JUDGMENT OF THE COURT (Fifth Chamber)
22 May 2003 *

In Case C-393/01,

French Republic, represented initially by R. Abraham, G. de Bergues and R. Loosli-Surrans, and, subsequently, by R. Loosli-Surrans, G. de Bergues and F. Alabrune, acting as Agents, with an address for service in Luxembourg,

applicant

v

Commission of the European Communities, represented by D. Booß and G. Berscheid, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

supported by

Portuguese Republic, represented by L. Fernandes, acting as Agent, with an address for service in Luxembourg,

United Kingdom of Great Britain and Northern Ireland, represented by J.E. Collins, acting as Agent,

interveners,

APPLICATION for annulment of Commission Decision 2001/577/EC of 25 July 2001 setting the date on which dispatch from Portugal of bovine products under the Date-Based Export Scheme may commence by virtue of Article 22(2) of Decision 2001/376/EC (OJ 2001 L 203, p. 27),

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, A. La Pergola, S. von Bahr and A. Rosas (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 21 November 2002,

after hearing the Opinion of the Advocate General at the sitting on 30 January 2003,

gives the following

Judgment

1 By application received by fax at the Court Registry on 8 October 2001, and lodged and registered at the Registry on 10 October 2001, the French Republic brought an action under Article 230 EC for annulment of Commission Decision 2001/577/EC of 25 July 2001 setting the date on which dispatch from Portugal of bovine products under the Date-Based Export Scheme may commence by virtue of Article 22(2) of Decision 2001/376/EC (OJ 2001 L 203, p. 27; 'the contested decision').

Legal background

2 Article 4 of Commission Decision 98/653/EC of 18 November 1998 concerning emergency measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal (OJ 1998 L 311, p. 23) provides:

'Portugal shall ensure that until 1 August 1999 the following are not dispatched from its territory to other Member States or to third countries, when derived from bovine animals slaughtered in Portugal:

(a) meat;

(b) products which are liable to enter the human food or animal feed chains;

(c) materials which are destined for use in cosmetic or medicinal products or medical devices.'

3 That decision is based on the EC Treaty, on Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29), and in particular

Article 10(4) thereof, and on Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13).

4 Article 2 of Decision 98/653 also prohibits the export to other Member States or third countries of live bovine animals and bovine embryos, meat meal, bone meal, and meat-and-bone meal of mammalian origin.

5 Article 13 of Decision 98/653 provides, in particular, that the Portuguese Republic is to implement a programme to demonstrate effective compliance with all relevant Community legislation on identification and registration of animals, the notification of animal diseases and epidemio-surveillance for transmissible spongiform encephalopathy ('TSE') and with all other Community legislation to protect against bovine spongiform encephalopathy ('BSE'). That Member State was also required to adopt a programme to demonstrate effective compliance with Decision 98/653 and with the relevant national measures to protect against BSE.

6 Article 14 of Decision 98/653 requires the Portuguese Republic to send the Commission every four weeks a report on the application of the protective measures taken against TSEs in accordance with Community and national provisions and on the results of the programmes referred to in Article 13 of that decision. Article 15 of the decision also provides that the Commission is to carry out Community inspections on-the-spot in Portugal.

7 The ban on bovine products originating in Portugal was extended until 1 February 2000 by Commission Decision 1999/517/EC of 28 July 1999 amending Decision

98/653 (OJ 1999 L 197, p. 45), and then for an indefinite period by Commission Decision 2000/104/EC of 31 January 2000 amending Decision 98/653 (OJ 2000 L 29, p. 36).

8 The conditions for lifting that ban were laid down by Commission Decision 2001/376/EC of 18 April 2001 concerning measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal and implementing a date-based export scheme (OJ 2001 L 132, p. 17). That decision repealed Decision 98/653, but did however reproduce some of its provisions.

9 The 7th, 8th, 9th, 10th and 11th recitals in the preamble to Decision 2001/376 are worded as follows:

'(7) A ban on the use of specified risk materials in human food or animal feed was introduced in Portugal on 4 December 1998. The ban has been extended in accordance with Commission Decision 2000/418/EC of 29 June 2000 regulating the use of material presenting risks as regards transmissible spongiform encephalopathies [OJ 2000 L 158, p. 76], as amended by Decision 2001/2/EC [OJ 2001 L 1, p. 21].

