JUDGMENT OF THE COURT
28 JUNE 1983

Commission of the European Communities v French Republic

(National monopolies: Artificial insemination of cattle)

Case 161/82

Agriculture — Harmonization of laws — Directive No 77/504 — Semen intended for the artificial insemination of cattle — Intra-Community trade — Powers of Member States — Grants of import licences subject to observance of zootechnical rules applicable to semen of national origin — Permissibility

(Council Directive No 77/504, Arts. 2 and 3)

A Member State does not infringe Directive No 77/504 on pure bred animals of the bovine species by subjecting the grant of import licences for semen intended for the artificial insemination of cattle to the zootechnical requirements provided for by its legislation and applicable without distinction to imported semen and that produced in the national territory. It follows from Article 3 of the directive in question that the directive accepts the diversity of the existing rules and in the event of intra-Community trade allows the rules applicable to the use of semen in the State in which the semen is to be used to prevail.

In Case 161/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, René-Christian Béraud, acting as Agent, assisted by Hans Peter Hartvig, a member of its Legal Department, with an address for service in Luxembourg

1 — Language of the Case: French.

at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

FRENCH REPUBLIC, represented by Gilbert Guillaume, Director of Legal Affairs in the Ministry of Foreign Relations, and Noël Museux, Deputy Director of Legal Affairs in the Ministry of Foreign Relations, acting as Agents, and Alexandre Carnelutti, Secretary for Foreign Affairs, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 2 Rue Bertholet,

defendant,

APPLICATION for a declaration that the French Republic, by restricting access to imports of semen intended for the artificial insemination of animals to a specific category of producers and by enabling insemination centres to carry on discriminatory practices in relation to imported semen, has failed to fulfil its obligations under Article 37 of the EEC Treaty and Article 2 of Council Directive No 77/504 of 25 July 1977 on pure-bred animals of the bovine species,

THE COURT

composed of: J. Mertens de Wilmars, President, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, T. Koopmans, O. Due, K. Bahlmann and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

(a) The French legislation at issue

The *artificial insemination of animals* in France is governed by Law No 66-1005 of 28 December 1966 on stock-breeding (Journal Officiel de la République Française 29. 12. 1966, p. 11619), supplemented by a series of implementing measures. The first title of Law No 66/1005 provides for the genetic improvement of stock. Article 4 reads:

"The collection and packing of semen may be carried out only by those holders of a licence as head of an insemination centre or under their authority.

Artificial insemination may be carried out only by holders of a licence as head of an insemination centre or as inseminator . . ."

Article 5 of the same Law provides that the management of insemination centres, whether concerned with the collection of semen and artificial insemination or only one of the two, is subject to prior authorization from the Minister for Agriculture.

Article 5 further provides:

"Each insemination centre shall serve an area within which it alone shall have power to act. The authorization in relation to it shall define that area.

Breeders within an area served by an insemination centre may request it to supply them with semen from production centres of their choice ... The insemination centre shall then effect the insemination on behalf of the breeders concerned; the additional costs resulting from such choice shall be charged to users of the service.

Where an artificial insemination area is allocated to an insemination co-operative the latter shall be required to make the facilities available to breeders who are not members of the co-operative."

Article 2 of Decree No 69-258 of 22 March 1969 on artificial insemination (Journal Officiel de la République Française of 23. 3. 1969, p. 2948) provides:

"Insemination centres may be authorized to carry out one or both of the following two categories of activities:

(1) Production, consisting of maintaining a station for approved male breeding animals or animals the genetic testing of which is authorized, taking responsibility for genetic testing pursuant to a programme approved by the Minister for Agriculture and the collection, packing, preservation and supply of the semen

of approved breeding animals or animals tested;

(2) Artificial insemination consisting of the insemination of females belonging to species designated in Article 1 of the Law of 28 December 1966 from stocks of semen supplied by production centres.

Insemination centres may be authorized to keep approved breeding animals supplied by production centres; in that case they shall themselves collect, pack and preserve the semen of the animals they keep."

The order of the Minister for Agriculture of 17 April 1969 on authorizations for the management of insemination centres (Journal Officiel de la République Française of 30. 4. 1969, p. 4349) states that those responsible for *production centres* shall carry out testing in accordance with programmes approved by the Minister for Agriculture. They may entrust the carrying out of certain duties to insemination centres with which they are associated for that purpose by contract (Article 9).

