JUDGMENT OF THE COURT (Fifth Chamber)

8 January 2002 *

In Case C-428/99,

REFERENCE to the Court under Article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands) for a preliminary ruling in the proceedings pending before that court between

H. van den Bor BV

and

Voedselvoorzieningsin- en verkoopbureau

on the power of the Member States to compensate cattle farmers and determine the amount of compensation due following the slaughter of United Kingdom calves ordered during the bovine spongiform encephalopathy crisis in March 1996 and on the interpretation of Commission Regulation (EC) No 717/96 of 19 April 1996 adopting exceptional support measures for the beef and veal market in Belgium, France and the Netherlands (OJ 1996 L 99, p. 16), as amended by Commission Regulation (EC) No 841/96 of 7 May 1996 (OJ 1996 L 114, p. 18),

* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, L. Sevón (Rapporteur) and M. Wathelet, Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by M.A. Fierstra, acting as Agent,

— the Commission of the European Communities, by G. Berscheid and C. van der Hauwaert, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government, represented by J.G. van Bakel, acting as Agent, and the Commission, represented by G. Berscheid and T. van Rijn, acting as Agent, at the hearing on 4 October 2001,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2001,

gives the following

Judgment

1 By decision of 27 October 1999, received at the Court on 8 November 1999, the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) referred to the Court for a preliminary ruling under Article 234 EC three questions on the power of the Member States to compensate cattle farmers and determine the amount of compensation due following the slaughter of United Kingdom calves ordered during the bovine spongiform encephalopathy ('BSE') crisis in March 1996 and on the interpretation of Commission Regulation (EC) No 717/96 of 19 April 1996 adopting exceptional support measures for the beef and veal market in Belgium, France and the Netherlands (OJ 1996 L 99, p. 16), as amended by Commission Regulation (EC) No 841/96 of 7 May 1996 (OJ 1996 L 114, p. 18; 'Regulation No 717/96 as amended').

2 Those questions were raised in proceedings between H. van den Bor BV ('Van den Bor') and the Voedselvoorzieningsin- en verkoopbureau (Office for the Purchase and Sale of Foodstuffs; 'the VVB') concerning determination of the amount of compensation due to Van den Bor for the loss resulting from the obligation to slaughter United Kingdom calves.

Relevant provisions

Community legislation

3 Article 92 of the EC Treaty (now, after amendment, Article 87 EC) provides:

'1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

...

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

...

3. The following may be considered to be compatible with the common market:

...

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. ...

...'

4 Article 93(3) of the EC Treaty (now Article 88(3) EC) provides:

'The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.'

5 The 15th recital in the preamble to Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ,

English Special Edition 1968 (I), p. 187), as amended by Commission Regulation (EC) No 2417/95 of 13 October 1995 (OJ 1995 L 248, p. 39) ('Regulation No 805/68'), is worded as follows:

'the establishment of a single market based on a common price system would be jeopardised by the granting of certain aids;... therefore, the provisions of the Treaty which allow the assessment of aids granted by Member States and the prohibition of those which are incompatible with the common market should be made to apply to beef and veal'.

6 Article 23 of Regulation No 805/68, in the form following its amendment by Regulation (EEC) No 1261/71 of the Council of 15 June 1971 on exceptional measures to be taken in different agricultural sectors arising from health protection problems (OJ, English Special Edition 1971 (II), p. 377), states:

'In order to take account of the restrictions on free circulation which may result from the application of measures for combating the spread of diseases in animals, exceptional measures of support for the market affected by those restrictions may be taken in accordance with the procedure provided for in Article 27. Those measures may only be taken in so far as, and for as long as, is strictly necessary for the support of that market.'

7 Article 24 of Regulation No 805/68 provides:

'Save as otherwise provided in this Regulation, Articles 92, 93 and 94 of the Treaty shall apply to the production of and trade in the products listed in Article 1.'

