaughterhouses of the Flemish Region is insufficient to meet the increase in demand for ritual slaughtering on the occasion of the Islamic Feast of the Sacrifice, it will be necessary to create new approved slaughterhouses. However, the conversion of the former temporary slaughter plants that operated in the period 1998 to 2014 (14) into approved slaughterhouses, within the meaning of Regulation No 853/2004, would require very significant financial investment which it would not be possible to recoup over the course of the year and which is not necessary for ensuring the welfare of animals and public health.

26. In the opinion of the referring court, the obligation for ritual slaughtering without stunning to be carried out solely in approved slaughterhouses prevents numerous practising Muslims from fulfilling their religious duty to slaughter an animal (or to have an animal slaughtered) on the first day of the Feast of the Sacrifice according to ritual, and thus creates an unjustified limitation on the exercise of their religious freedom, infringes legislative and administrative provisions and undermines national customs relating to religious rites.

27. Before examining the substance of the question referred for a preliminary ruling, I believe it necessary in this case to rule on its admissibility, which has been called into question, more or less directly, by the Flemish Region, the Netherlands and United Kingdom Governments, the Council and the Commission.

A. The admissibility of the question referred for a preliminary ruling

1. Observations submitted to the Court

28. Essentially, the objections and reservations that have been expressed relate either to the *formulation* of the question referred, which, it is submitted, wrongly suggests that the problem arises from Regulation No 1099/2009, or, more fundamentally, to the *relevance* of the question, inasmuch as the problem of the insufficient capacity of slaughterhouses in the Flemish Region is, in any event, unrelated to the application of the provisions of Regulations Nos 853/2004 and 1099/2009.

29. As regards, first of all, the *formulation* of the question referred, some of the interested parties (namely the Flemish Region and the United Kingdom Government) have argued that, since the conditions for the approval of slaughterhouses are laid down by Regulation No 853/2004, any possible limitation of the exercise of religious freedom can only result from that regulation. The referring court has therefore formulated its question incorrectly, inasmuch as it refers instead to the validity of Article 4(4) read together with Article 2(k) of Regulation No 1099/2009.

30. Next, as regards the *relevance* of the question referred, some interested parties (namely the Flemish Region, the Netherlands and United Kingdom Governments, the Council and the Commission) have expressed certain reservations about the usefulness of the Court’s answer in resolving the dispute in the main proceedings. In particular, it has been argued that the question referred for a preliminary ruling is based on domestic factual circumstances unrelated to the provisions of Regulations Nos 1099/2009 and 853/2009 and therefore incapable of affecting their validity.

31. Indeed, the problem at hand is the insufficient capacity of approved slaughterhouses in the Flemish Region at the time of the Islamic Feast of the Sacrifice and the substantial financial investment that would be required to enable former temporary slaughter plants to be approved in accordance with Regulation No 853/2004. In that context, the Council and, to a lesser extent, the Flemish Region have argued that it would have been more useful for the national court to refer to the Court of Justice a question relating not to the validity of the provisions of Regulations Nos 1099/2009 and 853/2004, but to the interpretation of those provisions, so as to obtain clarification of the breadth of discretion available to the Member States, in

particular, to adapt the conditions for approval in accordance with specific situations, such as that which arises on the occasion of the Islamic Feast of the Sacrifice.

2. *Assessment*

32. It is settled case-law that the Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to enable it to give a useful answer to the questions submitted to it. (15)

33. First of all, as regards the *formulation* of the question referred, I am of the opinion that it is not obviously unrelated to the facts of the main action or its purpose.

34. Indeed, the contested decision (see point 17 above) announced that, from 2015 onwards, ritual slaughtering without stunning would no longer be authorised, during the Islamic Feast of the Sacrifice, in temporary slaughter plants that do not meet the requirements imposed by Regulation No 853/2004. It is common ground that that decision was adopted on the basis of the rule laid down in Article 4(4) read together with Article 2(k) of Regulation No 1099/2009, which itself requires that ritual slaughtering be carried out in establishments that meet the requirements of Regulation No 853/2004.

35. Those two regulations pursue different objectives: while Regulation No 853/2004 is part of the ‘Hygiene Package’, (16) Regulation No 1099/2009 concerns the protection of animal welfare at the time of killing. The two regulations are nevertheless connected inasmuch as they frame the rules with which the construction and layout of slaughterhouses, and the equipment used in them, must comply.

36. It does not, therefore, appear to be appropriate to declare the question referred for a preliminary ruling to be inadmissible on the ground that it is incorrectly formulated: it does not seem that the question’s admissibility can be called into question in so far as concerns the correct identification of the provision of EU law which is actually at issue in the main proceedings.

37. The Court is, in this instance, in a position to give a useful answer, since the national court appears to have provided sufficient information regarding the facts of the case, the applicable EU law and the relationship between that law and the applicable national legislation. That information has enabled the parties to the dispute, the governments of the Member States and the other interested parties to submit observations to the Court, as indeed is evidenced by the content of the pleadings lodged. (17)

38. Accordingly, if it avoids excessive formalism, the Court is, it seems to me, in a position to identify the points of EU law which, having regard to the subject matter of the dispute, require interpretation or, if appropriate, an assessment of validity.

39. Secondly, as regards the doubts expressed as to the *relevance* of the question referred for a preliminary ruling, these are more deserving of analysis in the context of the Court’s examination of the substance of the case.

40. It should be observed that the case in the main proceedings raises the question of whether it is possible to contest, by reference to primary law, and in particular the provisions of the Charter and of the TFEU relating to freedom of religion, the obligation for ritual slaughter without stunning to be carried out in an approved slaughterhouse, given the potential financial impact of that obligation on the possibility of performing such slaughter during the Islamic Feast of the Sacrifice.

41. Nevertheless, and as I shall explain further on, while the preliminary reservations expressed by many of the interested parties are not such that the Court may immediately declare the present request for a preliminary ruling to be irrelevant to the resolution of the dispute, and therefore inadmissible, they do, on the other hand, merit the Court’s full attention when examining the substance of the question referred. In

the course of that examination, it will be necessary, amongst other things, to determine whether the provisions of EU law called into question in the case in the main proceedings really are the source of the alleged limitation on the exercise of religious freedom and on the observance of national customs relating to religious rites.