According to Article 10 the work of a production centre normally extends to all the areas of local insemination centres with which it is associated by contracts for testing breeding animals, the supply of breeding animals or of semen. Such contracts are notified to the Minister for Agriculture when the request for authorization is made and subsequently each time they are amended or renewed.

As regards *insemination centres* Article 12 of the order provides:

"Every insemination centre shall sign contracts with one or more production centres.

Such contracts must guarantee the regularity of supplies of semen for the area concerned, regard being had to needs which arise, and for periods of sufficient duration for the proper completion of testing.

Such contracts must guarantee the regularity of supplies of semen for the area concerned, regard being had to needs which arise, and for periods of sufficient duration for the proper completion of testing.

Such contracts shall contain an undertaking by the insemination centre to take part in programmes for testing conducted by the production centres with which it is associated. The undertaking shall take account of the opportunities which the area offers for implementing test programmes and assessing the medium-term needs of the area for approved breeding animals."

Article 13 provides:

"The insemination centres shall normally be supplied with breeding animals or semen by the production centre or centres with which they have entered into a contract. They may obtain supplies from other centres upon individual written request from breeders in their area pursuant to the provisions of the fifth paragraph of Article 5 of the aforementioned Law of 28 December 1966.

Semen stocked in the semen-store or stores maintained by an insemination centre shall normally be used for insemination in the area for which the centre has received authorization to act.

An insemination centre shall not return semen except to the production centres supplying it . . ."

Under Articles 17 and 18 of the same order copies of contracts for supply and

testing must be included with the request for authorization made by a production centre and that made by an insemination centre.

As regards the *importation of semen* into France an order of the Minister for Agriculture of 22 October 1949 on the conditions for the free importation of thoroughbred breeding horses, cattle, sheep and pigs (Journal Officiel de la République Française of 29. 10. 1949, p. 10600) provides that "any stockbreeding association or assimilated organization approved by the Minister for Agriculture and desiring to import free of customs duties thoroughbred animals for reproduction shall make an application for authorization in quadruplicate . . .". The zootechnical conditions to which any favourable decision of the Minister for Agriculture is to be subject are published in a "notice to importers".

Further, Article 3 of Decree No 70-137 of 16 February 1970 on the import and export of live animals and the semen of breeding animals (Journal Officiel de la République Française of 19. 2. 1970, p. 1766) provides:

"Doses of semen of animals of the species mentioned in Article 1 of the Law of 28 December 1966 presented to customs for import or export must have their origin and provenance certified by the official authorities of the exporting country and come from a breeding animal which has passed a genetic test pursuant to a programme approved by the Minister for Agriculture in the case of exports or recognized by him as equivalent to an approved programme in the case of imports."

(b) Community provisions

Article 2 of Council Directive No 77/504 of 25 July 1977 on pure-bred breeding animals of the bovine species (Official Journal, L 206, p. 8) provides:

"The Member States shall ensure that the following shall not be prohibited, restricted or impeded on zootechnical grounds:

Intra-Community trade in pure-bred breeding animals of the bovine species;

Intra-Community trade in the semen and embryos of pure-bred breeding animals of the bovine species . . ."

Until the entry into force of the provisions which the Council, acting on a proposal from the Commission, was required to adopt on this subject before 1 July 1980, the use of semen and embryos was to remain subject to national law, on the understanding that that law might not be more restrictive than that applicable to pure-bred breeding animals of the bovine species, semen and embryos in the Member State of destination (Article 3).

Article 5 of the same directive provides:

"Member States may require that pure-bred breeding animals of the bovine species and the semen or embryos from such animals shall be accompanied, in intra-Community trade, by a pedigree certificate which complies with a specimen drawn up in accordance with the procedure laid down in Article 8, particularly with regard to zootechnical performance."

Moreover, until the implementation of Community rules on the subject, the conditions applicable to imports of pure-bred breeding animals of the bovine species from non-member countries must not be more favourable than those governing intra-Community trade (Article 7).