8 Article 1 of Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community (OJ 1982 L 378, p. 58), as amended by Commission Decision 90/134/EEC of 6 March 1990 (OJ 1990 L 76, p. 23) ('Directive 82/894'), states that that directive is concerned with the notification of outbreaks of any of the diseases listed in Annex I thereto. BSE is among the diseases referred to in that annex.

9 Article 8(1)(a) of 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), as amended by Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425 (OJ 1993 L 62, p. 49) ('Directive 90/425'), is worded as follows:

'If, during a check carried out at the place of destination of a consignment or during transport, the competent authorities of a Member State establish:

(a) the presence of agents responsible for a disease referred to in Directive 82/894/EEC ..., as last amended by Commission Decision 90/134/EEC ..., a zoonosis or disease, or any cause likely to constitute a serious hazard to animals or humans, or that the products come from a region contaminated by an epizootic disease, they shall order that the animal or consignment of animals be put in quarantine at the nearest quarantine station or slaughtered and/or destroyed.

Costs relating to the measures provided for in the first subparagraph shall be borne by the consignor or his representative or the person responsible for the products or animals.

The competent authorities of the Member State of destination shall immediately notify the competent authorities of the other Member States and the Commission in writing, by the most appropriate means, of the findings arrived at, the decisions taken and the reasons for such decisions.

The protective measures provided for in Article 10 may be applied.

...'

10 Article 10(1) and (4) of Directive 90/425 provides:

'1. Each Member State shall immediately notify the other Member States and the Commission of any outbreak in its territory, in addition to an outbreak of diseases referred to in Directive 82/894/EEC, of any zoonoses, diseases or other cause likely to constitute a serious hazard to animals or to human health.

The Member State of dispatch shall immediately implement the control or precautionary measures provided for in Community rules, in particular the determination of the buffer zones provided for in those rules, or adopt any other measure which it deems appropriate.

The Member State of destination or transit which, in the course of a check referred to in Article 5, has established the existence of one of the diseases or causes referred to in the first subparagraph may, if necessary, take the precautionary measures provided for in Community rules, including the quarantining of the animals.

Pending the measures to be taken in accordance with paragraph 4, the Member State of destination may, on serious public or animal health grounds, take interim protective measures with regard to the holdings, centres or organisations concerned or, in the case of an epizootic disease, with regard to the buffer zone provided for in Community rules.

The measures taken by Member States shall be notified to the Commission and to the other Member States without delay.

...

4. The Commission shall in all cases review the situation in the Standing Veterinary Committee at the earliest opportunity. It shall adopt the necessary measures for the animals and products referred to in Article 1 and, if the situation so requires, for the products derived from those animals, in accordance with the procedure laid down in Article 17. The Commission shall monitor the situation and, by the same procedure, shall amend or repeal the decisions taken, depending on how the situation develops.'

11 Following the adoption of Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 78, p. 47), the Commission adopted Regulation No 717/96.

12 Regulation No 717/96 is stated to be based on Regulation No 805/68, in particular Article 23 thereof.

13 Article 7 of Regulation No 717/96 provides that the regulation is to enter into force on the day of its publication in the *Official Journal of the European Communities* and is to be applicable from 11 April 1996.

14 According to the first recital in the preamble to Regulation No 717/96, the possibility that calves born in the United Kingdom of Great Britain and Northern Ireland and exported to other Member States for fattening prior to the introduction of the export ban could enter the human food or animal feed chains had led to a lack of consumer confidence in beef and a disturbance of the markets in Belgium, France and the Netherlands; it was therefore necessary to take exceptional measures to support those markets.

15 As originally drafted, Article 1(1) of Regulation No 717/96 provided:

'The competent authorities in Belgium, France and the Netherlands shall be authorised to purchase any bovine animal aged six months or less on 20 March 1996 and present on that date on a holding located in the territory of Belgium, France or the Netherlands respectively presented to them by any producer, which can be proved by him to have been born in the United Kingdom.'