(8) According to the national BSE eradication plan in place in Portugal, birth cohorts and offspring of BSE cases shall be slaughtered and destroyed.

(9) A new centralised national system for identification and registration of bovine animals (SNIRB) was introduced in Portugal as of 1 July 1999.

(10) Portugal presented its first request for a date-based export scheme with a view to permitting, subject to certain conditions, the dispatch of products from animals born after a certain date, to the Commission on 3 December 1999. These technical proposals were subsequently amended and supplemented on 18 February, 24 March, 27 July and 22 September. The amended and supplemented proposals provide a suitable framework for allowing the dispatch and export of products derived from bovine animals slaughtered in Portugal.

(11) The measures for implementation of the export scheme and the offspring cull will be examined by the Food and Veterinary Office of the Commission before the dispatch of meat and meat products may commence. If that examination is satisfactory the Commission will set the date on which dispatch may commence.'

10 Article 2 of Decision 2001/376 renews the ban on the export of, *inter alia*, meat-and-bone meal of mammalian origin. Article 5 of that decision provides, however, that Portugal may authorise the dispatch of such material for the purpose of incineration to other Member States which have given their authorisation. Member States of destination are to ensure that that material is incinerated in accordance with Annex II to the decision.

11 Article 6 of Decision 2001/376 maintains the ban on the export of meat, products which are liable to enter the human food or animal feed chains and materials which are destined for use in cosmetic or medicinal products or medical devices.

12 Article 7 of that decision provides, however, that the Portuguese Republic may authorise the dispatch from its territory to other Member States or to non-member countries of amino acids, peptides and tallow, produced in establishments under official veterinary supervision.

13 Article 11(1) of Decision 2001/376 states that by way of derogation from Article 6 of that decision the Portuguese Republic may authorise the dispatch of meat and products to other Member States or to non-member countries in accordance with the conditions laid down in various articles of the decision and in Annex IV thereto, headed 'Date-Based Export Scheme (DBES)'. Article 11(1) to (4) of the decision lays down specific conditions relating to slaughterhouses, cutting plants, storage and transport of meat.

14 Article 12 of that decision provides that meat and products exported under the DBES must be identified by an additional distinct mark.

15 Annex IV to Decision 2001/376 sets out the general conditions of the DBES and determines which animals are eligible for that scheme. It lays down various specific measures such as controls prior to slaughter, slaughter of eligible animals only in slaughterhouses which are not used for slaughter of ineligible animals, control of the cutting of meat, and conditions concerning the traceability and identification of eligible carcases.

16 Article 20 of Decision 2001/376 reproduces the wording of Article 14 of Decision 98/653 regarding the reports which the Portuguese authorities must submit to the Commission at regular intervals.

17 Article 21 of Decision 2001/376 states:

'The Commission shall carry out Community inspections on-the-spot:

(a) in Portugal to verify the implementation of official controls in respect of each of the products referred to in Articles 7 and 8 before the dispatch of these products may commence or recommence;

(b) in Portugal to verify the [application] of the provisions in Articles 11 and 12 and Annex IV before the dispatch of the products referred to in Article 11 may commence;

(c) in Portugal to verify the application of the provisions of this decision, in particular in relation to the implementation of official controls;

(d) in Portugal to examine the development of the incidence of the disease, the effective enforcement of the relevant national measures and to conduct a risk assessment demonstrating whether appropriate measures to manage any risk have been taken;

(e) in the Member State of destination to verify the application, as appropriate, of the provisions in Article 5 and Annex II before the dispatch of the material referred to in Article 5 may commence.'

18 Article 22(2) of Decision 2001/376 is worded as follows:

'The dates on which the dispatch of material and products may commence or recommence pursuant to Articles 5, 7 and 11 shall be determined by the Commission taking account of the inspections referred to in Article 21 and after having informed the Member States.'

The contested decision

19 Pursuant to Article 22(2) of Decision 2001/376, by the contested decision the Commission set 1 August 2001 as the date for recommencement of the export of the bovine products referred to in Article 11 of Decision 2001/376.