42. In that context it will therefore be necessary to consider whether those provisions, which in actual fact merely relate to the manner in which any type of slaughter, ritual or otherwise, must be carried out, may have a bearing upon the central issue in the case in the main proceedings, which specifically concerns the capacity of the permanent approved slaughterhouses that currently exist to satisfy all of the demand for ritual slaughter during the Islamic Feast of the Sacrifice. (18)

43. In light of all the foregoing considerations, and in the spirit of cooperation that must prevail in relations between national courts and the Court of Justice, I take the view that the present request for a preliminary ruling is fully admissible.

B. Substance

1. Preliminary remarks

44. It seems to me to be important, by way of background, to formulate two series of general remarks. The first concern the identification of the rules and principles with reference to which the validity of the provisions of Regulation No 1099/2009 is called into question in this case. The second concern, more fundamentally, the fact that, contrary to what certain observations submitted to the Court might suggest, the Court should in this instance avoid engaging in a theological debate concerning the scope of the religious obligation to slaughter an animal during the Islamic Feast of the Sacrifice.

(a) The rules and principles with reference to which the validity of the provisions of Article 4(4) read together with Article 2(k) of Regulation No 1099/2009 is called into question

45. It must be observed that, in the question which it has referred for a preliminary ruling, the national court alludes to Article 10 of the Charter, Article 9 ECHR and Article 13 TFEU.

46. It seems to me that the Court must be permitted to restrict its assessment to the question whether there is a limitation of the freedom of ‘thought, conscience and religion’ enshrined in Article 10 of the Charter.

47. Indeed, as regards the reference to Article 9 ECHR, it is clear from the settled case-law of the Court that, while, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of EU law, and while Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law. (19)

48. Therefore, an examination of the validity of secondary EU law may be undertaken solely in the light of the fundamental rights guaranteed by the Charter. (20) Nevertheless, it is clear from Article 52(3) of the Charter and the explanation relating to Article 10 of the Charter that the right guaranteed by Article 10(1) of the Charter corresponds to the right guaranteed by Article 9 ECHR. It has the same meaning and the same scope. The interpretation given to that right by the European Court of Human Rights (‘the ECtHR’) may therefore have some relevance for, or at least be a source of inspiration for the interpretation of Article 10 of the Charter. Accordingly, the Court has held that the case-law of the ECtHR must be taken into consideration in the interpretation of the Charter. (21)

49. As regards the reference to Article 13 TFEU, which in particular requires the Member States to pay regard to animal welfare, while respecting ‘the legislative or administrative provisions and customs of the

Member States relating in particular to religious rites', it must be observed that the national court does not state precisely what customs or provisions it is referring to.

50. Even assuming that it may be inferred from the order for reference that what is being referred to is in fact the practice followed in the Flemish Region up to 2014 of permitting the use of temporary, unapproved slaughter plants in order to meet the surge in demand for ritual slaughter on the occasion of the Islamic Feast of the Sacrifice, it seems clear, even if that practice could be regarded as a religious custom, that examining it would essentially be the same thing as examining the validity of the regulatory provisions at issue in light of the right to religious freedom referred to in Article 10 of the Charter.

(b) The scope of the religious obligation to slaughter an animal (without stunning) during the Islamic Feast of the Sacrifice

51. In the present case it has been alleged that the slaughter, without stunning, of an animal, and more specifically the obligation to perform such a slaughter on the occasion of the Islamic Feast of the Sacrifice, should not necessarily be perceived as an inviolable obligation of the Muslim faith and that, therefore, the question referred for a preliminary ruling rests on a mistaken premiss.

52. Indeed, it has been emphasised, in particular by the association GAIA, that some representatives of the Muslim community are of the opinion that, since electrical stunning and any similar procedure for stunning an animal prior to its slaughter have no effect on the animal's vital functions, and in particular on blood drainage, (which implies that the animal could regain consciousness were it not for the bleed-out), they are therefore consistent with the requirements of the Muslim faith. (22)

53. In similar vein it has been pointed out that a number of Muslim countries import and produce meat that is labelled 'halal' and is taken from animals that have been slaughtered after stunning. (23)

54. Lastly, and regarding more specifically the religious obligation to slaughter an animal during the Islamic Feast of the Sacrifice, it has been argued that numerous Muslim scholars and practising Muslims consider that the slaughter need not necessarily take place on the first day of the feast. There is also a growing tendency, particularly among younger practising Muslims, to consider that the slaughtering of an animal during the feast may be replaced by the making of a gift.

55. To my mind, it is not for the Court to rule on the question whether the stunning of animals is actually prohibited by the Muslim faith or whether, on the contrary, and as GAIA insisted at the hearing, it is a tenet only among certain branches of the religion.

56. Since, according to the case file submitted to the Court, there seems to be a consensus among the majority of Muslims in Belgium, one that has been voiced by the Council of Theologians within the Muslim Executive of Belgium, that ritual slaughter must be carried out without stunning, reversible or otherwise, I can only take note of that.

57. It appears equally inappropriate to determine whether that requirement is perceived by all Muslims as a fundamental religious obligation or if there is a possible alternative to performing the obligation. As the Commission has stated in its written observations, the Court may only take note of the existence of certain religious streams. It is not for the Court to rule on the orthodoxy or heterodoxy of a given religious teaching or precept.

58. Consequently, and as the referring court has stated in so many words, the slaughtering of an animal without stunning on the occasion of the Islamic Feast of the Sacrifice is indeed a religious precept that benefits from the protection of religious freedom. That is true whether or not there are different branches of Islam and whether or not alternative solutions exist in the event that it is impossible to perform such slaughter. (24)

59. I can only agree with the position expressed by the referring court and by most of the interested parties that the ritual slaughter of an animal on the occasion of the Islamic Feast of the Sacrifice is indeed a ‘religious rite’ within the meaning of Article 2(g) of Regulation No 1099/2009 and thus falls within the scope of the right to freedom of religion enshrined in Article 10 of the Charter and Article 9 ECHR, as an expression of religious conviction.

60. Furthermore, that position seems to me to accord fully with the case-law of the ECtHR, in which ritual slaughter is regarded as a religious practice, with the result that it falls within the scope of the abovementioned provisions. (25)

61. Similarly, despite the fact that some of the interested parties have considered it necessary to question the point in order to establish whether or not there is a problem of slaughtering capacity in Flemish Region during the Islamic Feast of the Sacrifice, I do not think it desirable for the Court to address the question of whether the ritual slaughter must, from a theological point of view, necessarily be carried out on the first day of the celebration of the feast or whether it may also be carried out on the three days that follow. (26)

62. Those preliminary remarks having been made, it is appropriate to consider the question of whether or not the obligation for slaughtering without stunning to be carried out in approved slaughterhouses as referred to in Article 4(4) read together with Article 2(k) of Regulation No 1099/2009 entails a limitation on the exercise of religious freedom.

