JUDGMENT OF THE COURT

12 July 2001 *

In Case C-189/01,

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. Jippes,

Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren,

Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren,

and

Minister van Landbouw, Natuurbeheer en Visserij,

on the validity of Article 13 of Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11), as amended by Council Directive 90/423/EEC of

* Language of the case: Dutch.

26 June 1990 (OJ 1990 L 224, p. 13), and of Commission Decision 2001/246/EC of 27 March 2001 laying down the conditions for the control and eradication of foot-and-mouth disease in the Netherlands in application of Article 13 of Directive 85/511 (OJ 2001 L 88, p. 21), as amended by Commission Decision 2001/279/EC of 5 April 2001 (OJ 2001 L 96, p. 19),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, P. Jann, L. Sevón (Rapporteur), R. Schintgen, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: J. Mischo,
Registrar: H.A. Rühl, Principal Administrator,

having regard to the decision of the President of the Court to deal with the reference for a preliminary ruling by way of accelerated procedure in accordance with Article 104a of the Rules of Procedure,

after considering the written observations submitted on behalf of:

— Ms Jippes, the Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren and the Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren, by C.T. Dekker, advocaat,

— the Netherlands Government, by H.G. Sevenster, acting as Agent,

— the Greek Government, by G. Kanellopoulos and E. Svolopoulou, acting as Agents,

— the Irish Government, by D.J. O'Hagan, acting as Agent, assisted by G. Hogan SC and E. Mulloy, Barristers,

— the Italian Government, by O. Fiumara, avvocato dello Stato,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the Council of the European Union, by J. Carbery and A.-M. Colaert, acting as Agents,

— the Commission of the European Communities, by T. van Rijn and A. Bordes, acting as Agents,

after hearing the oral observations of Ms Jippes, of the Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren and of the Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren, represented by C.T. Dekker, of the Netherlands Government, represented by H.G. Sevenster, of the Danish Government, represented by J. Molde, acting as Agent, of the Greek Government, represented by E. Svolopoulou and I. Chalkias,

acting as Agents, of the Irish Government, represented by G. Hogan SC, of the Finnish Government, represented by T. Pynnä, of the Council, represented by J. Carbery and A.-M. Colaert, and of the Commission, represented by T. Van Rijn and A. Bordes, at the hearing on 20 June 2001,

after hearing the Opinion of the Advocate General,

gives the following

Judgment

1 By order of 26 April 2001, received at the Court on 27 April 2001, 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 two questions on the validity of Article 13 of Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11), as amended by Council Directive 90/423/EEC of 26 June 1990 (OJ 1990 L 224, p. 13) (hereinafter 'Directive 85/511'), and of Commission Decision 2001/246/EC of 27 March 2001 laying down the conditions for the control and eradication of foot-and-mouth disease in the Netherlands in application of Article 13 of Directive 85/511/EEC (OJ 2001 L 88, p. 21), as amended by Commission Decision 2001/279/EC of 5 April 2001 (OJ 2001 L 96, p. 19) (hereinafter 'Decision 2001/246').

2 Those questions have been raised in proceedings between Ms Jippes, residing at Yde (Netherlands), and the Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren and the Afdeling Assen en omstreken van de

Nederlandse Vereniging tot Bescherming van Dieren (Groningen section and Assen and environs section of the Netherlands Association for the Protection of Animals) (hereinafter 'the appellants'), on the one hand, and the Minister van Landbouw, Natuurbeheer en Visserij (Netherlands Minister for Agriculture, Nature Management and Fisheries, hereinafter 'the Minister'), on the other, concerning the vaccination against foot-and-mouth disease of animals belonging to Ms Jippes.

Legal framework

Provisions on combating foot-and-mouth disease

The International Animal Health Code

3 The International Office of Epizootics (hereinafter 'the IOE') is an intergovernmental organisation set up by international agreement of 25 January 1924. In May 2001 it comprised 158 members. Its objectives include, in particular, the aim of safeguarding health in world trade by drawing up health rules applicable to international trade in animals and animal products.

4 The IOE standards are recognised by the World Trade Organisation as basic international health rules. They are drawn up by specialist elected commissions and by working groups made up of scientists from all over the world, and are adopted by an international committee composed of delegates designated by the governments of the member countries.

5 The International Animal Health Code (ninth edition, 2000, hereinafter 'the Code') was drawn up in order to facilitate international trade in live animals, semen, embryos and animal products. In particular, it provides recommendations applicable to specific diseases. Chapter 2.1.1 of the Code is devoted to foot-and-mouth disease.

6 The provisions of that chapter deal with three different categories of animal health status which may be recognised as existing in a country or zone. The first is that of an 'FMD free' country or zone 'where vaccination is not practised'; the second is that of an 'FMD free' country or zone 'where vaccination is practised'; and the third is that of an 'FMD infected' country or zone. For the purposes of that classification, vaccination is defined as routine vaccination carried out for the prevention of foot-and-mouth disease by means of a vaccine complying with the standards fixed by the IOE.

7 A zone having a given animal health status in respect of foot-and-mouth disease may be established as existing within a country which fulfils the criteria relating to a different health status. In such circumstances, the zone in question must be separated from the rest of the country by a surveillance zone, or a buffer zone, or by physical or geographical barriers and animal health measures which effectively prevent the escape of the virus.

8 Under Article 2.1.1.2 of the Code, in order to be recognised as a country free from foot-and-mouth disease where vaccination is not practised, a country must, in particular, establish that there has been no outbreak of the disease and that no vaccination has been carried out to prevent it for at least 12 months, and that no vaccinated animals have been imported since the cessation of vaccination. Article 2.1.1.6 of the Code provides that, if foot-and-mouth disease occurs in such a country, it may regain its status as a disease-free country where vaccination is not practised either three months after the last case, where stamping-out and serological surveillance are applied, or three months after the slaughter of the last vaccinated animal, where stamping-out, serological surveillance and emergency vaccination are applied.

9 Article 1.1.1.1 of the Code defines 'stamping-out policy' as the 'carrying out under the authority of the Veterinary Administration, on confirmation of a disease, [of] the killing of the animals which are affected and those suspected of being affected in the herd and, where appropriate, those in other herds which have been exposed to infection by direct animal to animal contact, or by indirect contact of a kind likely to cause the transmission of the causal pathogen. All susceptible animals, vaccinated or unvaccinated, on an infected premises should be killed and their carcasses destroyed by burning or burial, or by any other method which will eliminate the spread of infection through the carcasses or products of the animals killed'.