16 Regulation No 841/96 replaced that provision with effect from the date upon which Regulation No 717/96 first applied. Article 1(1) of Regulation No 717/96 as amended provides:

'The competent authorities in Belgium, France and the Netherlands shall be authorised to purchase any bovine animal born on or after 1 September 1995 and present on 20 March 1996 on a holding located in the territory of Belgium, France or the Netherlands respectively presented to them by any producer, which can be proved by him to have been born in the United Kingdom.'

17 In accordance with Article 2(1) of Regulation No 717/96 as amended, the price to be paid for animals purchased under Article 1 of that regulation by the competent authority of the Member State concerned is ECU 2.8 per kilogram live weight. Article 2(2) states that the Community is to co-finance the purchase price paid by the Member State concerned for each purchased animal which has been destroyed in accordance with Article 1, at a rate of 70%.

18 Article 6 of Regulation No 717/96 as amended states that 'the measures taken under this Regulation shall be considered to be intervention measures within the meaning of Article 1(2) of Regulation (EEC) No 729/70'.

National legislation

19 In response to information concerning a possible link between BSE and Creutzfeldt-Jakob disease in humans and to the BSE crisis in the United Kingdom, the Kingdom of the Netherlands adopted, as early as 23 March 1996,

more stringent measures regarding cattle, beef, veal and other products derived from cattle originating from the United Kingdom. In particular, it ordered that such cattle should not be moved.

20 A regulation of 3 April 1996, adopted by the Minister for Agriculture, Nature Management and Fisheries acting jointly with the State Secretary for Health, Welfare and Sport, provided *inter alia* for the slaughter of calves imported from the United Kingdom.

21 The Regeling tegemoetkoming schade kalvereigenaren BSE 1996 (1996 BSE Regulation covering the losses of owners of calves; 'the compensation regulation') was also adopted on 3 April 1996 and entered into force on 9 April 1996. Article 4 stated:

'The amount of compensation shall be the commercial value of the calves prior to their removal from the holding where they were kept.'

22 Under the compensation regulation, the calves' value was determined by an expert.

23 Article 4 of the compensation regulation was amended as follows, from 17 April 1996, by a regulation of 16 April 1996:

'The amount of compensation shall be the commercial value of the calves prior to their removal from the holding where they were kept, subject to the proviso that,

as soon as an amount for compensation is determined under European legislation, that amount shall apply.'

24 On 26 April 1996, the Minister for Agriculture, Nature Management and Fisheries again amended the compensation regulation, with retroactive effect from the date upon which Regulation No 717/96 first applied, that is to say 11 April 1996. Thus amended, the regulation, whose title became 'Regeling vergoeding kalvereigenaren BSE 1996' (1996 BSE Regulation compensating owners of calves), provides in Article 4:

'Compensation shall amount to ECU 2.8 per kilogram live weight and shall be calculated in accordance with Article 2(1) of Commission Regulation (EC) No 717/96 adopting exceptional support measures for the beef and veal market in Belgium, France and the Netherlands (OJ 1996 L 99).'

The main proceedings and the questions referred for a preliminary ruling

25 On 19 April 1996, the area director of the Rijksdienst voor de keuring van Vee en Vlees (Livestock and Meat Inspectorate) drew up a statement ('the statement') setting a value of NLG 619 001.25 for the calves belonging to Van den Bor which were to be slaughtered. The expert instructed to carry out the valuation and Van den Bor's representative also signed the statement.

26 On 4 June 1996, the VVB sent a confirmation of purchase to Van den Bor. By that document it confirmed that on 25 April 1996 it had taken away 554 calves with a live weight of 96 020 kilograms, at the price of NLG 5.99 per kilogram live weight, excluding value added tax.

27 Van den Bor sent back a copy of the confirmation of purchase upon which it set out objections to the compensation as determined.