2. The existence of a limitation on the exercise of freedom of religion and on the practice of national customs relating to religious rites

63. I shall begin by giving an outline of the general rules that apply to the slaughter of animals regardless of the method of slaughter chosen (that is to say, with or without stunning the animal) which arise from Regulation No 853/2004 in the context of the adoption of the ‘Hygiene Package’. I shall then explain the reasons for which the provisions of Article 4(4) read together with Article 2(k) of Regulation No 1099/2009 — a regulation the principal aim of which, I would reiterate, is the protection of animal welfare — cannot give rise to a limitation of freedom of religion.

(a) The general rules which apply to all animal slaughter under Regulation No 853/2004

64. Food of animal origin, irrespective of the method of slaughter chosen, must be produced and sold in accordance with strict rules the primary objective of which is to ensure food hygiene and food safety. (27)

65. The primary and fundamental purpose of the establishment in Regulation No 853/2009 of precise hygiene rules applicable to food of animal origin, which may present specific risks, is the introduction of high standards of hygiene, in particular, so as to prevent adverse effects on human health. (28) Accordingly, those rules contain common principles ‘in particular in relation to the manufacturers’ and competent authorities’ responsibilities, structural, operational and hygiene requirements for establishments, procedures for the approval of establishments, requirements for storage and transport and health marks’. (29) Accordingly, Regulation No 853/2004 lays down specific requirements relating, in particular, to the construction, layout and equipment of slaughterhouses. Only slaughterhouses that meet those requirements may be approved under the regulation.

66. In order to ensure that the system put in place is sound and effective and to ensure the proper functioning of the internal market, (30) it seems imperative that those requirements should be observed in all Member States and by all producers and operators in the sector. (31) While a degree of flexibility is permitted, in no case must it compromise the objectives relating to food hygiene. (32)

67. It is therefore crucial that the requirements for slaughterhouses that may be approved in accordance with Regulation No 853/2004 apply whether slaughtering is carried out with or without stunning. The general obligation to use approved slaughterhouses has little to do with the method of slaughter employed (ritual or otherwise). Furthermore, that obligation is not based solely on considerations relating to the

protection of animal welfare: it follows from the imperatives arising from the 'Hygiene Package', as set out in particular in Regulation No 853/2004.

68. The requirement under Article 4(4) of Regulation No 1099/2009 that slaughtering must be carried out in approved slaughterhouses that meet all the standards laid down in Annex III to that regulation helps ensure food safety regardless of the method of slaughtering practised. That requirement, which, as the applicants in the main proceedings have confirmed, does not conflict with the precepts of the Muslim faith, is no less important for the fact that the animal may be slaughtered without first being stunned.

(b) The impact on freedom of religion of the rules on animal welfare arising from the provisions of Regulation No 1099/2009

69. It should be observed that the calling into question, in the case in the main proceedings, of the validity of Article 4(4) of Regulation No 1099 undeniably arose from the announcement made on 12 September 2014 by the Flemish Minister responsible for animal welfare that, from 2015 onwards, he would no longer issue approvals for temporary slaughter plants because such approvals were contrary to the provisions of that regulation. (33)

70. However, calling into question the validity of those provisions from the perspective of religious freedom seems paradoxical to me, to say the least.

71. Indeed, it is important to recall that, under the law that now applies, it is the principle of slaughter with stunning that applies. Article 4(1) of Regulation No 1099/2009 accordingly provides that animals are only to be killed after stunning in accordance with the methods and requirements set out in Annex I to the regulation.

72. The right freely to practise a religion having been weighed against animal welfare, and account having been taken of the objective of Regulation No 1099/2009, which is to harmonise animal welfare standards at the time of killing, Article 4(4) of the regulation nevertheless at present makes an exception for the ritual slaughter of animals without stunning in slaughterhouses.

73. As recital 18 of Regulation No 1099/2009 states, by laying down a derogation from the general rule established in Article 4(1) that animals may be killed only after they have been stunned, Article 4(4) of that regulation in reality facilitates ritual slaughtering without stunning, doing so in order that certain religious precepts may be observed.

74. However, contrary to what the arguments of the applicants in the main proceedings might suggest, that provision does not lay down any additional specific requirements that apply only to ritual slaughtering and not to other types of slaughter.

75. That being so, it seems to me that Article 4(4) could be declared invalid on account of the protection of religious freedom only if it were established that the very use of approved slaughterhouses was contrary to certain religious precepts or if it were demonstrated that the conditions established by that provision made it objectively more difficult to slaughter animals in accordance with certain religious rites.

76. However, I would reiterate that, as is clear from the case file and as was confirmed at the hearing, the applicants in the main proceedings do not allege that the obligation for ritual slaughtering to be carried out in slaughterhouses is in itself incompatible with their religious beliefs.

77. Moreover, the applicants in the main proceedings do not indicate the reasons of principle — that is to say, reasons other than the alleged problems of capacity of the slaughterhouses that currently exist or the costs that would be incurred in creating new plants or converting existing plants in accordance with the regulatory requirements — for which the requirement that the slaughtering of animals must be carried out in approved slaughterhouses is problematic from the point of view of respect for religious freedom.

78. As the Council and the Commission in particular have mentioned, the obligation to ensure that all slaughter locations are approved, and thus that they meet the requirements laid down by Regulation No 853/2004, is perfectly *neutral* and applies to any party that organises slaughtering. Legislation that applies in a neutral manner, *with no connection to religious convictions*, cannot in principle be regarded as a limitation on freedom of religion. (34)

79. The fact that recourse to such approved plants engenders additional costs by comparison with the temporary slaughter plants that had previously been tolerated in the Flemish Region therefore seems to me to be irrelevant. What must be borne in mind is that the costs resulting from the setting up of approved slaughterhouses are the same whether or not they are intended for ritual slaughter.

80. In this connection, the ECtHR has held that a measure does not constitute an interference with a fundamental right for the reason that it engenders costs for a group of people that adhere to certain religious precepts of religious beliefs. (35) That should apply a fortiori where the cost engendered by observance of a religious precept is in principle the same as the cost incurred by those who do not adhere to that precept.