(c) The administrative stage

By letter dated 25 September 1980 sent to the French Government the Commission initiated the procedure provided

for in the first paragraph of Article 169 of the Treaty in relation to the failure of a State to fulfil its obligations.

After referring to the aspects of the French rules described above the Commission, in that letter, alleges that the licence to import is granted only to production centres through the possible intermediary of a body acting on behalf of the centres. In practice that body, the Union Nationale des Coopératives d'Elevage et d'Insemination Artificielle [National Union of Stockbreeding and Artificial Insemination Co-operatives] (hereinafter referred to as "the National Union") effects almost all imports. A breeder requiring foreign semen applies to a production centre which effects the import through the intermediary of the National Union.

The Commission is of the opinion that the import monopoly reserved to production centres constitutes an infringement of the provisions of Article 37 of the EEC Treaty and, as regards the bovine species, of Article 2 of Council Directive No 77/504. Further any discriminatory practice of the insemination centres, such as a refusal by the centre to use semen purchased by a breeder from abroad or the requirement of a high fee, must be looked upon as an infringement of those provisions.

In a memorandum in answer from the Minister for Agriculture sent to the Commission by letter dated 22 January 1981 the French Government first of all refers to Article 5 of Law No 66/1005 of 28 December 1966 and Article 13 of the Order of 17 April 1969 from which it appears that upon individual request from breeders in their area insemination centres may obtain supplies from production centres other than those with which they have signed a contract.

That power has been enlarged at the request of breeders to enable them to have available semen imported after delivery of an import licence. Until now such licences have been granted to any importer capable of using the semen in compliance with the rules or acting on behalf of a body fulfilling that condition. The issue of a licence is automatic and without any limit on quantity when the zootechnical rules laid down for the semen of the breed in question are observed. The monopoly afforded to insemination centres authorized to perform artificial insemination relates solely to the service of artificial insemination. Trade in semen properly so called is not the subject of any monopoly whether on behalf of the insemination centres or the National Union.

The French Government then states that the position of the National Union as an intermediary in the purchase of semen from abroad (non-member countries or the Community) is due to reasons relating to the way in which artificial insemination has been organized from the beginning in France. Almost all the bodies responsible for that service are agricultural co-operatives which, with few exceptions, are members of the National Union, which offers them a number of services such as those necessary for the supply of imported semen. In those circumstances it is not surprising that the majority of the artificial insemination co-operatives have recourse to the services of the National Union as an intermediary for supplies from abroad.

There is however no obligation to use that channel. In that respect the French

Government claims that a number of transactions have been negotiated through other channels. Thus of the 51 import licences issued in respect of 89 605 doses of semen in 1978, 9 were granted to the company Bovec in respect of 8 229 doses and 3 to co-operatives in respect of 1 567 doses; of the 72 licences issued in respect of 85 686 doses in 1979, 17 were granted to Bovec in respect of 17 067 doses and 1 to a co-operative in respect of 2 000 doses. It follows that the French rules in no way prevent the issue of import licences for semen direct to insemination centres even if in practice artificial insemination co-operatives make little use of the opportunity.

Moreover the procedure for the issue of import licences is intended to check that the zootechnical references produced in respect of the semen the import of which is contemplated comply with the requirements laid down for their use in artificial insemination.

The French Government therefore considers that the French rules referred to by the Commission do not conflict with the provisions of Article 37 of the Treaty.

As regards the compatibility of the French rules with Directive No 77/504 the French Government observes that although according to Article 2 thereof intra-Community trade in semen and embryos of pure-bred breeding animals of the bovine species must not be restricted on zootechnical grounds Article 3 of the directive provides that national law on the subject remains applicable until the entry into force of Community provisions. In the absence of Community provisions there can be no objection to the fact that France still applies national law. The zootechnical rules imposed in respect of that kind of product from other Member States are not more restrictive than those applicable to semen and embryos produced in France.

In its memorandum in reply the French Government moreover states that it is ready:

To allow breeders holding a "special licence" as inseminator to import semen directly to cover their own breeding needs and to make provisions allowing breeders not coming within the aforesaid category, and who are not therefore entitled to hold semen, to import semen for the needs of their breeding if they designate in their application the centre approved for artificial insemination with which they are connected.