20 The second and third recitals in the preamble to the contested decision state as follows:

'(2) Inspections carried out by the Commission services in Portugal from 14 to 18 May and 25 to 27 June 2001, in particular to assess the system of veterinary checks pursuant to Articles 11 and 12 and Annex IV to Decision 2001/376/EC, have shown that the conditions are complied with satisfactorily.

(3) The Commission has presented the results of the inspections and the consequences it draws from them to the Member States convened in the Standing Veterinary Committee. The Commission has received from Portugal guarantees on the full application and effective enforcement of Community

legislation on surveillance for and eradication of TSEs, in addition to those guarantees requested by the report of the Food and Veterinary Office.'

Procedure before the Court

21 By orders of the President of the Court of 1 March and 8 March 2002, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland respectively were granted leave to intervene in support of the form of order sought by the Commission.

The action

22 The French Government raises two pleas in law in support of its action. The first plea alleges infringement of Articles 21 and 22 of Decision 2001/376 and manifest error of assessment. The second alleges infringement of the precautionary principle as a result of poor risk management.

First plea

Arguments of the parties

23 The French Government submits that the Commission adopted the contested decision in breach of Article 21, in conjunction with Article 22, of Decision

2001/376 by not ensuring, before the date for lifting the ban was set, the effective implementation of the system for preventing BSE in Portugal, as required by that decision.

24 In addition, the Commission manifestly erred in its assessment by taking the view that the inspections carried out in Portugal had established that the conditions laid down in Decision 2001/376 for lifting the ban were met.

25 According to the French Government, the wording of Article 22(2) of Decision 2001/376, which provides that the dates on which the dispatch of material and products from Portugal may commence or recommence are to be determined by the Commission 'taking account of the inspections referred to in Article 21' of that decision, relates to all the inspections referred to in that article. According to that government, Article 21(c) and (d), which concern inspections of a general nature, cannot be separated from Article 21(b), which is more specifically related to the DBES. In that connection, it makes reference to the statement of reasons on which Decision 2001/376 is based: first, the eighth recital of the decision, which recalls that the national BSE eradication plan is a prerequisite for the implementation of the DBES, then the ninth recital, which recalls in addition that the system for identification and registration of bovine animals is a prerequisite for the design and application of that scheme, and finally the eleventh recital of that decision, which requires the Food and Veterinary Office ('the FVO') to examine both the measures for implementation of the export scheme and the measures for the offspring cull and states that only if that examination is satisfactory will the Commission set the date on which dispatch may commence.

26 The French Government submits that, prior to adopting the contested decision, the Commission did not in fact carry out the necessary checks required under Article 21 of Decision 2001/376. In that regard, it states that the last FVO inspection report to be submitted before the contested decision was adopted was

the report of 19 July 2001 relating to the mission carried out in Portugal from 25 to 27 June 2001. That report found that it remained necessary for the competent authorities to adopt a draft decree and issue a circular containing the 'DBES manual' and recommended that no establishment other than slaughterhouses and cutting plants processing only DBES beef be approved before inspection by the FVO, which means that, contrary to the provisions of Article 21(c) of Decision 2001/376, 'the implementation of official controls' had not been verified and that, contrary to the requirements of Article 21(d), 'the effective enforcement of the relevant national measures' had not been ensured.

27 The legislative decree, which was not approved until 12 July 2001, and the DBES manual, which was submitted to the Portuguese Minister for Agriculture on 14 July 2001, were, in particular, intended to establish a procedure for the identification and traceability of bovine products in Portugal. The efficacy of that procedure could not therefore have been verified at the date on which the contested decision was adopted, nor indeed at the date set for the partial lifting of the ban.

28 More specifically, the French Government draws attention to the existence of a letter sent on 11 June 2001 by the Commission to the Portuguese authorities, which clearly shows that the DBES was not yet applied at that date and reveals numerous weaknesses in the system of traceability before and after slaughter and in the system for keeping separate the channels for eligible and ineligible products, and the absence of any alarm plan should an animal associated with risk be identified.

29 In that regard, it submits that the report of the mission carried out by the FVO from 25 to 27 June 2001 simply recalls the conditions of the DBES which had to be formalised in the draft legislative decree and the DBES manual, and does not contain anything to show that the points of non-compliance noted in the letter of

11 June 2001 resulted in specific corrective measures, in particular in respect of the rules on backwards and forwards traceability.