81. Such a rule is therefore not, in and of itself, capable of removing or limiting the possibility of carrying out ritual slaughters. It merely reiterates that all slaughtering must take place in a plant that satisfies the requirements laid down in an annex to Regulation No 853/2004.

82. It seems to me that, by their arguments, the applicants in the main proceedings are ultimately seeking to rely not only on the derogation laid down for ritual slaughtering but also on an additional derogation from the obligation to carry out such slaughtering in approved slaughterhouses.

83. Indeed, the main reason that seems to have led the national court to refer the question for a preliminary ruling is the fact that the permanent approved slaughterhouses that currently exist in the Flemish Region do not have sufficient slaughtering capacity during the Islamic Feast of the Sacrifice because of an increase in demand and that the cost of building such slaughterhouses or converting temporary slaughtering plants into permanent approved slaughter locations are proving to be very high.

84. However, that insufficient capacity and the costs that may be involved in the setting up of new approved plants bear no relation to the application of the provisions of Regulation No 1099/2009.

85. To my mind, a temporary difficulty of slaughterhouse capacity in a given region, such as that which has allegedly (36) been observed in the Flemish Region as a result of the great demand for ritual slaughtering over a period of a few days on the occasion of the Islamic Feast of the Sacrifice, equally has no bearing, direct or indirect, on the obligation to use slaughterhouses approved in accordance with Regulation No 853/2004. As the United Kingdom Government and the Commission have observed, such a difficulty instead highlights the question of who must bear the cost of setting up such plants in order to meet the peak in demand for ritual slaughtering during the Islamic Feast of the Sacrifice.

86. When asked at the hearing whether the availability of halal meat was, in general, satisfactorily ensured at times other than during the celebration of the Islamic Feast of the Sacrifice, the applicants in the main proceedings answered in the affirmative. They also confirmed that, in their view, the problem arose from the fact that the building of new approved slaughterhouses specifically to meet the peak in demand for ritual slaughtering on the occasion of that holiday was not an option that was economically profitable over the course of the year.

87. This confirms that any problems of capacity, considered from the points of view of both supply and demand, have not been caused by Article 4(4) of Regulation No 1099/2009 but are indeed the consequence of a combination of several specific circumstances entirely independent of the scope of that provision and arising mainly from a great concentration of the demand for ritual slaughtering at a very precise time of the year and over a very short period of time.

88. However, as the Commission has emphasised, quite rightly in my opinion, the validity of a provision of EU law is to be assessed according to the characteristics of that provision itself and cannot depend on the particular circumstances of a given case. (37)

89. In conclusion, and despite the doubts which the referring court has, it seems to me that there is no convincing argument for the view that the legislation at issue, which I would reiterate is entirely neutral and applies generally, constitutes a limitation on freedom of religion.

3. *The justification for a possible limitation of religious freedom*

90. Inasmuch as it cannot, in my opinion, be held that any limitation of freedom of religion results from the general obligation to use approved slaughterhouses, the question of whether such a limitation is justified does not arise.

91. Nevertheless, in the event that the Court of Justice does not support that conclusion and considers that the obligation to use approved slaughterhouses, which alone is being challenged in this case, constitutes an interference with freedom of religion in that it prevents practising Muslims from fulfilling their religious obligation during the Feast of the Sacrifice, I am of the opinion that there would then be no legitimate objective in the public interest such as might justify the existence of a limitation of that freedom.

92. That conclusion, which at first sight may be surprising if one refers to my analysis in the section dealing with the identification of a limitation of religious freedom, may be explained by the following considerations.

93. Admittedly, it is a priori defensible to take the view that the restriction of the possibilities for ritual slaughtering that is created by the obligation to use approved slaughterhouses is in the interests of legitimate public policy and public health objectives, that is to say, the protection of animal welfare, of public health and of food safety.

94. Nevertheless, should it be held that the obligation to use approved slaughterhouses during the Islamic Feast of the Sacrifice does run counter to religious freedom, the Court would then necessarily be required to attempt an impossible arbitration between that freedom and the imperatives of protecting animal welfare, public health and food safety, which, I would reiterate, are the three general objectives served by the obligation to use approved slaughterhouses. Ultimately, that would amount to establishing a hierarchy between respect for religious freedom and the necessary pursuit of those legitimate public interest objectives, whereas the legislature specifically intended to strike a balance between respect for religious freedom and the pursuit of those various objectives, in particular with the provisions of Article 4(4) of Regulation No 1099/2009.

95. In other words, should it be held that Article 4(4) of Regulation No 1099/2009 — which attests to the EU legislature's wish to strike a fair balance between religious freedom and the pursuit of the legitimate public interest objectives of protecting public health, food safety and animal welfare — (38) does constitute a limitation of religious freedom, I find it difficult to see how such a limitation could be regarded as specifically justified by those imperatives in the particular context of the celebration of the Islamic Feast of the Sacrifice.

96. While considerations relating to human health must, in principle, prevail over considerations relating to animal welfare, it appears that, in the present case, particularly close attention has been paid to the promotion of animal welfare as a legitimate public interest objective, one that is specifically addressed by the adoption of the provisions of Article 4(4) read together with those of Article 2(k) of Regulation No 1099/2009.

97. Accordingly, I shall now explain, first, why the protection of animal welfare is not an objective capable of justifying a limitation of religious freedom, should it be held that Article 4(4) of Regulation No 1099/2009 does give rise to such a limitation, and, secondly, why such a limitation is also not relevant

or proportionate for the purposes of ensuring food safety and public health in the very specific context of the celebration of the Islamic Feast of the Sacrifice.

(a) Article 4(4) read together with Article 2(k) of Regulation No 1099/2009 considered with reference to freedom of religion and the protection of animal welfare

98. Although I do not at all support the conclusion that Article 4(4) read together with Article 2(k) of Regulation No 1099/2009 is problematic from the point of view of religious freedom, I can only endorse the view that the applicants in the main proceeding have expressed in the written observations which they have submitted to the Court that prudence must necessarily be exercised whenever the objective of protecting animal welfare comes into potential conflict with a fundamental right.

99. It is sufficient, in this connection, to refer to Article 13 TFEU, which provides that ‘the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, *while respecting* the legislative or administrative provisions and customs of the Member States relating in particular to religious rites’. (39)

100. In the present case, it seems to me difficult to conclude that, even if it creates a limitation of religious freedom, the obligation under Article 4(4) of Regulation No 1099/2009 to use slaughterhouses approved in accordance with Regulation No 853/2004 is necessary for and proportionate to the pursuit of a legitimate objective.