However, those provisions become applicable only on condition of:

Reciprocity on the part of all partner countries with regard to French exporters of semen; and

The abolition in all Member States of any monopoly or quasi-monopoly in the export of semen.

Since the observations of the French Government were not such as to alter the Commission's view, the latter, by letter dated 23 February 1982, sent it a reasoned opinion dated 17 February 1982.

In the reasoned opinion the Commission reserves its position regarding:

The lawfulness under Community law of the system of import licences required by the French authorities; and

The question whether France, even at present when the Community harmonization in this sphere is not complete, is nevertheless entitled to require that imported semen observes the French zootechnical rules including the requirement that the semen originates from certain breeds.

Those aspects of the French rules are therefore not the subject of the reasoned opinion.

Moreover the Commission maintains its view that the limitation of importers to a specific category of producers and the opportunity for the insemination centres to practise discrimination as a result of the French rules are incompatible with Article 37 of the Treaty and Article 2 of Council Directive No 77/504.

It considers that the adjustments proposed by the French Government are not likely to terminate the infringement and moreover it is unacceptable that they should be subject to the condition that there should be reciprocity in the other Member States.

In a memorandum to the Commission dated 19 April 1982 the French Government confirmed its position.

(d) The proceedings before the Court

The action by the Commission under the second paragraph of Article 169 of the Treaty for a declaration that the French Republic has failed to fulfil its obligations was lodged at the Court Registry on 27 May 1982.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. It did however ask the Commission to answer the following questions in writing:

"(a) Can the Commission substantiate the statements in its application to the effect that imports of semen are artificially burdened with high charges, subject to long delays in delivery and are responsible for difficulties in entering animals produced from imported semen in herd-books?

(b) The Commission is asked to clarify its interpretation of Article 37 of the Treaty in relation to the problems raised by this case and then to explain which, in its view, is the body by which France controls, directs or appreciably influences imports of semen intended for the artificial insemination of cattle and which, in its view, are the categories of producers to whom access to imports of semen is restricted.

(c) The Commission is asked to supply statistics in relation to intra-Community trade in bovine semen."

Further, the Court invited the French Government to answer the following questions in writing:

"According to the French Government the French legislation involves no exclusive right to import semen intended for the artificial insemination of cattle, whereas the Commission maintains that access to imports thereof is restricted to certain categories of producers.

Since during the administrative proceedings the French Government declared itself ready to clarify the scope of the provisions in question, the Court invites it to state whether it is still ready to amend the relevant legislation so that no misunderstanding in that respect is any longer possible."

II — Conclusions of the parties

The *Commission,* the *applicant,* claims that the Court should:

(1) Declare that the French Republic, by restricting access to imports of semen intended for the artificial insemination of animals to a specific category of producers and by enabling insemination centres to carry on discriminatory practices in relation to imported semen, has failed to fulfil its obligations under Article 37 (1) of the EEC Treaty and Article 2 of Council Directive No 77/504 of 25 July 1977;

(2) Order the defendant to pay the costs.

The *French Republic,* the *defendant,* contends that the Court should:

Dismiss the Commission's application as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

The *Commission of the European Communities,* the *applicant,* states first of all that this action, just like the reasoned opinion, is aimed only at certain aspects of the French rules on artificial insemination and administrative practice with regard to import licences. They are in particular the restriction of access to imports of semen to a particular category of producers and the opportunity for insemination centres to carry on restrictive practices.

As regards the facts it admits that import licences are also granted to certain production or insemination centres which are not associated with the National Union or Bovec. It nevertheless maintains that the National Union effects the major part of imports since that association contains almost all the insemination centres whilst any breeder requiring foreign semen must apply to the insemination centre of his area. Thus import licences are in particular refused to producers outside the control of centres officially approved.

After giving that clarification the Commission basically reasserts the arguments put forward in the administrative proceedings.

It refers to the judgment of 3 February 1976 in Case 59/75 *Manghera* [1976] ECR 91 to claim that the exclusive right to import and market imported products which is exercised or conferred by the State constitutes discrimination contrary to Article 37. The practice of reserving the importation and marketing of imported semen to bodies producing and marketing their own semen constitutes *a fortiori* such discrimination. Such a practice means a guarantee of the sale of national production, the effect of which is equivalent to a quantitative restriction on imports prohibited by Article 30.

