ORDER OF THE COURT
12 October 1988 *

In Case 34/88

(1) **Coopérative agricole de l'Anjou et du Poitou (Cevap),** whose registered office is in Saint-Laurent-sur-Sèvre (Vendée),

(2) **Société Spanghero,** whose registered office is in Castelnaudary,

(3) **Société coopérative agricole des producteurs de viande (Caveb),** whose registered office is in Chatillon-sur-Thouet, Partenay,

(4) **Société Loirelvo,** whose registered office is in La-Croix-de-Pierre/Begrolles-en-Mauges,

(5) **Société Sovimaine,** whose registered office is in Champagne,

(6) **Société coopérative des éleveurs de veaux d'Armorique (Coop EVA),** whose registered office is in Landivisiau,

(7) **Coopérative des producteurs de bovins de la Creuse,** whose registered office is in Jarnages, Gare de Parsac,

(8) **Société Bridel,** whose registered office is in Chateaubriand,

(9) **Joseph Flourez,** residing in Lescure, Saint-Pardoux-la-Rivière,

(10) **Michel Leblond,** residing in Villereal, Le Grand Malbos/Le Rayet,

(11) **Gérard Couteau,** residing in Chalabre, Sainte-Colombe-sur-l'Hers,

(12) **Jean-Pierre Bayssette,** residing in Labruguière, Le Gua,

(13) **Gilbert Lhaumond,** residing in Sarlat, Marcillac-Quentin,

* Language of the Case: French.

all represented by Messrs Dubos-Pelissié-Prunier and Marie-Christine Hervé-Porchy, of the Rouen Bar, with an address for service in Luxembourg at the Chambers of Marc Baden, 24, rue Marie-Adélaïde,

applicants,

v

Council of the European Communities, represented by Jacques Delmoly, Principal Administrator in its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100, boulevard Konrad-Adenauer, Kirchberg,

defendant,

supported by

Commission of the European Communities, represented by its Legal Advisers Claire Durand and Gianluigi Campogrande, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

intervener,

APPLICATION for a declaration that Council Decision 87/561/EEC of 18 November 1987 on transitional measures concerning the prohibition on administration to farm animals of certain substances having a hormonal action is void,

THE COURT

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

Advocate General: C. O. Lenz
Registrar: J.-G. Giraud

after hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 29 January 1988, the coopérative agricole de l'Anjou et du Poitou (Cevap) and Others brought an action pursuant to the second paragraph of Article 173 of the EEC Treaty for a declaration that Council Decision 87/561/EEC of 18 November 1987 on transitional measures concerning the prohibition on administration to farm animals of certain substances having a hormonal action (Official Journal 1987, L 339, p. 70) is void.

2 By an order of 27 April 1988 the Commission was given leave to intervene, pursuant to the first paragraph of Article 37 of the Statute of the Court of Justice of the EEC, in support of the conclusions of the Council (the defendant).

3 By a document lodged at the Court Registry on 4 March 1988 the Council raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure and requested the Court to rule on that objection without examining the substance of the case.

4 Council Directive 85/649/EEC of 31 December 1985 prohibiting the use in livestock farming of certain substances having a hormonal action (Official Journal 1985, L 382, p. 228), which laid down the principle of an absolute prohibition on the administration of substances having a hormonal action, was to be transposed by the Member States into their national legal systems by 1 January 1988 at the latest. On 18 November 1987, following a proposal from the Commission, the Council adopted the decision in issue with a view to avoiding any sudden termination of the possibility of disposing, on the internal market, of animals not yet slaughtered by that date to which hormones had been lawfully administered, and of the meat of such animals not completely disposed of by that date.

5 Article 1 (3) of Council Decision 87/561/EEC confirms that for new production the system of absolute prohibition introduced by Council Directive 85/649 is applicable from 1 January 1988. As regards marketing of existing production, Article 1 (1) provides that Member States are to maintain until 31 December 1988 the arrangements resulting from the national provisions at present in force in respect of the placing on the market and access to intra-Community trade of that production, and specifies that that transitory measure is also applicable in respect of importation of such meat from third countries.

6 By a judgment of 23 February 1988 in Case 68/86 (*United Kingdom* v *Council* [1988] ECR 855), in proceedings brought by the United Kingdom of Great Britain and Northern Ireland pursuant to the first paragraph of Article 173 of the EEC Treaty, the Court declared Directive 85/649 void on the ground that by not following the procedure laid down in Article 6 (1) of its Rules of Procedure the Council had infringed an essential procedural requirement.

7 On 7 March 1988 the Council adopted Directive 88/146, which is identical in content to Directive 85/649. It declared that the Community provisions adopted on the basis of the directive which had been annulled were to be considered to have been adopted pursuant to the new directive.

8 In its application on the procedural issue the Council's main contention is that the applicants cannot be regarded as being concerned by the decision in question, which merely confirms in declaratory form the prohibition on the administration of hormones, the only aspect which might concern livestock farmers.

9 In the alternative, the Council contends that the applicants cannot be individually or directly concerned. The decision is by its nature general in scope; it enables Member States to maintain certain national provisions and applies in a general and abstract way.

10 The Commission also submits that since it does not identify any economic agent or defined group of such agents the decision does not concern the applicants individually.

11 The applicants did not submit observations on the objection of inadmissibility. In their application they claim that they are individually and directly concerned. The decision in issue, they say, was adopted after the number of animals concerned within the Community had been calculated, which could only be done after the producers had been determined and identified. Thus the number and identities of producers had been determined and could be verified. Moreover, the decision is directly applicable because the Member States were left with no discretion.

12 Pursuant to Article 91 (3) of the Rules of Procedure, the remainder of proceedings in respect of a preliminary objection are to be oral unless the Court decides otherwise. The Court considers that in this case it has sufficient information at its disposal and there is no need to open the oral procedure.

13 It should first be pointed out that under the second paragraph of Article 173 of the EEC Treaty any natural or legal person may institute proceedings against a decision which, although addressed to another person, is of direct and individual concern to the former.

14 The applicants are all producers of beef and veal, either as individuals or in cooperatives or firms. It is not necessary to examine whether they are directly concerned by the decision in issue; it must be held in any event that they are manifestly not concerned individually by that decision.

15 The Court has consistently held that for a person to be individually concerned, his legal position must be affected because of circumstances which distinguish him individually just as in the case of the person addressed. The decision in question does not concern the applicants except in their objective capacity as producers of beef and veal in the same way as any other economic agent in an identical situation.

16 Consequently the action must be declared inadmissible.

Costs

17 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions they must be ordered jointly and severally to pay the costs, including those of the Commission.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the applicants jointly and severally to pay the costs, including those of the Commission.

Luxembourg, 12 October 1988.

J.-G. Giraud
Registrar

O. Due
President