10 Chapter 2.1.1 of the Code lays down numerous rules governing the importation or transit of live animals, semen, embryos, fresh meat, meat products and products of animal origin. Those rules are binding to a greater or lesser extent, depending on the animal health status of the country or zone of provenance.

The Community rules

11 The basic legislation laying down the Community measures to control foot-and-mouth disease, applicable in the event of an outbreak of that disease, is contained in Directive 85/511. In particular, Article 4 of that directive provides that, where a holding contains one or more animals suspected of being infected or of being contaminated with foot-and-mouth disease, the competent authority is to have the holding placed under official surveillance and is to impose various measures restricting movements of animals, products, persons and vehicles. Depending on the circumstances, those measures may be extended to cover adjoining holdings.

12 Article 5(2) of Directive 85/511 provides that, where it is established that one or more animals on a holding are infected, the competent authority must without delay order the slaughter on the spot and destruction of all animals of susceptible species on the holding. Depending on the circumstances, that measure may also be extended to cover adjoining holdings.

13 The decision to abandon vaccination against foot-and-mouth disease was taken by the adoption of Council Directive 90/423/EEC of 26 June 1990 amending Directive 85/511/EEC introducing Community measures for the control of foot-and-mouth disease, Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine and Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat or meat products from third countries (OJ 1990 L 224, p. 13).

14 The third recital in the preamble to Directive 90/423 is worded as follows:

'Whereas a Commission study on control of foot-and-mouth disease has shown that the adoption of a non-vaccination policy for the Community as a whole would be preferable to a vaccination policy; whereas it has been concluded that a risk exists in the manipulation of virus in laboratories due to the possibility of escape to local susceptible animals and in the use of vaccine if inactivation procedures do not ensure its safety'.

15 Article 13 of Directive 85/511 provides:

'1. Member States shall ensure that:

— the use of foot-and-mouth vaccines is prohibited,

...

3. Notwithstanding the provisions of paragraph 1 concerning the use of foot-and-mouth disease vaccine, it may be decided, when foot-and-mouth disease has been confirmed and threatens to become extensive, that emergency vaccination using technical procedures guaranteeing the animals' total immunity may be introduced. In this case, the measures to be taken shall include:

— the extent of the geographical area in which emergency vaccination is to be carried out,

— the species and the age of the animals to be vaccinated,

— the duration of the vaccination campaign,

— a specific standstill of vaccinated animals and their products,

— the special identification and special registration of the vaccinated animals,

— other matters appropriate to the emergency situation.

The decision to introduce emergency vaccination shall be taken by the Commission in collaboration with the Member State concerned, acting in

accordance with the procedure laid down in Article 16. This decision shall have particular regard to the degree of concentration of animals in certain regions and the need to protect special breeds.

However, by way of derogation from the first subparagraph, the decision to introduce emergency vaccination around the outbreak may be taken by the Member State concerned following notification to the Commission, provided that basic Community interests are not endangered. This decision shall be immediately reviewed in the Standing Veterinary Committee in accordance with the procedure laid down in Article 16.'

16 On 10 March 1999 the Scientific Committee on Animal Health and Animal Welfare made recommendations on the strategy for emergency vaccination against foot-and-mouth disease. The report produced by that committee describes the risks connected with vaccination, identifies the criteria to be taken into consideration when deciding to introduce emergency vaccination and lays down the guidelines on emergency vaccination programmes and on the restrictions to be applied to movements of animals and animal products within and out of a zone where emergency vaccination has been introduced.

17 Following the reports of outbreaks of foot-and-mouth disease in the Netherlands in particular, the Commission adopted various decisions concerning measures to protect against foot-and-mouth disease in that Member State.

18 Suppressive vaccination was authorised by Decision 2001/246, based 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), 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), in particular Article 10 thereof, and on Directive 85/511, in particular Article 13(3) thereof.

19 The first subparagraph of Article 1(2) of Decision 2001/246 defines suppressive vaccination as emergency vaccination of animals of susceptible species in identified holdings situated in a defined area which is carried out exclusively in conjunction with pre-emptive killing. According to the second subparagraph of Article 1(2), suppressive vaccination is intended to bring about an urgent reduction of the amount of virus circulating and the risk of virus spreading beyond the perimeters of the area without delaying the pre-emptive killing. Under the third subparagraph of Article 1(2), suppressive vaccination is to be carried out only where the pre-emptive killing of animals of susceptible species must be delayed for an estimated time most likely exceeding the time required in order effectively to reduce the spread of virus by immunisation on account of constraints on the killing of animals of susceptible species and/or constraints on the available capacities to destroy killed animals.

20 Protective vaccination is authorised in the Netherlands by Decision 2001/279. This is defined in the first subparagraph of Article 1(3) of Decision 2001/246, as amended, as emergency vaccination of bovine animals in identified holdings situated in the vaccination zone which is carried out exclusively in conjunction with pre-emptive killing of certain categories of other animals of susceptible species, whether or not in conjunction with suppressive vaccination. According to the second subparagraph of Article 1(3), protective vaccination is intended to bring about an urgent reduction of the amount of virus circulating and the risk of virus spreading beyond the perimeters of the area, but may be carried out only on condition that animals of susceptible species vaccinated under the conditions of protective vaccination are not subject to pre-emptive killing.

21 Annex III(B) to Decision 2001/246, as amended, defines the protective vaccination zone as an area of about 25 km around Oene (Netherlands). The other annexes to that decision define the conditions for the use of protective vaccination (Annex II), the measures applicable in the vaccination zone with regard to bovine animals vaccinated under the terms of protective vaccination (Annex IV) and the treatment of meat and animal products to ensure destruction of foot-and-mouth disease virus (Annexes V to VII).

22 Point 6.6 of Annex II to Decision 2001/246, as amended, provides that the restrictions are to be lifted not earlier than 12 months after completion of the vaccination campaign or 12 months after the last outbreak in the vaccination zone, whichever is the latest, or three months after the slaughter of the last vaccinated animal.

The national rules

23 In the Netherlands, the use of foot-and-mouth vaccine is prohibited pursuant to the combined provisions of the Gezondheids- en welzijnswet voor dieren (Law on animal health and well-being) and the Decree laying down rules concerning the use of serums and vaccines, which provides that all categories of keepers of animals are to be prohibited from treating with non-live vaccines or serums against foot-and-mouth disease, or causing to be so treated by third parties, any cattle, poultry, mink or other species or categories of animals covered by the Decree designating species of animals afflicted with infectious animal diseases.