The Commission summarizes its position as follows. To make the French rules compatible with Community law three amendments are necessary:

(a) Anyone wishing to do so should be able to import semen; possibly there might be a condition that the semen should be sent directly to an approved insemination centre or person entitled to hold semen.

(b) Insemination centres should be expressly authorized to obtain stocks from suppliers in other Member States if they can show, where appropriate, permanent relations with the latter.

(c) All opportunity for production and insemination centres to discriminate against imported products as against domestic products should be excluded by law so as to eliminate the higher costs and unjustifiably longer delivery dates and the difficulties involved in entering in herd-books animals produced from semen imported from other Member States.

As regards Directive No 77/504 the Commission observes that national legislation on the use of semen and embryos provided for in Article 3 may apply only subject to the prohibition of restrictions on zootechnical grounds as referred to in Article 2. The fifth indent of Article 2 refers to Article 3 only in respect of intra-Community trade in bulls used for artificial insemination.

The *Government of the French Republic*, the *defendant*, states first of all that the condition of reciprocity in respect of the adjustment measures proposed in the administrative proceedings is based on an error and is not part in fact of the proposals for adjustment.

Moreover, it considers that the commercial monopoly presumed by the Commission does not exist, so that Article 37 of the Treaty does not apply to the French arrangements for artificial insemination.

In that respect the French Government alleges that the Law of 28 December 1966 and the implementing legislation pursue a recognized objective of public interest which is worthy of protection, namely the improvement of the quality and the conditions of stock farming. The State thus assumes a task of public interest by organizing a rigorous supervision of artificial insemination. Such supervision does not however allow it to direct, control or influence imports or exports directly or indirectly.

The system established to that end is aimed *inter alia* at sanitary conditions for the conduct of artificial insemination, the training of inseminators and the quality of cattle allowed to reproduce. For that purpose a territorial monopoly in services in favour of approved insemination centres has been established. The contractual links between insemination centres and production centres is intended from the same point of view to ensure the regularity of supplies of semen. Finally the system of import licences is intended to make it possible to check that imported semen complies with the French health and zootechnical rules.

There is therefore no provision laying down a commercial monopoly in semen. The territorial exclusiveness afforded to

artificial insemination centres applies only to the rendering of services. Moreover, the centres are totally independent of the State.

As to the alleged discrimination against imported semen, the French Government states that the condition to the effect that the importer must be able to use the semen in accordance with the law means only that the importer must specify the centre or approved inseminator who will effect the insemination. The proposal made during the administrative proceedings to extend the issue of licences to any breeder only gives specific expression to the intention of the French Government to apply the legislation already in force. Moreover, that facility is little used because of the prohibitive cost of importing small quantities and the lack of interest in importing semen when there is no authorization to inseminate.

The French Government reiterates its explanation of the position of the National Union and supplements the statistics of imports given during the administrative proceedings as follows: of 67 licences issued in respect of 101 392 doses of semen in 1980 20 were granted to Bovec in respect of 25 399 doses, 42 to the National Union itself and a branch in respect of 72 293 doses and 5 to insemination centres in respect of 3 700 doses; of 50 licences issued in respect of 91 895 doses in 1981, 18 were granted to Bovec in respect of 18 667 doses of semen, 30 to the National Union itself and a branch in respect of 60 888 doses and 2 to a centre and another association in respect of 2 340 doses. Another table submitted to the Court shows the distribution of imports between the Member States and certain non-member countries which export bovine semen.

In the light of the foregoing the French Government complains that the Commission did not consider whether the fact that in practice imports are confined to certain categories of producers is not due simply to the free choice of those traders.

In addition the Commission has not substantiated its allegations of discriminatory practices by the insemination centres.

With regard to Directive No 77/504 the French Government states that checking that imported products comply with the French zootechnical rules is the counterpart of the supervision of the same kind undertaken with regard to French products and a necessary complement for achieving the aim of improving the quality of stock. The meaning of Articles 2 and 3 of the directive is that a Member State must not apply stricter rules to imported semen. The interpretation put forward by the Commission is tantamount to preventing a Member State from applying its zootechnical legislation to semen imported from other Member States.