101. Before examining individually the questions of the need for and the proportionality of the provision at issue, it seems to me that a *general and preliminary remark* must be made regarding the weighing of the possibility for recourse to slaughtering without stunning, which, out of respect for certain religious convictions, is afforded by the applicable legislation, on the one hand, against the protection of animal welfare, on the other.

102. In the course of the present proceedings it has been argued — often with the force of conviction and in a manner that is difficult to challenge — that the slaughtering of an animal that has not been stunned is undeniably likely to cause the animal greater pain and suffering. (40)

103. Nevertheless, accepting this premiss, which is quite understandable in theory, should not in my opinion lead to the conclusion that religious communities that recommend slaughtering animals without stunning them have no regard for animal welfare and are following archaic practices that are barbarous and out of step with the principles of a modern democratic society.

104. Moreover, it is sufficient to take note of the fact that, by adopting Article 4(4) of Regulation No 1099/2009, the EU legislature specifically decided that the Member States should continue to be free to authorise particular methods of slaughter prescribed by religious rites. Once again, it is important to emphasise that the requirement under that provision that ritual slaughtering be carried out only in a ‘slaughterhouse’ is merely a reiteration of the general rule laid down by Regulation No 853/2004 which applies regardless of the method chosen for slaughtering the animal.

105. In this connection, I would repeat that the ‘limitation’ here at issue does not concern slaughtering without stunning, but concerns the more general obligation to use slaughterhouses that have been approved in accordance with Regulation No 853/2004.

106. As has been stressed in discussions at national level, behind the specific question of ritual slaughtering the spectre of stigmatisation very swiftly appears. It is historically prevalent and care must be taken not to encourage it. (41)

107. There is nothing to rule out the possibility that slaughtering without stunning, carried out in proper circumstances, (42) will be less painful for the animal than slaughtering the animal after stunning it in circumstances in which, for obvious reasons of profitability, and given the widespread industrialisation of

the production of food of animal origin, the stress and suffering experienced by the animal when it is killed are exacerbated. (43)

108. At the risk of stating the obvious, all forms of killing are by nature violent and consequently problematic from the viewpoint of animal suffering. (44)

109. Personally, I am not convinced — and a good number of studies and inquiries say as much — (45) that the use of approved slaughterhouses is always an effective bulwark against animal suffering such that it could by itself justify a limitation of religious freedom.

(1) Whether there is any need to limit freedom of religion in order to protect animal welfare

110. It is now settled case-law of the Court (46) that the protection of animal welfare is a legitimate objective in the public interest the importance of which is reflected, in particular, in the adoption by the Member States of the Protocol on protection and welfare of animals annexed to the Treaty Establishing the European Community. (47) The substance of that protocol is now to be found in Article 13 TFEU, which is a provision of general application of the FEU Treaty, contained in Part One thereof, setting out the ‘Principles’. (48)

111. The question which arises is whether, in the event that there is a limitation of religious freedom, the obligation to use approved slaughterhouses is justified, in the particular context of the Islamic Feast of the Sacrifice, by the need to protect animal welfare.

112. In my opinion, it is not certain that it is.

113. Admittedly, there is a general interest in preventing ‘savagely’ slaughtering from being carried out in conditions which are dubious from the viewpoint of animal welfare, which, at first sight, suggests that it is preferable for the slaughtering of animals to be carried out in plants that are supervised by the public authorities (49) or which meet specific standards of equipment and logistics.

114. However, that must not lead to the conclusion that such plants must, in the very specific context of the Islamic Feast of the Sacrifice, necessarily be slaughterhouses that have been approved in accordance with Regulation No 853/2004.

115. At the risk of repeating myself, the question which arises here is not whether slaughtering without stunning should be banned in the interests of animal welfare, but whether, in the context of the derogation laid down in Article 4(4) of Regulation No 1099/2009, the use of approved slaughterhouses offers, on the occasion of the celebration of the Islamic Feast of the Sacrifice, advantages in terms of animal welfare, by comparison with the use of temporary slaughter plants that have not been approved.

116. As regards, in particular, the fact that ritual slaughtering could be carried out in the Flemish Region until 2014, it must be noted that the Commission itself, following the audit which it carried out in Belgium between 24 November and 3 December 2014 in order to assess the monitoring and supervision of animal welfare during slaughter in the temporary plants that were authorised up to that time, stated that such plants offered sufficient guarantees, and it took note of the efforts made by the Belgian authorities to improve the situation.

117. In the 30 July 2015 audit report, the Commission accordingly noted that the competent authorities were doing what was necessary to ensure that the same animal welfare requirements were being observed in the temporary slaughter plants of which it was aware. The report concluded that, although the killing of animals without stunning, for the purpose of religious rites, other than in slaughterhouses was not in compliance with Regulation No 1099/2009, the competent national authorities had made great efforts to ensure that, during religious holidays, the same animal welfare requirements were observed at regulated locations.

118. It seems that, in reaching that conclusion, the Commission had implicitly considered that temporary slaughter plants that possessed certain characteristics, without necessarily corresponding to the definition of approved slaughterhouses in Article 2(k) of Regulation No 1099/2009, could be capable of offering sufficient guarantees in terms of animal welfare protection during the slaughter carried out on the occasion of the celebration of the Islamic Feast of the Sacrifice. Given that that celebration takes place only once a year, and given the fact that the animals slaughtered during the celebration are not, in principle, meant to remain for very long at the slaughtering location, the setting up of approved slaughterhouses does not really seem to be a relevant requirement. Indeed, the conditions which plants must meet, in particular under Regulation No 853/2004, were laid down with plants that are intended to handle supply and demand on a daily basis in mind.

119. Furthermore, in the specific context of a peak in demand for slaughtering, such as that which may be observed during the Islamic Feast of the Sacrifice, one might even wonder whether the authorisation of slaughtering in temporary plants that meet precise health standards, without however corresponding to the definition of approved slaughterhouses in Article 2(k) of Regulation No 1099/2009, might not be a better response to animal welfare concerns. The creation of such plants could, by lightening the burden on approved slaughterhouses, ultimately help slaughtering to be carried out under the best conditions for the animal, in particular in so far as concerns the stress it suffers.