28 On 3 February 1997, the VVB adopted a decision by which it rejected Van den Bor's complaint contesting the amount of compensation determined on 4 June 1996. In the decision it stated, in particular, that:

— at the time when the statement was drawn up, the system of compensation had already been altered;

— the compensation accorded with the legislation in force, in that it was based not on the value determined by the expert but on the number of kilograms of live weight bought in multiplied by the price per kilogram of live weight, that is to say ECU 2.8, or NLG 5.99;

— significance could no longer be attached to the statement in view of the European and national legislation, as amended.

29 Van den Bor brought an action for annulment of the VVB's decision of 3 February 1997 before the College van Beroep voor het bedrijfsleven.

30 That court decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Was the Netherlands Minister for Agriculture, Nature Management and Fisheries authorised, pending enactment of Community rules in the matter, to adopt national rules enabling compensation to be paid in respect of loss suffered by the person concerned as a result of the slaughter of British calves, as occurred in the case of the decisions by the abovementioned Minister of 3 April 1996?

(2) If the answer to Question 1 is in the negative, does Community law preclude the honouring of the expectation raised by a decision under the abovementioned national rules that a specified amount of compensation will be paid, which if solely national law were applicable, would have to be regarded as justified?

(3) If Question 1 is answered in the affirmative, does Community law, and in particular Regulation No 717/96, preclude the compensation to the appellant from being determined in accordance with the abovementioned national rules?'

Question 1

31 By its first question, the College van Beroep voor het bedrijfsleven essentially asks whether the Community provisions applicable to the common agricultural policy in the beef and veal sector are to be interpreted as meaning that, in response to information concerning a possible link between BSE and Creutzfeldt-Jakob

disease in humans and to the BSE crisis in the United Kingdom, the Member States were entitled to order the slaughter of young bovine animals originating from the United Kingdom present in their territory and to prescribe the compensation payable to farmers suffering loss following that measure.

Observations submitted to the Court

32 The Netherlands Government submits that the Kingdom of the Netherlands was entitled, on the basis of Article 10 of Directive 90/425, to promulgate the body of national provisions at issue in the main proceedings, including those relating to compensation. Compensation was necessary in order to prevent farmers from being tempted to evade the obligation to have their animals slaughtered. It states that the text of the compensation provisions was sent to the Commission by letter of 9 April 1996 and takes the lack of reaction on the part of the Commission to that letter to mean that it had no objection to the basis for the purchase rules or to their content in the version applicable before Regulation No 717/96 was adopted.

33 The Commission contends, by contrast, that the Netherlands authorities lacked the power to adopt what it describes as a national intervention measure intended to support price levels in the national beef and veal market by granting financial aid to Netherlands owners of calves. The power to adopt such measures is specifically conferred on the Commission by Article 23 of Regulation No 805/68.

34 The Commission also points out that, under Article 24 of that regulation, the State aid rules are in principle applicable to the beef and veal sector. Sums paid to owners of calves pursuant to the compensation regulation, as amended on 16 April 1996, must be regarded as State aid for the purpose of Article 92(1) of

the Treaty. Since that national legislation was not notified to the Commission under Article 93(3) of the Treaty, it must be considered to be invalid, in accordance with the Court's settled case-law.

Findings of the Court

35 It should be observed at the outset that, where there is a regulation on the common organisation of the market in a given sector, the Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to it. Rules which interfere with the proper functioning of a common organisation of the market are also incompatible with such common organisation, even if the matter in question has not been exhaustively regulated by it (Case C-1/96 *Compassion in World Farming* [1998] ECR I-1251, paragraph 41).

36 Calves fall within the beef and veal sector, for which the common organisation of the market is governed by Regulation No 805/68. In accordance with Article 1 of Directive 90/425 and Annex A thereto, they are covered by Directive 90/425.

37 Article 8(1)(a) of that directive permits the competent authorities of the Member State to which a consignment of animals is sent to order *inter alia* the slaughter of animals where they establish the presence of agents responsible for a disease which is subject to notification in accordance with Directive 82/894, a zoonosis or disease, or any cause likely to constitute a serious hazard to animals or humans.

38 That provision must be interpreted in the light of its objective, which is to ensure that the health of animals and humans is protected, and of developments in scientific knowledge.