In its *reply* the *Commission* maintains that the restriction of imports of semen resulting from the rules and administrative practice in France amounts to a factual monopoly within the ambit of Article 37 of the Treaty.

It alleges that the adjustment proposed by the French Government, which would be superfluous if it reflected the existing position, merely confirms the need to amend the existing rules and practice.

The extension proposed, which relates only to access to imports, is moreover not sufficient to make the French legislation comply with Community law.

As to the opportunity for breeders to have insemination effected with the semen of their choice, the Commission states that the supply is in general a closed circuit between insemination centres and production centres on the basis of contracts imposed by the legislature to that end. The insemination centres are not free to obtain supplies on their own initiative from other production centres or from abroad. Taken together with the administrative practice in relation to import licences the result of this system is practically to exclude competition on the French market in semen and to exclude equality of opportunity for imported semen from other Member States on the French market as against domestic products.

Finally, assuming that the reservation in Article 3 of Directive No 77/504 in relation to national legislation is also applicable to semen it relates only to national measures applicable without distinction to domestic and imported products, such as measures in relation to the conditions appertaining to the quality of semen. Discriminatory measures relating to the import and marketing of imported semen come only under Article 2 of the directive.

In its *rejoinder* the *French Government* says that in describing the French system as a factual monopoly the Commission recognizes that France has not created a legal monopoly in that area.

Moreover it states that the quality and reliability of semen can be guaranteed only by close collaboration between the production and insemination centres. An insemination centre holding stock from production centres with which it is associated has no interest in obtaining semen elsewhere on its own initiative without a specific request from an interested breeder. Article 5 of the Law of 28 December 1966 and Article 13 of the Ministerial order of 17 April 1969 merely reflect that factual situation while leaving to breeders the choice of perhaps requesting insemination with semen from abroad.

As regards the proposed adjustments the French Government recognizes that the drafting of its note in answer to the formal notice from the Commission may appear inaccurate on that issue in so far as it suggests that formal amendments to the existing provisions are necessary. It does not follow from the existing rules that access to imports is restricted to a specific category of producers. Nor has investigation by the defendant of its administrative practice established any discrimination. In that connection the French Government observes that the complaints received by the Commission, which were listed in Case 271/81, are directed against the territorial monopoly affecting the provision of services, lawfully held by insemination centres.

In any event the French authorities responsible for issuing import licences have no discretion. The licence is automatically issued when the objective conditions in relation to zootechnical and health matters are satisfied and the

centre or person empowered to effect the insemination is specified.

As regards the interpretation of Articles 2 and 3 of Directive No 77/504 the French Government replies that the national legislation, which remains applicable under Article 3, is intended to specify the quality standards in relation to zootechnical and health matters applicable to products used within the national territory.

IV — Oral procedure

The parties presented oral argument at the sitting on 26 April 1983.

At the hearing the French Government confirmed, in relation to the question put by the Court, that it considers that its legislation contains no provision giving artificial insemination centres an exclusive right to import semen intended for the artificial insemination of cattle. Nevertheless the Government is ready to amend the relevant provisions to specify expressly that the right to import is not exclusive to the centres.

Further, the representative of the French Government stated that the company Bovec, which imports *inter alia* bovine semen from the United States, is a subsidiary of an American company.

The Advocate General delivered his opinion at the sitting on 1 June 1983.

Decision

1 By application lodged at the Court Registry on 27 May 1982 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the French Republic, by restricting imports of semen intended for the artificial insemination of animals to a specific category of producers and by enabling insemination centres to carry out discriminatory practices in relation to imported semen, has failed to fulfil its obligations under the Treaty.

2 In the Commission's view the provisions applicable in France laid down by laws or regulations in relation to the artificial insemination of animals and the practice followed by the French authorities as regards conditions for the importation of semen are contrary to Article 37 of the Treaty and Article 2 of Council Directive No 77/504 of 25 July 1977 on pure-bred breeding animals of the bovine species (Official Journal L 206, p. 8).