(2) *The proportionality of any limitation of freedom of religion in order to protect animal welfare*

120. In accordance with Article 52(1) of the Charter, any limitation on the exercise of rights recognised by the Charter must be provided for by law and be proportional.

121. The limitation under discussion in the present case, that is, a limitation which arises from the obligation laid down in Article 4(4) of Regulation No 1099/2009 to use approved slaughterhouses, that is to say, plants which satisfy the requirements laid down by Regulation No 853/2004, undeniably arises from the law.

122. On the other hand, in the event that it is concluded that there is in this instance a limitation of religious freedom and that it is justified, I doubt whether that limitation could be held to be proportionate to the objective pursued.

123. According to the settled case-law of the Court, the principle of proportionality requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question, since the disadvantages caused by the legislation must not be disproportionate to the aims pursued, (50) and, where there is a choice between several appropriate measures, recourse must be had to the least onerous. (51)

124. I am of the opinion that the obligation for slaughtering to be carried out in an approved slaughterhouse may go beyond what is strictly necessary in order to attain the objective of protecting animal welfare pursued when it is a case of slaughtering an animal in the performance of a religious rite at a very precise time of the year.

125. It must be observed in this connection that Annex III to Regulation No 853/2004 lays down numerous requirements which slaughterhouses must satisfy in order to be approved in accordance with that regulation.

126. However, it is questionable whether, in the event that there is a limitation of religious freedom, compliance with all of those requirements is necessary in the very particular context of the momentary increase in the demand for slaughtering during the Islamic Feast of the Sacrifice.

127. While I would not claim that this is an exhaustive list, some of the rules laid down in Annex III to Regulation No 853/2004, such as the structural requirements relating, in particular, to cutting plants and the refrigerated storage of meat, may, it seems, prove superfluous to meeting the peak in demand for ritual

slaughtering that is experienced on the occasion of the Islamic Feast of the Sacrifice, inasmuch as the plants in question will be used only once a year and the meat from them will, in principle, be given directly to the final consumer.

128. Accordingly, in the event that it is considered that the provisions at issue limit freedom of religion, I take the view that there certainly exists a less onerous solution than the obligation to use approved slaughterhouses during the Islamic Feast of the Sacrifice.

(b) *Freedom of religion and the protection of food safety and public health*

129. If it is found that the rule set out in Article 4(4) read together with Article 2(k) of Regulation No 1009/2009 constitutes a limitation of religious freedom, the further question would then arise of whether that limitation could be justified on legitimate grounds of public interest relating to food safety and human health.

130. Indeed, the objectives pursued by Regulation No 853/2004, to which Regulation No 1099/2009 refers, relate first and foremost to food safety and, ultimately, are designed to protect human health.

131. Nevertheless, continuing on from what I have already stated, a total ban on slaughtering other than in plants that have been approved in accordance with the rules established in Annex III to Regulation No 853/2004 might not appear to be sufficiently relevant from the viewpoint of food safety and public health to justify the restriction on performing a religious obligation to slaughter an animal or to have an animal slaughtered on the occasion of a very specific annual event, such as the Islamic Feast of the Sacrifice in this case.

132. As the Commission noted in the 30 July 2015 audit report, temporary slaughter plants that meet precise health standards could be capable of offering sufficient guarantees in terms of public health and food safety so that they can meet the considerable, yet brief demand for slaughtering during the Islamic Feast of the Sacrifice.

133. It follows from the foregoing considerations that it cannot, in my view, be concluded that Article 4(4) read together with Article 2(k) of Regulation No 1099/2009 entails a limitation of religious freedom. Nevertheless, and solely in the event that it is found that, on the contrary, such a limitation does exist, I am of the opinion that that limitation could not be regarded as justified by legitimate objectives in the general interest relating to animal welfare and the protection of public health and food safety. In any event, such a limitation could not, in my opinion, be held to be proportionate to the objectives pursued.

4. *Request to assess the validity or to interpret Article 4(4) read together with Article 2(k) of Regulation No 1099/2009?*

134. In the present case, the referring court has decided to confine its reference for a preliminary ruling to a question seeking an *assessment of the validity* of the provisions of Article 4(4) read together with Article 2(k) of Regulation No 1099/2009.

135. However, as the Council has stated in its written observations, it would probably have been more useful for the referring court to question the Court of Justice about the *interpretation* of the provisions of Regulations Nos 1099/2009 and 853/2004, in particular in so far as concerns the breadth of discretion available to the Member States with regard to the rules governing the approval of slaughterhouses so as to ascertain the degree to which the Member States may take account of specific situations such as that which may arise in a Member State (or part thereof) on the occasion of the Islamic Feast of the Sacrifice.

136. For my part, I am not entirely convinced by such a step, which would ultimately amount to overturning the rule which, as EU law currently stands, is of general application and which requires the slaughtering of animals to be carried out in approved slaughterhouses.

137. While it is true that Regulations Nos 1099/2009 and 853/2004 provide for some flexibility, inasmuch as they lay down not only certain derogations from the obligation to have recourse to approved slaughterhouses, but also derogations from certain technical requirements imposed on slaughtering locations, (52) in particular for ‘mobile slaughterhouses’ and ‘small slaughterhouses’ involved in direct selling, (53) I doubt that the Court is, in this case, in a position to determine, precisely and without a thorough examination of all of the requirements that arise from those regulations, the circumstances that would justify derogation from the structural requirements imposed on slaughtering locations, which are of considerable importance in the drafting of those regulations.

138. In this connection, I would reiterate that, in this case, the Court is at most asked to address a problem of a temporary nature, one which, according to my understanding of the case file, has since been resolved.

139. More fundamentally, it appears that the applicants in the main proceedings are in reality seeking a relaxation of the rules and health requirements that apply in the sector of food of animal origin because they are reluctant to assume the costs entailed by compliance with those requirements.

140. In that context, it does not seem appropriate to attempt to draw up interpretative guidelines which ultimately could undermine the rules that have been set out with precision in the legislation that currently applies to the killing of animals.

IV. Conclusion

141. In light of the foregoing considerations, I propose that the Court answer the question referred by the *Nederlandstalige rechtbank van eerste aanleg Brussel* (Dutch-language Court of First Instance, Brussels, Belgium) for a preliminary ruling as follows:

Examination of the question referred for a preliminary ruling has revealed nothing that could affect the validity of Article 4(4) read together with Article 2(k) of Council Directive (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, in the light of the right to freedom of religion enshrined in Article 10 of the Charter of Fundamental Rights of the European Union and taken into consideration in Article 13 TFEU with reference to animal welfare.