30 The Commission disputes the French Government's interpretation of Articles 21 and 22 of Decision 2001/376. Article 22(2) refers to three distinct schemes and cannot be interpreted as meaning that all the provisions of Article 21 apply to each of the three specific schemes. Only Article 21(b) has a direct link to the DBES. Article 21(a) and (e) concern matters which are expressly beyond the scope of that scheme. The provisions of Article 21(c) and (d) are taken verbatim from Article 15 of Decision 98/653, which instituted the ban on bovine products originating in Portugal, and do not have any direct link to the DBES.

31 The Commission therefore considers that the matters referred to in Article 21 of Decision 2001/376 had to be taken into account to varying degrees. It had to take account of all the inspections carried out since Decision 98/653 and to check rigorously whether the inspections referred to in Article 21(b) of Decision 2001/376 had been carried out and supported the conclusion that the situation in Portugal provided all the necessary guarantees. It considers that those two requirements, which do not bind it to the same extent, were met when it decided to set a date for the recommencement of dispatches under the DBES.

32 As regards the inspections and assessments carried out pursuant to Article 15 of Decision 98/653, the provisions of which are reproduced in Article 21(c) and (d) of Decision 2001/376, the Commission submits that the contested decision was the culmination of intense cooperation between its services and the Portuguese Government, in the course of which a large number of missions were carried out. The reports of those missions — to which the Commission makes reference — can be found on its internet site. The checks referred to in Article 21(c) and (d) were thus carried out throughout the entire duration of the ban and were accordingly taken into account in deciding on the date for the lifting of the ban.

33 The Commission draws attention, however, to the specific nature of the DBES, which is based on the individual status of the eligible animals and, in particular, on the traceability of each of those animals.

34 As regards the inspection required under Article 21(b) of Decision 2001/376, the Commission submits that the conclusions of the report of the mission carried out by the FVO from 25 to 27 June 2001 were generally favourable to the lifting of the ban, particularly as regards the effectiveness with which the procedures had been implemented. The only negative point raised in that report was the incomplete nature of the applicable legal provisions. The legislative decree published on 31 July 2001 was approved by the Portuguese Council of Ministers on 12 July 2001, countersigned by the Prime Minister on 23 July 2001 and promulgated by the President of the Republic on 29 July 2001. It came into force on 1 August 2001. The DBES manual was approved by the Secretary of State for Agriculture on 13 July 2001. The Portuguese system was thus in place, albeit not completely formalised, on the date when the contested decision was adopted, and the Commission considers that it met all the supervisory obligations imposed on it by Community law.

35 According to the Commission, the letter of 11 June 2001 referred to by the French Government merely pointed out certain residual problems. The FVO mission confirmed that on the basis of that letter the Portuguese authorities found solutions to each of the points it raised. In particular, the Portuguese Government responded to the problems of traceability raised by the Commission and that response was assessed by the FVO well before the date for the recommencement of exports was set.

36 The Commission accepts that the FVO did not verify the actual operation of the DBES in the establishment visited, but it points out that such a verification was, in practice, impossible at a time when the authorisation to recommence exports had not yet been granted and the system could not be ready to function correctly.

37 In its statement in intervention, the Portuguese Government sets out the steps taken since 1999 to implement the DBES. All the eligibility procedures for farms and animals under that scheme were evaluated during a Community mission carried out in May 2001. Those procedures were found to be adequate and, in a number of cases, had been improved. The implementation of the DBES was evaluated during the mission which took place from 25 to 27 June 2001. That mission concluded that, with the mere exception of the adoption of the final version of the DBES manual and the publication of the applicable legislation, the requirements of Decision 2001/376 had been met.

38 The Portuguese Government submits that the conclusions of the report of that mission were presented to the Standing Veterinary Committee by the Commission and the FVO on 11 July 2001. The inspectors set out in detail the measures adopted by the Portuguese authorities, without raising any reaction at all from the Member States. The committee was not informed of the specific date on which the contested decision was to take effect since the Commission had not yet come to the end of the internal procedure for adoption of that decision. However, after the committee's consent had been obtained, 1 August 2001 was the date initially given. The Portuguese Government submits that all the required guarantees had been provided, both by its permanent representative to the European Union and by the Portuguese Directorate-General for Veterinary Affairs, and that both the data and the content of the documents required were known to all the parties. The process which led to adoption of the contested decision took place in close collaboration with the competent bodies, the Commission and the sole establishment authorised to apply the DBES. The Portuguese Government is therefore surprised by the action brought by the French Republic and by the plea raised.