Rules concerning animal welfare

The European Convention for the Protection of Animals kept for Farming Purposes

24 The European Convention on the Protection of Animals kept for Farming Purposes (hereinafter 'the Convention') was adopted on 10 March 1976 within the framework of the Council of Europe. It was approved on behalf of the European Economic Community pursuant to Article 1 of Council Decision 78/923/EEC of 19 June 1978 (OJ 1978 L 323, p. 12).

25 Article 3 of the Convention provides: 'Animals shall be housed and provided with food, water and care in a manner which — having regard to their species and to their degree of development, adaptation and domestication — is appropriate to their physiological and ethological needs in accordance with established experience and scientific knowledge.'

The Community rules

26 Declaration No 24 on the protection of animals, annexed to the Final Act of the Treaty on European Union (hereinafter 'Declaration No 24'), provides:

'[T]he Conference calls upon the European Parliament, the Council and the Commission, as well as the Member States, when drafting and implementing

Community legislation on the common agricultural policy, transport, the internal market and research, to pay full regard to the welfare requirements of animals.'

27 By the Protocol on protection and welfare of animals, adopted at the same time as the Treaty of Amsterdam and annexed to the Treaty establishing the European Community (hereinafter 'the Protocol'), the High Contracting Parties agreed upon the following provision:

'In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.'

Background to the dispute in the main proceedings

28 The order for reference states that Ms Jippes keeps as a hobby four sheep (Hampshire Down breed) and two goats (Saane breed) at her residential address in Yde. Those animals are not used for breeding or intended for the supply of meat or milk. They will stay in their enclosure until the time they die a natural death.

29 Yde is located in the province of Drenthe, outside the vaccination zones specified in Annexes I and II to Decision 2001/246, as amended.

30 On 2 April 2001, the appellants requested the Minister to grant Ms Jippes an exemption from the ban on the vaccination of animals against foot-and-mouth disease, and to give his decision on that request by no later than 3.00 p.m. on 4 April 2001, in the absence of which it would be assumed that the requested exemption had been refused. On 6 April 2001 they lodged a complaint concerning the Minister's failure to give a decision on their request for exemption.

31 On 6 April 2001, the appellants also applied to the President of the College van Beroep voor het bedrijfsleven for authorisation to allow Ms Jippes' animals to be vaccinated against foot-and-mouth disease, subject to the following conditions:

'(1) before the vaccination, it must be established that the animals are not infected;

(2) the vaccination of the animals must be registered;

(3) during a period to be determined by the President, the animals may not be removed from the area of land on which they are vaccinated.'

32 By letter of 9 April 2001, that court requested the Minister to respond to that application by way of decision on the complaint.

33 By decision of 11 April 2001, the Minister decided on the appellants' complaint. On 12 April 2001, the appellants brought an appeal against that decision before the College van Beroep voor het bedrijfsleven.

The order for reference and the questions referred for a preliminary ruling

34 On 13 April 2001, the College van Beroep voor het bedrijfsleven decided that the case should be dealt with by way of accelerated procedure.

35 Before that court, the appellants argued that the vaccination ban provided for in the first indent of Article 13(1) of Directive 85/511 is incompatible with Article 3 of the Convention. However, the national court considers, with reference to the judgment of the Court of Justice in Case C-1/96 *Compassion in World Farming* [1998] ECR I-1251, that that provision does not impose any clear, precisely defined and unqualified obligation requiring no further implementation and on the basis of which it is possible to determine whether animals should be vaccinated.

36 The appellants also assert that the vaccination ban is contrary to a general principle of Community law pleaded by them, requiring all appropriate measures to be taken in order to ensure animal welfare and to guarantee that animals are not unnecessarily exposed to pain or suffering and that no unnecessary harm is done to them.

37 According to the national court, that line of argument raises the question, first, whether such a rule forms part of the Community legal order as a general principle of law in the light of which the vaccination ban falls to be assessed and, if so, whether the scope of that principle is such as to render a ban of that kind invalid on the ground that it is inconsistent with it.

38 The College van Beroep voor het bedrijfsleven then examined the question whether the vaccination ban provided for in Article 13 of Directive 85/511

accords with the principle of proportionality in the event of an extensive outbreak of foot-and-mouth disease which, as in the present case, is not confined to a few places within the Community.

39 It also considered the issue of proportionality, and therefore the legality of Decision 2001/246, as amended, particularly in relation to the question whether the conditions laid down by that decision are necessary in order to achieve the objective laid down — namely the combating of foot-and-mouth disease, which is not an aim in itself but which is linked, according to the preamble to Directive 85/511, to the interest of stockfarmers in increasing their profitability and thus to the purpose of Article 33(1)(b) EC, according to which one of the objectives of the common agricultural policy is to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture.

40 The question of proportionality is also raised in relation to limitation of the geographical scope of Decision 2001/246, as amended, especially as regards the territorial zone in which protective vaccination is permitted.

41 The College van Beroep voor het bedrijfsleven observes that, in weighing up the competing interests with a view to assessing the vaccination ban and the way in which it has been applied by the Commission, it is also necessary to take into consideration the restrictions imposed on other sectors of the economy and on society as a whole. As experience has now shown, an outbreak of foot-and-mouth disease covering large areas of different Member States involves substantial restrictions, not only for those engaged in stockfarming, suppliers and the processing industry but also for other economic sectors unconnected with stockfarming and other parts of society generally.

42 Lastly, the national court noted that Directive 85/511, in particular Article 13(3) thereof, does not contain any express basis for the condition attached by the Commission to recourse to suppressive vaccination, whereby such emergency

vaccination must be accompanied by the killing of vaccinated animals. Such a measure goes further than the slaughtering of animals to which the national authorities may resort under Directive 85/511. According to the national court, the question of the validity of Decision 2001/246, as amended, arises also in that connection.

43 Having regard to those factors, the College van Beroep voor het bedrijfsleven has decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is the ban on vaccination imposed by Article 13 of Directive 85/511/EEC invalid on the ground that it is contrary to Community law, in particular the principle of proportionality?

2. Is the way in which the Commission has applied the aforesaid Article 13, in particular by adopting Decision 2001/246/EC, as amended by Decision 2001/279/EC, invalid on the ground that it is contrary to Community law?'