¹ Original language: French.

² Council Directive of 18 November 1974 on stunning of animals before slaughter (OJ 1974 L 316, p. 10). The preamble to that directive states, *inter alia*, that ‘the practice of stunning animals by appropriate recognised techniques should be generalised’ and that ‘it is necessary to take account of the particular requirements of certain religious rites’.

³ Council Regulation of 24 September 2009 on the protection of animals at the time of killing (OJ 2009 L 303, p. 1). Recital 18 of that regulation states: ‘Since Community provisions applicable to religious slaughter have been transposed differently depending on national contexts and considering that national rules take into account dimensions that go beyond the purpose of this regulation, it is important that derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiarity to each Member State. As a consequence, this regulation respects the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance, as enshrined in Article 10 of the Charter of Fundamental Rights of the European Union.’

⁴ It should be observed that the previously applicable rules did not lay down any detailed criteria for the approval of slaughterhouses, with the result that the Member States had a discretion in determining which establishments, including temporary establishments, could be approved as equivalent establishments (see, in

particular, Article 5(2) of Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing (OJ 1993 L 340, p. 21), as amended).

5 Also referred to as the Great Feast (Eid al-Kabir), this holiday celebrates the faith of Ibrahim (Abraham in the Biblical tradition), symbolised by his acceptance of God's command to sacrifice his only son Ismaël (Isaac in the Biblical tradition). After Ibrahim had accepted His command, God sent the archangel Jibril (Gabriel), who at the last moment replaced the child with a ram to serve as the sacrificial offering. It is in commemoration of Ibrahim's devotion to God that Muslim families sacrifice an animal in accordance with certain rules.

6 In accordance with the provisions of Article 26(2)(c) of Regulation No 1099/2009, certain Member States do not permit ritual slaughtering without stunning. To my knowledge, the Kingdom of Denmark, the Republic of Slovenia and the Kingdom of Sweden do not allow animals to be slaughtered without first being stunned. More recently, it seems that a political agreement has been reached in the Flemish and Wallonian Regions to prohibit the slaughtering of animals without stunning as from 2019.

7 OJ 2004 L 139, p. 55 and Corrigendum OJ 2004 L 226, p. 22.

8 The celebration begins approximately 70 days after the end of the Islamic month of Ramadan.

9 According to Muslim tradition, a variety of animals may be chosen for the sacrifice, including sheep (ewes and rams), cows, bulls and calves, and goats.

10 According to the preparatory work for the 1995 amending law, the reason underlying the latter option was the insufficient capacity of numerous slaughterhouses at certain times of the year.

11 In this context, representatives of the Muslim community were called upon to estimate the slaughtering capacity of each geographical area and to inform the communal authorities concerned.

12 In this context, the Minister concerned has referred, inter alia, to a final report, published on 30 July 2015, of an audit carried out by the European Commission in Belgium between 24 November and 3 December 2014 in order to assess the monitoring and supervision of animal welfare during slaughter and related operations (DG(SANTE) 2014-7059 — MR) ('the 30 July 2015 audit report'). That report states, in particular, that the 'killing of animals without stunning for religious rites outside a slaughterhouse does not comply with the regulation'.

13 The applicants in the main proceedings rely on Article 1(3)(a)(iii) of Regulation No 1099/2009, which provides that the regulation does not apply where animals are killed during 'cultural or sporting events'. In accordance with Article 2(h) of the regulation, these are events which are essentially and predominantly related to long-established cultural traditions or sporting activities where there is no production of meat or other animal products or where that production is marginal compared to the event as such and not economically significant.

14 It is apparent from the case file that there were 59 of these temporary slaughter plants and that only two of them were converted into slaughterhouses in 2015 and only three more in 2016.

[15](#) See, inter alia, judgments of 21 December 2016, *Vervloet and Others* (C-76/15, EU:C:2016:975, paragraph 57 and the case-law cited) and of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania* (C-74/16, EU:C:2017:496, paragraph 25).

[16](#) The term designates the body of EU legislation relating to food hygiene which entered into force on 1 January 2006 and is aimed at simplifying and harmonising the applicable legislation in the European Union.

[17](#) See, inter alia, judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555, paragraph 31).

[18](#) See, in particular, the argument of the Flemish Region that the question relates to purely domestic circumstances, that is to say, the allegedly insufficient capacity of approved slaughterhouses in a particular region at a very precise moment in time. See also the observation of the Netherlands Government that it is for the Member States to concern themselves with the availability of halal meat and that that matter falls outside the scope of Regulations Nos 1099/2009 and 853/2004.

[19](#) See judgments of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105 paragraph 44); of 3 September 2015, *Inuit Tapiriit Kanatami and Others v Commission* (C-398/13 P, EU:C:2015:535, paragraph 45); and of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84, paragraph 45).

[20](#) See, in particular, judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84, paragraph 46 and the case-law cited).

[21](#) See, in particular, judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci* (C-205/15, EU:C:2016:499, paragraph 41 and the case-law cited).

[22](#) GAIA refers, in particular, to a study done by the University of Bristol, which shows that 95% of Muslim scholars agree that stunning that does not result in the death of the animal that is to be slaughtered is halal (see Fuseini, A. and Others, 'The perception and acceptability of pre-slaughter and post-slaughter stunning for Halal production: the views of UK Islamic scholars and Halal consumers', in *Meat Science* No 123, 2017, pp. 143 to 153).

[23](#) Some Muslim countries, such as Jordan and Malaysia, tolerate stunning during ritual slaughter provided that it is reversible, that is to say that it does not cause the animal to die. Moreover, mention is frequently made of the case of New-Zealand (the world's largest sheepmeat producer), which exports to Muslim countries meat taken from animals that have been slaughtered after stunning.

[24](#) As the ECtHR held in its judgment of 17 December 2013 (*Vartic v. Romania*, CE:ECHR:2013:1217JUD001415008, § 34 and the case-law cited), the duty of impartiality prevents public authorities from assessing the legitimacy of religious beliefs or the manner of their expression.