39 By order in Case C-180/96 R *United Kingdom* v *Commission* [1996] ECR I-3903, the Court accepted the ban, in March 1996, on the export of cattle from the United Kingdom by way of a protective measure under Article 10 of Directive 90/425. It took into consideration, at paragraphs 8 and 67 to 72 of the order, the number of cases of BSE in the United Kingdom, the incubation period of several years during which BSE cannot be detected, the scientific uncertainty which existed regarding the modes of transmission of the disease and the lack of traceability of the animals in the United Kingdom.

40 The same considerations mean that the Member States were entitled, at that time, to order the slaughter of calves originating from the United Kingdom present in their territory, under Article 8(1)(a) of Directive 90/425.

41 As the Advocate General has explained in paragraphs 29 to 35 of his Opinion, the fact that the Member States had the power to order the slaughter of animals means that they also had the power to arrange for farmers affected by that measure to be compensated, since there could be serious grounds for believing that, in the absence of fair compensation, those farmers might conceal the origin of animals in their keep in order to avoid their slaughter and the resulting financial loss.

42 That power of the Member States to compensate farmers is not affected by the power of the Community in Article 23 of Regulation No 805/68 to adopt exceptional measures of support for the market affected. If the Community adopts such measures, it is for the Member States, where necessary, to amend the measure which they have adopted so that it does not prejudice the proper functioning of the common organisation of the market.

43 It is true that compensation of the kind provided for by the Netherlands legislation at issue in the main proceedings, granted through State resources, is liable to give an advantage to the undertakings granted compensation by enabling them to avoid a loss which would otherwise be inescapable, and is therefore liable to distort competition.

44 However, it cannot be caught by Article 24 of Regulation No 805/68 which in principle prohibits State aid in the beef and veal sector and by the corresponding obligation of prior notification laid down in Article 93(3) of the Treaty, since it is strictly ancillary to a measure ordering the slaughter of animals, adopted in accordance with Article 8(1)(a) of Directive 90/425.

45 It should be noted that, under the third subsubparagraph of Article 8(1)(a) of that directive, the competent authorities of the Member State concerned are required immediately to notify the competent authorities of the other Member States and the Commission in writing, by the most appropriate means, of the findings arrived at, the decisions taken and the reasons for such decisions.

46 The notification must allow the Commission to verify whether a national compensation measure is compatible with the provisions regulating the common organisation of the market in the sector in question and with the applicable State aid provisions. That examination will allow it, where appropriate, to seek a suitable solution with the Member State concerned.

47 In such cases, the Commission and the Member State must, by virtue of the rule imposing on the Member States and the Community institutions a reciprocal duty of genuine cooperation, which underlies, in particular, Article 5 of the EC Treaty (now Article 10 EC), work together in good faith with a view to overcoming the difficulties whilst fully observing the Treaty and other Community provisions, in

particular those regulating the common organisation of the market in the sector concerned and those relating to State aid.

48 In that regard, it is apparent from the documents provided by the Netherlands Government that it was by a letter dated 15 April 1996 from the Permanent Representation of the Kingdom of the Netherlands to the European Union, sent in response to a request made on 9 April 1996 by the Netherlands Ministry for Agriculture, Nature Management and Fisheries, that the Commission was advised of the adoption of the slaughter and compensation measures at issue in the main proceedings. While it is difficult to reconcile the time taken to submit that information with the obligations of a Member State under the third subsubparagraph of Article 8(1)(a) of Directive 90/425, that delay nevertheless does not affect the power of the Member State to adopt those measures.

49 The answer to the first question must therefore be that the Community provisions applicable to the common agricultural policy in the beef and veal sector are to be interpreted as meaning that, in response to information concerning a possible link between BSE and Creutzfeldt-Jakob disease in humans and to the BSE crisis in the United Kingdom, the Member States were entitled, under Article 8(1)(a) of Directive 90/425:

— to order the slaughter of young bovine animals originating from the United Kingdom present in their territory and,

— since there could be serious grounds for believing that, in the absence of fair compensation, farmers might conceal the origin of animals in their possession in order to avoid their slaughter and the resulting financial loss, to adopt a compensation measure ancillary to the measure requiring slaughter of the animals.