44 The national court considered that those questions need to be answered as a matter of exceptional urgency and therefore requested that they be examined in accordance with the procedure provided for in Article 104a of the Court's Rules of Procedure. By way of justification for its request, it took into consideration the number of outbreaks of foot-and-mouth disease in the Netherlands, the rapidity of the spread of the disease, the uncertainty as to the manner in which it will continue to spread and the number of animals liable to be slaughtered, weighed against the fact that vaccination constitutes a means of protection against the virus.

45 On a proposal from the Judge-Rapporteur and after hearing the Advocate General, the President of the Court decided that the reference for a preliminary ruling should be dealt with by way of accelerated procedure in accordance with Article 104a of the Rules of Procedure.

The validity of Article 13 of Directive 85/511

46 By its first question, the national court is asking, in essence, whether the ban on vaccination against foot-and-mouth disease provided for in Article 13 of Directive 85/511 is invalid on the ground that it is contrary to Community law, and in particular the principle of proportionality.

47 Having regard to the reasoning contained in the order for reference with regard to the Convention, the appellants do not deal in their observations with the question whether, in the light of the Convention, Directive 85/511 is valid.

48 However, they assert that there exists a general principle of Community law to the effect that, save in so far as may be necessary, animals are not to be exposed to pain or suffering and that their health and welfare are not to be impaired ('the principle of animal welfare'). They maintain that that principle forms part of the collective legal consciousness and may be inferred from the intention expressed by the Member States and the Community in ratifying the Convention, from a 1987 resolution of the European Parliament, from various Community directives applying that principle and from the Protocol, which, according to Article 311 EC, forms an integral part of Community law and with which Directive 85/511 was therefore bound to comply.

49 As regards the content of that principle, the appellants refer to the explanations given on the Commission's Internet site, in particular those relating to Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (OJ 1998 L 221, p. 23).

50 The appellants state that the fact that animal welfare is not listed amongst the objectives of the Community and of the common agricultural policy does not affect the existence of a principle aimed at ensuring such welfare. Indeed, numerous general principles of Community law have been recognised by the Court despite their not having been listed amongst the objectives of the Community or of its various policies.

51 According to the appellants, the principle of animal welfare means that the relevant rules must be laid down and applied in such a way as to take account of the obligation to adopt adequate measures to avoid the exposure of animals to unnecessary pain or suffering and to prevent their health and welfare from being impaired. Consequently, whilst that principle does not preclude the adoption of measures which result in the exposure of animals to pain or the impairment of their welfare, it does have to be weighed against the objective pursued, bearing in mind the fundamental rule that animal health must not be impaired and that the aim pursued must not take precedence over animal welfare unless this can be justified.

52 The principle of animal welfare was not taken into account in the context of the adoption of Directive 90/423, which, in imposing the rule prohibiting preventive vaccination, was aimed solely at promoting the profitability of stockfarming. The third recital in the preamble to that directive refers to the risk inherent both in the manipulation of the virus in laboratories and in the use of vaccine if inactivation procedures do not ensure its safety. However, according to the appellants, this concerns only those provisions of Article 13 of Directive 85/511 which relate to the manipulation of viruses for research purposes, to the storage of vaccines and to the approval of establishments and laboratories authorised to manipulate foot-and-mouth viruses for the purposes of research or the manufacture of vaccines.

53 Nor was the principle of proportionality respected when Directive 90/423 was adopted, since the objective of controlling foot-and-mouth disease could have

been attained by less radical means than a vaccination ban coupled with the slaughter of contaminated animals and those suspected of being contaminated. According to the appellants, preventive vaccination is unquestionably the most effective way of preventing all further spread of the foot-and-mouth virus.

54 The appellants add that, even if animal welfare were to be regarded merely as an interest to be taken into account in making a policy choice, rather than as a general principle of law, the result would be the same, since a refusal to take account of such an interest would be contrary to the Protocol.

55 The governments submitting observations, the Council and the Commission all start by giving an account of the characteristics of foot-and-mouth disease and the risks which it involves. Foot-and-mouth disease is dangerous to animals; it gives rise to painful blisters in the mouth and in the interstices of the feet or hooves, induces fever and may be fatal, especially in the case of young animals. The virus is highly resistant and can easily be spread by contaminated livestock, meat, milk and feed. It may also be spread through the intermediary of other animals, humans, goods and the wind. The IOE has placed it at the top of List A of the contagious diseases of which it must be notified.

56 Those governments, the Council and the Commission maintain, first of all, that the most effective method of combating foot-and-mouth disease is to apply a non-vaccination policy accompanied, where outbreaks of it occur, by sanitary slaughter, but not excluding emergency vaccination if the circumstances so require. Preventive vaccination provides only ostensible protection, since it is not as effective in eradicating the disease as non-vaccination accompanied by sanitary slaughter; instead, it allows the disease to remain endemic within a given territory. Vaccination is not effective in all cases, and may facilitate the spread of the disease. Moreover, vaccinated animals may transmit the virus during the days

following the vaccination, may be infected with the disease without showing any symptoms and may become carriers of the virus, thereby risking the contamination of healthy animals. In addition, it is necessary to take account of the significant risks connected with manipulation of the virus to produce vaccines.

57 The tests used at the present time do not permit infected animals to be distinguished from vaccinated animals, making it impossible to detect and control the disease. This explains the reason for the distinction drawn by the Code between countries free from foot-and-mouth disease where vaccination is practised and those in which it is not practised.

58 Next, the governments submitting observations, the Council and the Commission observe that there exist seven types of virus, as well as numerous sub-types, and that re-vaccination has to be carried out every six months. In order for a preventive vaccination policy to be effective in the Community, it would be necessary to vaccinate 300 million animals twice a year, using several vaccines covering all the virus types and sub-types. This would involve significant logistical and financial problems.

59 Lastly, Member States practising vaccination would lose their status as 'FMD free' countries 'where vaccination is not practised' within the meaning of the Code; this would have serious consequences as regards exports to third countries of animals and animal products. Even if just one Member State were to practise preventive vaccination, all the others would suffer the consequences, since the Community is often regarded as a single entity by third countries. The Finnish Government points out, by way of example, that exports from Finland, which is currently free from foot-and-mouth disease, have been affected on account of the reaction by sone third countries to the crisis which has arisen in some of the Member States of the Community.

60 In the light of the drawbacks presented by preventive vaccination, the policy of non-vaccination accompanied by sanitary slaughter is more effective, less expensive and less restrictive as regards movements of animals and animal products.