39 The United Kingdom Government did not lodge a statement in intervention.

Findings of the Court

40 As a preliminary point, it should be noted that Decisions 2001/376 and 2001/577 are based, *inter alia*, on Directive 89/662 which authorises the Commission to adopt interim protective measures on serious public-health or animal-health grounds.

41 In that regard, it should be recalled that the first paragraph of Article 152(1) EC provides that a high level of human health protection must be ensured in the definition and implementation of all Community policies and activities.

42 On several occasions the Court has drawn attention to the reality and the seriousness of the risks associated with BSE and the appropriateness of interim protective measures justified on the ground of protection of human health in the light of that disease, whether in respect of measures adopted by the Commission (the order in Case C-180/96 R *United Kingdom* v *Commission* [1996] ECR I-3903, and the judgments in Case C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265, and Case C-365/99 *Portugal* v *Commission* [2001] ECR I-5645) or by a Member State (Case C-428/99 *Van den Bor* [2002] ECR I-127, paragraph 40).

43 It is in the light of those factors that it is appropriate to examine the present action, which seeks to establish whether on the date of the contested decision the Commission was confident that adequate safety in the operation of the DBES had been achieved and that the conditions for lifting the ban on the export of bovine products originating in Portugal were accordingly met.

44 In order to do that, the Court must first identify the inspections which the Commission had to carry out before setting the date for recommencement of exports of the products referred to in Article 11 of Decision 2001/376, and the purpose of those inspections.

45 Article 22(2) of Decision 2001/376 states that the date is to be determined by the Commission 'taking account of the inspections referred to in Article 21' of that decision.

46 Article 21 of Decision 2001/376 provides for five types of Community inspections. The inspection referred to in Article 21(b) relates specifically to the products referred to in Article 11 of that decision and, indeed, it is undisputed that the Commission had to carry out that inspection. The inspections referred to in Article 21(a) and (e) concern different products from those referred to in Article 11 and it is clear that they need not be taken into consideration in respect of the recommencement of exports of the latter products.

47 The inspections referred to in Article 21(c) and (d) are more general in nature and were already provided for in Article 15 of Decision 98/653. It is in particular in the course of those more general inspections that compliance with the prohibition on meat meal, bone meal and meat-and-bone meal in animal feed and the proper operation of the systems for identification and traceability of bovine animals can be checked.

48 Even though the DBES is based on the individual status of eligible animals, compliance with the prohibition on meat meal, bone meal and meat-and-bone meal and the proper operation of the animal identification and traceability systems, in particular, remain essential to ensuring the safety required of that scheme. It is of no use for an animal to be individually identified as eligible if meat meal, bone meal and meat-and-bone meal continue to be consumed in the

Member State concerned or if the database which supplies the identity and the traceability of the animal contains a significant proportion of errors or is not regularly updated.

49 Consequently, even assuming that, as the Commission maintains, the matters referred to in Article 21(b), (c) and (d) of Decision 2001/376 could have been taken into account to varying degrees, the Commission was not permitted to confine itself to the inspection referred to in Article 21(b) before setting the date for recommencement of exports of the products referred to in Article 11 of that decision, but had also to carry out the inspections provided for in Article 21(c) and (d), at least in respect of the elements essential to the safety of the DBES.

50 As regards the purpose of those inspections, it should be noted, as the Advocate General pointed out in point 96 of his Opinion, that, as is made clear in Article 21 of Decision 2001/376, the purpose of those inspections is not merely to verify whether laws or regulations have been adopted or are adequate, but also to ensure the 'application' (Article 21(b) and (c)) or the 'effective enforcement' (Article 21(d)) of those and other applicable provisions.

51 In that regard, it should first be noted that the very wording of the third recital in the preamble to the contested decision shows that the Commission did not itself verify the full application and enforcement of Community legislation on surveillance for and eradication of TSEs, but merely relied on the guarantees provided by the Portuguese authorities.