3 The issue between the parties, both during the proceedings prior to the action brought before the Court and in this action has related solely to the French system applicable to the artificial insemination of cattle. The directive cited by the Commission relates only to pure-bred breeding animals of the bovine species and the facts on which the Commission bases its action have arisen on the import of bovine semen. In those circumstances the Court considers that the action is concerned with import restrictions and discriminatory practices with regard to semen intended for the artificial insemination of animals of the bovine species only.

4 The French rules applicable to the artificial insemination of such animals depends in particular on Law No 66/1005 of 28 December 1966 on stock-breeding (Journal Officiel de la République Française 1966, p. 11619). According to the first paragraph of Article 5 of that Law a licence is necessary for the management of insemination centres. The provision in question makes a distinction between centres responsible for production of semen and those responsible for insemination, but it does not prohibit one and the same centre from engaging in both operations, Production involves maintenance of a cattle station for male-breeding animals, the testing of the breeding animals, the collection, packing, preservation and sale of the semen. Insemination involves the insemination of females or supervising that operation when it is effected by breeders qualified to perform it.

5 The aforesaid Law of 1966 moreover provides that each insemination centre shall serve an area within which it alone is authorized to act (Article 5, fourth paragraph); if such an area is allotted to an agricultural co-operative it is bound to afford facilities to breeders who are not members. Breeders established in the area of an insemination centre may ask it to supply them with semen from production centres of their choice (Article 5, fifth paragraph); the additional costs resulting from such choice are to be borne by the user. Insemination centres which are not at the same time production centres are normally supplied with breeding animals or semen by the production centre or centres with which they have signed a supply contract.

6 The import of semen requires the grant on each occasion of a licence from the Minister for Agriculture. Application for a licence must be accompanied by a *pro forma* invoice mentioning the quantities of doses per breeding animal, a certificate of the blood group of the animals which have produced the semen, given by an approved laboratory in the country of origin, and the official results of checks on the performance of the animals.

7 In this action the Commission does not challenge either the right of the French authorities to require import licences for the importation of semen intended for the artificial insemination of cattle or to require that imported semen shall observe the zootechnical rules applicable in France. Its action is concerned solely with the fact that the French rules and the administrative practice followed by the French authorities in relation to the grant of import licences leads to the restriction of access to imports of semen to a particular category of producers and to the opportunity for insemination centres to carry on discriminatory practices.

8 In that respect the Commission alleges that import licences are granted exclusively to traders who, according to the French authorities, are capable of using the semen in accordance with the national rules applicable or who act on behalf of a body statisfying that condition. It follows that, generally speaking, import licences are issued only to production or insemination centres and to the national union of such centres, the Union Nationale de Coopération d'Elevage et d'Insémination Artificielle [National Union of Stock-breeding and Artificial Insemination Co-operatives] (hereinafter referred to as "the National Union") and one commercial company, Bovec.

9 According to the Commission such a practice is contrary to Article 37 of the Treaty inasmuch as it reserves the import and marketing of imported semen to bodies producing and marketing semen produced within the national territory, which leads to a guarantee of the sale of national products. That practice, it is claimed, also infringes Article 2 of Directive No 77/504 according to which intra-Community trade in the semen of pure-bred breeding animals of the bovine species may not be restricted or impeded on zootechnical grounds.

10 The French Government states first of all that the regional monopoly of insemination centres relates to the provision of services and does not affect the import and marketing of semen. Even assuming that all such regional monopolies constitute a national monopoly, such a monopoly is in no way of a commercial character within the meaning of Article 37 of the Treaty.

11 As to the system applicable to imports of semen, the French Government recognizes that a licence is granted only on condition that the importer can use the semen in accordance with the law or act on behalf of a body satisfying that condition. In that respect it is sufficient for the importer to be able to specify the insemination centre or the approved inseminator whom he has instructed to carry out the insemination.

12 According to the French Government it is wrong to think that only insemination centres may import semen and that to obtain imported semen a breeder must apply to the insemination centre in his district. There is nothing in the French law to prevent a particular breeder or a production or insemination centre from applying directly to a foreign centre to buy semen for him. Nevertheless that opportunity is little used by reason of the prohibited cost of importing semen in small quantities.

13 The French Government emphasizes that the Law of 1966 on stock-breeding and the implementing legislation is intended to improve the quality of and conditions for stock farming. That objective involves a rigorous supervision of artificial insemination, which in turn has a certain repercussion on the conditions for the grant of import licences for semen intended for artificial insemination.