61 That policy was chosen in the context of the unification of the internal market, with a view to avoiding the obstacles to trade between Member States resulting from the different policies previously applied in those States. The Community legislature took into consideration a report setting out the advantages and disadvantages of a non-vaccination policy; that report had been drawn up by the Commission with the assistance of experts from the Member States and a sub-group of the Scientific Veterinary Committee, which assessed the prognoses and risk factors. The extract from that report cited by the Council at the hearing states that, having regard to the risk inherent in manipulation of the virus with a view to vaccination, a vaccination policy would result in more outbreaks of foot-and-mouth disease than a non-vaccination policy.

62 As to the assessment of the validity of Article 13 of Directive 85/511, the governments submitting observations, the Council and the Commission point out that the Community legislature enjoys a wide discretion in matters concerning the common agricultural policy.

63 The Commission denies the existence of a principle of animal welfare in the light of which the validity of Article 13 of Directive 85/511 falls to be reviewed. It maintains that there are various substantive rules relating to animal welfare and that the Court has taken that factor into account, particularly in its case-law concerning restrictions on the free movement of goods which are justified by the need to protect the health and life of animals. However, animal welfare does not form part of the objectives of the EC Treaty, as is apparent from the express wording of the fourth recital in the preamble to Council Decision 78/923/EEC on the conclusion of the Convention. No principle of animal welfare emerges from the sources referred to by the appellants. Thus, Declaration No 24 and the

Protocol merely require the welfare requirements of animals to be taken fully into account; this is not sufficient to warrant the conclusion that those provisions express any general principle of Community law.

64 The Netherlands Government points out in that connection that the Protocol postdated the adoption of Directive 90/423. Moreover, the Protocol does not give expression to any generally applicable principle, since it provides for animal welfare to be taken into account in the context of only four areas of activity of the Member States and the Community. In addition, it does not lay down any uniform principle to be observed in the different Member States, since it provides that respect is to be had for the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

65 The governments submitting observations, the Council and the Commission consider that, in any event, the non-vaccination policy is not inconsistent with the protection of animals, since it is the most effective method of combating foot-and-mouth disease. It is necessary to take into consideration the state of health of all animals in the Community, not merely that of the six animals belonging to Ms Jippes. In addition, the animals to be slaughtered are killed in accordance with the rules in force concerning the protection of animals.

66 The non-vaccination policy is not contrary to the principle of proportionality. The Netherlands Government points out that, for the purposes of examining whether a Community rule is valid in the light of the principle of proportionality, it is the interest of the Community which must be taken into consideration, not that of any particular Member State. Consequently, contrary to what is stated by the College van Beroep voor het bedrijfsleven in its order for reference, the high density of animals in the Netherlands is not a factor that can be taken into account.

67 The policy of non-vaccination and sanitary slaughter is aimed at combating and eradicating foot-and-mouth disease throughout the Community in order to improve the state of health of Community livestock, with a view to increasing the profitability of stockfarming. That aim is also intended to cover animal welfare.

68 The policy chosen in order to achieve that aim is appropriate, since scientific studies have shown that non-vaccination accompanied by sanitary slaughter is the most effective method of eradicating foot-and-mouth disease. By contrast, preventive vaccination does not eliminate the dangers of contamination either in the short term or in the long term, and does not in any event allow sanitary slaughter to be dispensed with where outbreaks occur or obviate the need to impose major restrictions in respect of movements of animals, persons and goods. The Council states that the non-vaccination policy has borne fruit, inasmuch as few outbreaks have occurred since the entry into force of Directive 90/423 and it has been possible to control them.

69 The Council and the Commission additionally consider that the proportionality of the vaccination ban is also apparent from the fact that it is not an absolute prohibition, inasmuch as derogations from it are permitted in extreme cases where the circumstances are such that emergency vaccination must be authorised.

70 Lastly, the Irish Government points out that, in reviewing Community rules to see whether they comply with the principle of proportionality, the Court has acknowledged that, whilst such rules might cause harm to persons who were in no way responsible for the situation which led to their adoption, the importance of the aims pursued by those rules was such as to justify negative consequences, even of a substantial nature, for certain persons (Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraphs 22 and 23). In the present case, having regard to the fact that it concerns a virulent animal disease capable of giving rise to an economic disaster not only in the agricultural and rural sectors but also in other sectors such as tourism, the slaughtering policy cannot be characterised as a disproportionate response to the crisis.

Assessment by the Court

The taking into account of animal welfare

71 It should be borne in mind, at the outset, that ensuring the welfare of animals does not form part of the objectives of the Treaty, as defined in Article 2 EC, and that no such requirement is mentioned in Article 33 EC, which sets out the objectives of the common agricultural policy.

72 This is stated in the fourth recital in the preamble to Council Decision 78/923/EEC concerning the conclusion of the Convention, according to which 'the protection of animals is not in itself one of the objectives of the Community'.

73 As to the Protocol, it is apparent from its very wording that it does not lay down any well-defined general principle of Community law which is binding on the Community institutions. Although it provides that 'full regard' must be had to the welfare requirements of animals in the formulation and implementation of the Community's policy, it limits that obligation to four specific spheres of Community activity and provides that the legislative or administrative provisions and customs of the Member States must be respected as regards, in particular, religious rites, cultural traditions and regional heritage.

74 Nor is it possible to infer any principle of general application from the Convention, which, as the Court held in its judgment in *Compassion in World Farming*, cited above, does not impose any clear, precisely defined and unqualified obligation, or from Declaration No 24, which has been superseded by the Protocol and the wording of which is even less binding than that of the Protocol.

75 Similarly, Article 30 EC refers to the 'life of... animals' only by way of exception to the prohibition of measures having equivalent effect, and there is nothing in the Court's case-law to indicate that the Court has accepted any plea of justification based on that provision (Case C-169/89 *Van den Burg* [1990] ECR I-2143; Case C-5/94 *Hedley Lomas* [1996] ECR I-2553; *Compassion in World Farming*, cited above; and Case C-350/97 *Monsees* [1999] ECR I-2921).

76 Lastly, although there exist various provisions of secondary legislation referring to animal welfare, they likewise contain no indication that the need to ensure animal welfare is to be regarded as a general principle of Community law.

77 The Court has however held on several occasions that the interests of the Community include the health and protection of animals (Joined Cases 141/81 to 143/81 *Holdijk and Others* [1982] ECR 1299; Case 131/86 *United Kingdom* v *Council* [1988] ECR 905; Case C-405/92 *Mondiet* [1993] ECR I-6133; see also *Hedley Lomas* and *Compassion in World Farming*).