[25](#) See, in particular, judgment of the ECtHR of 27 June 2000, *Cha'are Shalom Ve Tsedek v. France*, (CE:ECHR:2000:0627JUD002741795, § 73). See, more generally, regarding dietary strictures based on religion, judgments of the ECtHR of 7 December 2010, *Jakóbski v. Poland* (CE:ECHR:2010:1207JUD001842906), and of 17 December 2013, *Vartic v. Romania* (CE:ECHR:2013:1217JUD001415008).

[26](#) In the Muslim tradition, the three days that follow the celebration of the Islamic Feast of the Sacrifice are referred to as the days of Tachriq. At the hearing, GAIA gave a description of the varying beliefs regarding this matter.

[27](#) See, on this point, the explanatory memorandum to the Commission's proposal for the 'Hygiene' regulation (COM(2000) 438 final, p. 10), which resulted in the adoption of Regulation No 853/2004, which emphasises the great importance of using slaughterhouses that have been approved on the basis of strict standards of hygiene.

[28](#) See, to that effect, recital 2 of Regulation No 853/2004.

[29](#) See recital 4 of Regulation No 853/2004.

[30](#) See, to that effect, recital 9 of Regulation No 853/2004.

[31](#) See recital 18 of Regulation No 853/2004, which states that 'the structural and hygiene requirements laid down in this regulation ... apply to all types of establishments, including small businesses and mobile slaughterhouses'.

[32](#) See, in particular, recital 19 of Regulation No 853/2004. That recital states that the procedure allowing Member States to exercise flexibility should be transparent and should provide, where necessary to resolve disagreements, for discussion within the Standing Committee on the Food Chain and Animal Health.

[33](#) In this context, the national court refers in particular to the 30 July 2015 audit report. That report states that 'the killing of animals without stunning, for the purpose of religious rites, other than in a slaughterhouse is not in compliance with the regulation', even though the competent central authority '[had] made great efforts to ensure that, during religious holidays, the same animal welfare requirements were observed at regulated locations'.

[34](#) The Commission mentions in this context the case-law of the ECtHR (see, in particular, judgment of the ECtHR of 3 December 2009, *Skugar and Others v. Russia*, (CE:ECHR:2009:1203DEC004001004) concerning the use of a tax identification number.

[35](#) See, to that effect, judgment of the ECtHR of 30 June 2011, *Association Les Témoins de Jéhovah v. France* (CE:ECHR:2011:0630JUD000891605, § 52 and the case-law cited), which states that 'freedom of religion in no way implies that churches or their congregations may be granted a different tax status from other taxpayers'.

[36](#) Several interveners, and the Flemish Region in particular, have stated that this shortage of slaughter locations has not been demonstrated in this case.

[37](#) See, to that effect, judgment of 28 July 2016, *Ordre des barreaux francophones et germanophone and Others* (C-543/14, EU:C:2016:605, paragraph 29).

[38](#) That is true notwithstanding the Member States' right to adopt, in accordance with Article 26(2) of Regulation No 1099/2009, 'national rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in [that] regulation'. I would point out that recital 18 of the regulation states, to similar effect, that 'it is important that derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiarity to each Member State'.

[39](#) My emphasis.

[40](#) See the position of the United Kingdom Government, which states that it is scientifically proven that stunning animals in order to render them unconscious when they are killed is an effective method of reducing animal suffering. In the same vein, the Estonian Government has referred to a study entitled 'Report on good and adverse practices — Animal welfare concerns in relation to slaughter practices from the viewpoint of veterinary sciences', carried out in the context of the European Union project DIALREL (Encouraging Dialogue on issues of Religious Slaughter), available at the following address: <http://www.dialrel.eu/dialrel-results/veterinary-concerns.html>

[41](#) I am borrowing here, almost verbatim, from the conclusion of a report on behalf of a committee of inquiry of the French Assemblée nationale française, dated 20 September 2016, on the way in which animals are slaughtered in French slaughterhouses (<http://www2.assemblee-nationale.fr/14/autres-commissions/commissions-d-enquete/conditions-d-abattage-des-animaux-de-boucherie-dans-les-abattoirs-francais/>).

[42](#) I think it of interest to point out in this context that it is precisely on account of respect for animals and the importance which is attached to their welfare that the act of killing them is ritualised in Jewish and Muslim traditions.

[43](#) Associations for the protection of animals regularly refer to the deplorable conditions in which slaughtering is carried out even in approved slaughterhouses. In the report cited in footnote 41, the rapporteur notes the 'temptation among certain players to use the issues raised by ritual slaughtering to obfuscate the often very serious difficulties ... encountered by traditional slaughtering in terms of animal welfare'.

[44](#) As recital 2 of Regulation No 1099/2009 states, 'killing animals may induce pain, distress, fear or other forms of suffering to the animals even under the best available technical conditions. Certain operations related to the killing may be stressful and any stunning technique presents certain drawbacks.'

[45](#) In the course of my research I have noticed that, even though the general rule that applies today is for slaughter to be carried out in approved slaughterhouses, a good number of breeders and animal protection associations support the notion that slaughtering that is carried out as closely as possible to the place where the animal is raised is certainly the most appropriate solution from the viewpoint of animal welfare.

[46](#) See, in particular, judgments of 17 January 2008, *Viamex Agrar Handel and ZVK* (C-37/06 and C-58/06, EU:C:2008:18, paragraphs 22 and 23 and the case-law cited); of 19 June 2008, *Nationale Raad van Dierenkwekers en Liefhebbers and Andibel* (C-219/07, EU:C:2008:353, paragraph 27); and of 23 April 2015, *Zuchtvieh-Export* (C-424/13, EU:C:2015:259, paragraph 35).

[47](#) OJ 1997 C 340, p. 110.

[48](#) See judgment of 23 April 2015, *Zuchtvieh-Export* (C-424/13, EU:C:2015:259, paragraph 35).

[49](#) See, to that effect, judgment of the ECtHR of 27 June 2000, *Cha'are Shalom Ve Tsedek v. France* (CE:ECHR:2000:0627JUD002741795, § 77).

[50](#) See, in particular, judgments of 8 April 2014, *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238, paragraph 46 and the case-law cited), and of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84, paragraph 54).

[51](#) See, in particular, judgments of 17 October 2013, *Schaible* (C-101/12, EU:C:2013:661, paragraph 29), and of 9 June 2016, *Pesce and Others* (C-78/16 and C-79/16, EU:C:2016:428, paragraph 48).

[52](#) See, on this point, Article 10(3) to (8) of Regulation No 853/2004.

[53](#) See recitals 40 and 47 of Regulation No 1099/2009.