14 It must be observed first of all that there is nothing in the documents in the file or in the arguments addressed to the Court to show that the French laws or regulations establish a national monopoly in the marketing or importation of semen intended for the artificial insemination of cattle. For the Commission to be able to rely on Article 37 of the Treaty it would therefore be necessary pursuant to the second subparagraph of Article 37 (1) for the Commission to establish the existence of a body through which the French State, in law or in fact, controls, directs or appreciably influences imports of semen from other Member States either directly or indirectly.

15 The Commission admits that the sole fact that the French Republic subjects the import of semen to a licensing system is not such as to establish the existence of a situation in fact or in law such as described in that provision. It has nevertheless maintained that the practice followed by the French authorities leads to that result.

16 It is apparent from the statistics submitted by the French Government and not challenged by the Commission that in 1980 and 1981 more than half the foreign bovine semen purchased in France was imported by the National Union and the rest by insemination centres, by a branch of the National Union and by Bovec. In 1981 more than 75% of imported semen came from non-member countries and in particular from the United States. In the same year almost 20% of doses of imported semen were covered by import licences granted to Bovec; in 1980 the figure actually reached 20%.

17 In the Commission's view those figures confirm that the French authorities by the indirect means of an established administrative practice in relation to the grant of import licences *de facto* conferred an exclusive right of import on production or insemination centres or bodies acting on their behalf or in conjunction with them. Those bodies are *inter alia,* it claims, the National Union and Bovec.

18 The French Government has however maintained that Bovec is a private undertaking and subsidiary of an American company, and that information has not been contradicted by the Commission. It follows that the number of importers active in the market in semen intended for the artificial insemination of cattle is not confined to insemination centres and to the National Union since a private commercial undertaking which is independent of them is also an importer. In those circumstances the facts do not allow the conclusion to be drawn that all the insemination centres and the National Union constitute a "body" through which the French Republic controls, directs and appreciably influences imports between the Member States.

19 Since the Commission has relied exclusively on the practice followed by the Minister for Agriculture in relation to the grant of import licences to claim

that Article 37 of the Treaty has been infringed, it follows from the aforegoing considerations that such infringement has not been established.

20 The second claim in the action is based on Article 2 of Directive No 77/504 which provides that the Member States shall ensure that intra-Community trade in the semen and embryos of pure-bred breeding animals of the bovine species shall not be prohibited, restricted or impeded on zootechnical grounds.

21 The French Government has cited Article 3 of the directive to refute that submission, According to that provision, until the entry into force of Community provisions for the approval of pure-bred breeding animals of the bovine species for breeding, the approval of bulls to be used for artificial insemination as well as the use of semen and embryos are to remain subject to national law, on the understanding that that law may not be more restrictive than that applicable to pure-bred breeding animals of the bovine species, semen and embryos in the Member State of destination.

22 It must be observed that the Commission's submission, placed in the context of the aforesaid provisions of Articles 2 and 3 of the directive, amount to arguing that the restrictions or impediments to intra-Community trade in semen for zootechnical reasons, as prohibited by Article 2, imply the application by a Member State to imported semen of the zootechnical rules provided by its national law for the use of semen within its territory.

23 That view is not compatible with the provisions of Article 3, namely that the use of semen is to remain subject to national law and conflicts in particular with the provision at the end of that article to the effect that a Member State may not apply to semen imported from another Member State a stricter system than that applicable to sperm produced and used in its own territory. It follows that the directive accepts the diversity of the existing rules and in the event of intra-Community trade allows the rules applicable to the use of semen in the State in which the semen is to be used to prevail.

24 As a result the French Republic has not infringed Directive No 77/504 by subjecting the grant of import licences for semen intended for the artificial insemination of cattle to the zootechnical requirements provided for by French legislation and applicable without distinction to imported semen and that produced in the national territory.

25 It follows that the action must be dismissed.

Costs

26 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

Mertens de Wilmars O'Keeffe Everling Mackenzie Stuart
Bosco Koopmans Due Bahlmann Galmot

Delivered in open court in Luxembourg on 28 June 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President