78 Thus, the Court has held, in paragraph 17 of the judgment in *United Kingdom* v *Council*, that 'efforts to attain the objectives of the common agricultural policy cannot disregard requirements of public interest, such as the protection... of the health and life of humans and animals, which the Community institutions must take into account in exercising their powers'.

79 The Protocol seeks to reinforce the obligation to take the health and protection of animals into consideration by providing that full regard must be had to the welfare requirements of animals in the formulation and implementation of the Community's policy, particularly in relation to the common agricultural policy, whilst at the same time recognising that differences currently exist between the

legislation of the respective Member States and the various sentiments harboured within those Member States. Fulfilment of that obligation can be verified, in particular, in the context of a review of the proportionality of the measure.

The principle of proportionality

80 It should be borne in mind from the outset that the Community legislature enjoys a wide discretionary power in matters concerning the common agricultural policy, corresponding to the political responsibilities given to it by Articles 34 EC to 37 EC. Consequently, judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its power of assessment (see, to that effect, Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraphs 8 and 14).

81 As to review of proportionality, the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see *Fedesa and Others*, cited above, paragraph 13, and Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 41).

82 As regards judicial review of compliance with that principle, bearing in mind the wide discretionary power enjoyed by the Community legislature in matters concerning the common agricultural policy, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue (*Fedesa and Others*, paragraph 14, and *Crispoltoni*, cited above, paragraph 42).

83 Thus, the criterion to be applied is not whether the measure adopted by the legislature was the only one or the best one possible but whether it was manifestly inappropriate.

84 In addition, it should be recalled that the legality of a Community act cannot depend on retrospective assessment of its efficacy. Where the Community legislature is obliged to assess the future effects of rules to be adopted and those effects cannot be accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question (see, to that effect, *Crispoltoni and Others*, paragraph 43, and Case C-150/94 *United Kingdom* v *Council* [1998] ECR I-7235, paragraph 49).

85 When considering the constraints attaching to different possible measures, it is necessary to verify that the Community legislature has taken full account of the requirements of animal welfare.

86 In that connection, as regards the information available to the Council at the time when the non-vaccination policy was adopted, it is apparent from the third recital in its preamble that Directive 90/423 was adopted following a study by the Commission. That study, which was carried out in 1989, took into consideration the sanitary and financial aspects of the different methods of combating foot-and-mouth disease and the effect which they would have on exports and the realisation of the internal market. Having weighed the cost against the advantages offered by the various options, the Commission decided in favour of a non-vaccination policy, and that conclusion was endorsed by the Council in Directive 90/423.

87 As appears from the study in question and was stated in the proceedings before the Court, where outbreaks of foot-and-mouth disease are established, preventive vaccination does not enable the disease to be eradicated, particularly since vaccinated animals may continue to carry the virus and may contaminate healthy animals. Moreover, given that the current state of scientific knowledge is such

that it is impossible to distinguish between vaccinated animals and infected animals, the development of the disease cannot be effectively monitored.

88 The Court has also been told that, according to that study, it is impossible, even where no outbreaks occur, to guarantee that the virus is not present in a vaccinated herd. For that reason, the Code lays down stricter control standards for animals and animal products originating in a country or zone free from foot-and-mouth disease where vaccination is practised than for animals and products originating in a country or zone where vaccination is not practised.

89 Irrespective of those sanitary justifications, the study also showed that a preventive vaccination policy aimed at protecting all animals in the Community would involve significantly greater expense and drawbacks in terms of controls than a non-vaccination policy, having regard to the number of animals to be vaccinated, the multiplicity of the types of virus and the frequency with which the vaccination would have to be carried out.

90 The Council could also take account of the economic repercussions of a vaccination policy in terms of exports of animals and animal products to third countries. Numerous third countries comply with the recommendations contained in the Code; consequently, if a State were to opt for a vaccination policy, that would limit the export possibilities open to stockfarmers and producers in that State.

91 Lastly, the non-vaccination policy jointly adopted by all the Member States was designed to guarantee, on the basis of a high level of health, the free movement of goods in the internal market.

92 By contrast, it has not been established that a preventive vaccination policy would have the effect of reducing the number of outbreaks of foot-and-mouth disease.

93 By the same token, it has not been established that such a policy would have reduced the need, upon the occurrence of outbreaks of the disease, to have recourse to sanitary slaughter and to restrict movements of animals, humans and goods. According to well-established scientific opinion, such measures remain the most effective way of combating foot-and-mouth disease, whether or not vaccination has been carried out. It should be noted in that regard that restrictions on movement and the prompt slaughtering of infected animals on the spot are measures which had already been introduced by Articles 4 and 5 of Directive 85/511 and that those articles were not amended by Directive 90/423.

94 Consequently, the risk of disruption to the economy and to society as a whole, as referred to by the national court, would not necessarily have been less great if a preventive vaccination policy had been adopted rather than a non-vaccination policy.

95 It follows from the foregoing that, when instituting the policy of non-vaccination, the Council carried out a global assessment of the advantages and drawbacks of the system to be established and that that policy, corresponding to the recommendations of the IOE and the practice followed by numerous countries worldwide, was not on any view manifestly inappropriate in the light of the objective of controlling foot-and-mouth disease.

96 In addition, it is necessary to take into consideration the fact that the ban on a general system of preventive vaccination does not preclude recourse, where the circumstances so require, to selective emergency vaccination in accordance with the requirements of a particular situation.

97 It is not correct to claim that such a policy fails to take into account the protection and health of animals. On the contrary, it was aimed at improving the health of all the animals concerned by safeguarding them against a particularly frightening disease.

98 Moreover, the fact that the Community legislature took account of the Community interest when establishing its policy for combating foot-and-mouth disease did not prevent it from having regard to the particular situation prevailing in certain Member States, such as the density of the animal population in the Netherlands. On the contrary, the degree of concentration of animals in certain regions is a factor which, according to Article 13(3) of Directive 85/511, must be taken into consideration when adopting any decision introducing emergency vaccination.

99 By contrast, although the effect of such a policy is to preclude the possibility of preventive vaccination of animals belonging to an individual or to a specific group of stockfarmers, and whilst that may be regrettable, it does not follow that the policy must be called in question on account of the particular situation of the individual or group concerned. The Council was obliged to have regard to the general state of health of all livestock rather than that of certain individual animals. In the present case, the requirements to be taken into consideration for the purposes of weighing the interests at stake were such as to justify a global assessment of the advantages and drawbacks of the measures contemplated (see, to that effect, Case 5/73 *Balkan-Import-Export* [1973] ECR 1091, paragraph 22).