52 Second, on the date when the contested decision was adopted, it was impossible for the Commission to verify whether any national legislation on the DBES, which met the requirements of that scheme, had been adopted, since the

legislative decree was not promulgated by the President of the Republic or published until after the adoption of that decision.

53 Finally, as regards the DBES manual, whose effective implementation in the establishment applying for an approval for the treatment of products covered by the DBES was supposed to be verified by the mission carried out by the FVO from 25 to 27 June 2001, it need only be observed that the Commission has never verified its adoption by the Portuguese authorities and was not able to produce the manual at the hearing, with the result that the Court still does not know the date on which that manual was adopted, nor even whether it has in fact been adopted.

54 It was acknowledged at the hearing that the experts who, as part of the FVO's mission, went to the establishment applying for approval, visited a slaughter-house without animals subject to the DBES and a cutting plant without meat covered by that scheme. As is clear from the manner in which the mission report was written, those experts could do nothing more than reiterate the DBES requirements at the various stages of the treatment of animals and meat.

55 It follows from the foregoing that the Commission evidently did not carry out the verifications required under Article 21(b) of Decision 2001/376.

56 As regards the more general inspections relating to BSE, referred to in Article 21(c) and (d), the purpose of the mission carried out by the FVO from 14 to 18 May 2001 was, in particular, to check compliance with the Community provisions relating to the ban on using meat meal, bone meal and meat-and-bone meal in animal feed. However, in point 6.2 of the report of that mission the experts stated, *inter alia*, that the relevant Community legislation had not been transposed into national law, the relevant national law still allowed the

incorporation of processed animal proteins into non-ruminant feed, and the understaffing of the competent authority meant that it was not possible adequately to verify compliance with the Community rules.

57 As regards the identification and traceability of bovine animals, it must be observed that the last FVO mission concerned with those matters before adoption of the contested decision took place from 6 to 10 November 2000. That mission was a follow-up to a previous mission, which took place from 13 to 17 March 2000 and which drew particularly negative conclusions in respect of the identification of bovine animals (unreliability of eartagging, significant proportion of errors in the computerised database SNIRB, delays in updating that database, inadequate crosschecking between the various identification systems, and so on).

58 In the conclusions of the report of the mission carried out from 6 to 10 November 2000, the experts noted the remarkable efforts made by the Portuguese authorities to address the recommendations of the previous mission. They nevertheless concluded in point 6.3 of their report that the implementation of the controls in practice was still completely unsatisfactory. In addition, they considered that the situation as regards the number of errors in the SNIRB database had deteriorated (point 6.4 of the report). The traceability of an animal's offspring remained unsatisfactory (point 6.5 of the report).

59 It follows from the foregoing that, on the date the contested decision was adopted, the verifications carried out by the Commission in application of Article 21(c) and (d) of Decision 2001/376 were not sufficient toestablish that the Portuguese Republic had correctly applied and effectively enforced the Commu-

nity and national provisions designed to ensure compliance with the elements essential to the safety of the DBES.

60 Therefore in adopting the contested decision without first carrying out the verifications required so as to ensure adequate safety in the operation of the DBES applicable to the products referred to in Article 11 of Decision 2001/376, the Commission has infringed Article 21, in conjunction with Article 22, of that decision.

61 It follows that the contested decision must be annulled.

Second plea

62 Since the first plea raised by the French Republic in support of its action is well founded, there is no need to consider its second plea.

Costs

63 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the French Republic has applied for the Commission to be ordered to pay the costs and the Commission has been unsuccessful, it must be ordered to pay the costs. Under Article 69(4) of those Rules, Member States and institutions which intervene in proceedings are to bear their own costs. Therefore the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland must be ordered to bear their own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Annuls Commission Decision 2001/577/EC of 25 July 2001 setting the date on which dispatch from Portugal of bovine products under the Date-Based Export Scheme may commence by virtue of Article 22(2) of Decision 2001/376/EC;**

2. **Orders the Commission to pay the costs;**

3. **Orders the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

Wathelet Timmermans La Pergola

von Bahr Rosas

Delivered in open court in Luxembourg on 22 May 2003.

R. Grass — Registrar

M. Wathelet — President of the Fifth Chamber