Question 2

50 Since the answer to the first question is in the affirmative, there is no need to answer the second question.

Question 3

51 By its third question, which is asked should the answer to the first question be that the Member States had the power to adopt compensation measures, the College van Beroep voor het bedrijfsleven essentially seeks to ascertain whether Community law, in particular Regulation No 717/96 as amended, precludes the amount of compensation to farmers from being determined by national provisions.

52 Adopted on the basis of Article 23 of Regulation No 805/68, Regulation No 717/96 as amended determines the Community's contribution to the financing of the destruction of calves originating from the United Kingdom purchased and destroyed in accordance with certain conditions.

53 According to Article 1(1) of Regulation No 717/96 as amended, the competent authorities in certain Member States, including the Kingdom of the Netherlands, 'shall be authorised' to purchase calves originating from the United Kingdom presented to them for slaughter under that regulation.

54 It follows, *a contrario*, from the wording of that provision that the authorities were no longer authorised to purchase those calves pursuant to national compensation measures from the date upon which Regulation No 717/96 became applicable.

55 Once the Community adopted exceptional measures of support for the beef and veal market, in accordance with Article 23 of Regulation No 805/68, there was a risk that compensation measures initially adopted by a Member State on the basis of Article 8(1)(a) of Directive 90/425 would come into conflict with the Community rules and their retention would have been liable to impair the proper functioning of the common organisation of the market in beef and veal.

56 In the instant case, it appears that the Netherlands authorities assessed the amount of compensation due to Van den Bor on 19 April 1996. That valuation was carried out before Regulation No 717/96 entered into force on 20 April 1996, that is to say, in accordance with Article 7 thereof, the date of its publication in the *Official Journal of the European Communities*. However, that regulation, both in its original version and as amended, became applicable retroactively from 11 April 1996, thus applying to the determination of the amount of compensation to be paid to Van den Bor.

57 The answer to the third question must therefore be that, even though the Member States had the power to adopt compensation measures under Article 8(1)(a) of Directive 90/425, Community law, in particular Regulation No 717/96 as amended, precluded the amount of compensation to farmers from being determined by national provisions from the date upon which that regulation became applicable.

Costs

58 The costs incurred by the Netherlands Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the College van Beroep voor het bedrijfsleven by decision of 27 October 1999, hereby rules:

1. The Community provisions applicable to the common agricultural policy in the beef and veal sector are to be interpreted as meaning that, in response to information concerning a possible link between bovine spongiform encephalopathy and Creutzfeldt-Jakob disease in humans and to the bovine spongiform encephalopathy crisis in the United Kingdom, the Member States were entitled, under Article 8(1)(a) of 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, as amended by Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public

health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425:

— to order the slaughter of young bovine animals originating from the United Kingdom present in their territory and,

— since there could be serious grounds for believing that, in the absence of fair compensation, farmers might conceal the origin of animals in their possession in order to avoid their slaughter and the resulting financial loss, to adopt a compensation measure ancillary to the measure requiring slaughter of the animals.

2. Even though the Member States had the power to adopt compensation measures under Article 8(1)(a) of Directive 90/425, as amended by Directive 92/118, Community law, in particular Commission Regulation (EC) No 717/96 of 19 April 1996 adopting exceptional support measures for the beef and veal market in Belgium, France and the Netherlands, as amended by Commission Regulation (EC) No 841/96 of 7 May 1996, precluded the amount of compensation to farmers from being determined by national provisions from the date upon which that regulation became applicable.

Jann Edward La Pergola

Sevón Wathelet

Delivered in open court in Luxembourg on 8 January 2002.

R. Grass P. Jann

Registrar President of the Fifth Chamber