100 Consequently, having regard to the wide discretionary power conferred on the Council in matters concerning the common agricultural policy, it must be concluded that the ban on preventive vaccination imposed by Article 13 of Directive 85/511 does not exceed the limits of what is appropriate and necessary in order to attain the objective pursued by the Community rules.

101 It follows from the foregoing that consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Article 13 of Directive 85/511.

The validity of Decision 2001/246, as amended

102 By its second question, the national court is asking, in essence, whether Decision 2001/246, as amended, is contrary to Community law and thus invalid, in particular on the ground that the conditions for protective vaccination, as laid down in Article 1(1) of Decision 2001/279, are said to violate the principle of proportionality.

103 The appellants consider that Decisions 2001/246 and 2001/279 were prompted solely by considerations relating to the interests of cattle exporters and that they do not in any way take animal welfare into consideration. Those decisions are therefore contrary to the principle of animal welfare and to the Protocol.

104 It is also submitted that the decisions in question violate the principle of proportionality. The appellants assert, in particular, that protective vaccination could have been accompanied by less radical restrictive measures than those set out in Annex II to Decision 2001/246, as amended, without affecting the interests of Netherlands cattle exporters. Thus, it would have been feasible to impose the condition that, for a period of one year, the vaccinated animals were not to be moved except to previously notified locations and that they were not in any event to be taken to another Member State. By the same token, the geographical zone covered by protective vaccination is unduly limited, inasmuch as there is a very dense concentration of animals in the Netherlands and authorisation for protective vaccination in the zone in question already involves risks to exports on account of the loss of FMD-free status where vaccination is not practised within the meaning of Chapter 2.1.1 of the Code.

105 The appellants maintain that it would have been possible to allow exports of animals and products from the Netherlands to other Member States once the disease disappeared, on condition that the animals had not been vaccinated or that the products did not come from vaccinated animals. Measures of that kind would have enabled protective vaccination to be carried out whilst at the same time taking the interest of Netherlands exporters into account, since, according to the appellants, most exports from the Netherlands (approximately 90%) are made to other Member States. They further argue that the latter States would not lose their health status merely by reason of their having imported products from a Member State where vaccination is practised.

106 The appellants further point out that they proposed that Ms Jippes' animals be tested before being vaccinated, in order to exclude all risk that the animals might be contaminated on account of the virus being present prior to vaccination though they showed no symptoms of the disease. The animals could also remain confined for as many days as might be needed in order for the vaccine to take effect.

107 The appellants additionally maintain that Decision 2001/279 violates the principle of equality, since it is only stockfarmers in and around Oene that have been authorised to vaccinate their animals whereas, having regard to the rapidity with which the virus spreads, Ms Jippes' animals are just as much threatened as those of the stockfarmers in question. They likewise consider that, if authorisation has been given for vaccination of protected species, it should also be given for Ms Jippes' animals.

108 The Commission points out that it enjoys a discretion in this matter and that the Court's analysis must therefore be restricted to a limited review of the measures adopted.

109 The Netherlands Government and the Commission consider that, having regard to the objective pursued, Decisions 2001/246 and 2001/279 are not manifestly

disproportionate. They maintain that it is apparent from the reasons given for Decision 2001/246 and from point 3 of the reasons given for Decision 2001/279 that the Commission took account of the epidemiological situation and of the dense concentration of susceptible animals in the Netherlands.

110 The Netherlands Government and the Commission state that the conditions laid down in those decisions for emergency vaccination, suppressive vaccination and protective vaccination are in conformity with the guidelines drawn up by the Scientific Committee on Animal Health and Animal Welfare in its report concerning the strategy to be applied to emergency vaccination against foot-and-mouth disease. As regards the duration of the restrictions, that report was itself based on the provisions of the Code.

111 The Netherlands Government and the Commission maintain that the protective vaccination provided for by Decision 2001/279 constitutes 'ring vaccination' around the places where there are outbreaks of foot-and-mouth disease which is intended to operate as a 'fire-break' preventing the virus from spreading. The fact that that vaccination has been limited to bovine animals is because it is only in the meat of that species that the foot-and-mouth virus can be inactivated. As to the period of 12 months needed in order to regain the status of a country free from infection where vaccination is not practised, that period is justified by the fact that it must be long enough to enable animals to give birth to calves which have not developed immunity to the virus.

112 According to the Commission, the zone in which protective vaccination is authorised, whilst larger than the suppressive vaccination zones, is geographically limited since, having regard to the restrictive conditions recommended by the Scientific Committee on Animal Health and Animal Welfare in its report, which must be applied in that zone for veterinary reasons, it was felt necessary to avoid disrupting the economy and society as a whole any more than was strictly necessary. In addition, the Commission had to take account of the general interest of all stockfarmers in the Community. The larger the zone in which protective vaccination is authorised, the more remote the possibility that third countries will

accept the 'regionalisation' of the Community, that is to say, its being compartmentalised into regions in such a way as to enable regions unaffected by foot-and-mouth disease to retain in international trade their status as zones free from foot-and-mouth disease where vaccination is not practised.

Assessment by the Court

The principle of proportionality

113 In order to verify whether the Commission has complied with the principle of proportionality in the exercise of the powers conferred on it by Article 13(3) of Directive 85/511 and Article 10(4) of Directive 90/425 where a zoonosis such as foot-and-mouth disease is found to exist, it is necessary to establish whether the means employed by it were appropriate for the attainment of the objective pursued and to ensure that they did not go further than was necessary in order to attain that objective.

114 Decisions 2001/246 and 2001/279 take account of the recommendations made by the Scientific Committee on Animal Health and Animal Welfare in its report. In that report, the Committee describes the advantages and drawbacks of vaccination and points to various criteria by reference to which it is possible to determine those circumstances in which the advantages of vaccination outweigh the disadvantages.

115 The Committee points out the problems relating to the transmissibility of the virus by vaccinated animals and the impossibility of distinguishing between sick

animals and vaccinated animals. It concludes that, for those reasons, the extent of the protective vaccination zone must be as small as possible and clearly defined. It further describes the restrictions to be applied to vaccinated animals and to meat and products derived from such animals.

116 It is apparent from Decisions 2001/246 and 2001/279 and from that report that, contrary to the arguments advanced by the appellants, health considerations were the predominant factor prompting the decision to carry out protective vaccination and the choice of location of the vaccination zone. If anyone so requesting were to be granted authorisation to vaccinate animals belonging to him and kept outside that zone, that would very possibly diminish the ability to monitor development of the disease on the ground and increase the risk of contamination.

117 In addition, manipulation of the vaccine entails risks which justify the statement in point 6.3 of Annexes I and II to Decision 2001/246, as amended, that, as regards the implementation of the vaccination campaign, '[n]ecessary measures must be in place to avoid possible spread of virus'.

118 Having regard to those factors, it must be concluded that that decision takes the protection and welfare of animals into account, since it is designed to control the spread of foot-and-mouth disease and to eradicate it as rapidly as possible.

119 As to the restrictions on movement of animals, meat and animal products, these take into consideration the requirements laid down by the Code and are necessary on account of the drawbacks and risks to which vaccination gives rise. They are intended, in particular, to make it possible to distinguish between vaccinated animals and non-vaccinated animals and between meat and products derived

from the two different categories of animal, in such a way as to limit as far as possible the effects which the crisis may have on trade with third countries.

120 It is necessary in that connection to take account of the fact that stockfarming represents a source of income for many persons in the Community and that it is in the interests of all persons exporting from the Community not only that foot-and-mouth disease be brought under control as quickly and as effectively as possible but also that outbreaks of foot-and-mouth disease and protective vaccination zones remain circumscribed, in order not to prejudice the health status, within the meaning of the Code, of the Member State affected or the perception by third countries of the level of health of the entire Community herd.

121 The appellants have suggested that various conditions be applied to Ms Jippes' animals, such as the requirement that screening tests be carried out and that they remain in isolation throughout the incubation period. However, taking into account the fact that numerous persons might apply for authorisation to vaccinate their animals on those terms, verification of compliance with those conditions would necessitate the setting-up of wide-scale control measures, when all available resources are needed to combat outbreaks of the disease. In addition, quite apart from the fact that the surveillance zones established around the vaccinated animals would seriously disrupt the economy and society as a whole in the regions concerned, those zones would not guarantee the absence of contamination of the animals during the vaccine's incubation period, having regard to the extremely rapid spread of the virus and its numerous carriers.

122 In view of those circumstances, it must be held that Decision 2001/246, as amended, was appropriate for the attainment of the objective pursued and did not go beyond what was necessary in order to attain it, and that it does not therefore violate the principle of proportionality, particularly inasmuch as it places a geographical limit on the zone in which protective vaccination may take place and imposes restrictions on the movement of vaccinated animals and meat and products derived from them.

The legal basis of Decision 2001/246

123 In addition, and in response to the national court's uncertainty concerning the legal basis of Decision 2001/246 in so far as it provides for slaughter of animals which have been vaccinated, it should be noted that that decision is based on Directive 90/425, in particular Article 10 thereof, and on Directive 85/511, in particular Article 13(3) thereof.

124 The preventive slaughter of animals on holdings where one or more animals have been found to be infected and of possibly contaminated animals on adjoining holdings is required by Article 5 of Directive 85/511.

125 Emergency vaccination is expressly provided for in Article 13(3) of Directive 85/511, which does not place any limit on the grounds capable of justifying vaccination or prohibit the slaughter of susceptible animals which have been vaccinated.

126 Lastly, Article 10(4) of Directive 90/425 provides that the Commission is to adopt the necessary measures in the event of a zoonosis or disease likely to constitute a serious hazard to animals.

127 It must be concluded that those provisions constituted an adequate legal basis for the adoption by the Commission of Decision 2001/246.

The principle of equal treatment

128 The appellants plead violation of the principle of equality, on the ground that, whilst Ms Jippes has not been authorised to vaccinate her animals, protective vaccination has been authorised in the zone around Oene and animals in zoos may be vaccinated.

129 It should be noted that, according to settled case-law, the general principle of equality, which is one of the fundamental principles of Community law, precludes comparable situations from being treated in a different manner unless the difference in treatment is objectively justified (see, in particular, Joined Cases C-267/88 to C-285/88 *Wuidart and Others* [1990] ECR I-435, paragraph 13, and Case C-150/94 *United Kingdom* v *Council*, cited above, paragraph 97).

130 It must be concluded in that regard that the situations referred to by the appellants are not comparable and that, even if they were, the measures adopted by the Commission are in any event objectively justified.

131 As regards animals located in the zone around Oene, it has been stated in paragraph 111 above that the protective vaccination carried out in relation to them is intended to operate as a 'fire-break', with a view to preventing the spread of the virus present in the affected locations within that area. However, although such vaccination may have that effect in a region where the virus is in any event present, it might contribute to the spread of the virus if it were practised in other regions which are still free from the disease.

132 It follows that the vaccination of those animals is objectively justified on account of the location of the holdings on which they are kept and by the objective of controlling the spread of outbreaks of foot-and-mouth disease.

133 As regards the possible emergency vaccination of animals in zoos, it should be noted that they are defined by Commission Decision 2001/303/EC of 11 April 2001 laying down the conditions for the control and eradication of foot-and-mouth disease in endangered species in application of Article 13 of Directive 85/511 (OJ 2001 L 104, p. 3). According to Article 1 of that decision, the term 'endangered species' means 'those animals listed in categories: Extinct in the Wild, Critically Endangered, Endangered and Vulnerable of the current IUCN-The World Conservation Union Red List of Threatened Species'.

134 It follows that those animals are not in a situation comparable with that of Ms Jippes' animals, since it has not been alleged that hers belong to a species threatened with extinction.

135 Consequently, the plea alleging violation of the principle of equal treatment is unfounded.

136 It follows from the foregoing that consideration of the second question has not disclosed any factor of such a kind as to affect the validity of Decision 2001/246, as amended.

Costs

137 The costs incurred by the Netherlands, Danish, Greek, Irish, Italian and Finnish Governments and by the Council 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,

in answer to the questions referred to it by the College van Beroep voor het bedrijfsleven by order of 26 April 2001, hereby rules:

1. **Consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Article 13 of Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease, as amended by Council Directive 90/423/EEC of 26 June 1990.**

2. Consideration of the second question has not disclosed any factor of such a kind as to affect the validity of Commission Decision 2001/246/EC of 27 March 2001 laying down the conditions for the control and eradication of foot-and-mouth disease in the Netherlands in application of Article 13 of Directive 85/511/EEC, as amended by Commission Decision 2001/279/EC of 5 April 2001.

Rodríguez Iglesias Gulmann La Pergola

Wathelet Skouris Edward

Jann Sevón Schintgen

Macken Colneric

von Bahr Cunha Rodrigues

Delivered in open court in Luxembourg on 12 July 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President