JUDGMENT OF THE COURT (Third Chamber)

10 March 2005 *

In Joined Cases C-96/03 and C-97/03,

REFERENCES for preliminary rulings under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decisions of 7 January 2003, received at the Court on 4 March 2003, in the proceedings

A. Tempelman (C-96/03),

Mr and Mrs T.H.J.M. van Schaijk (C-97/03)

v

Directeur van de Rijksdienst voor de keuring van Vee en Vlees,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, J.-P. Puissochet, J. Malenovský and U. Lõhmus, Judges,

* Language of the case: Dutch.

Advocate General: M. Poiares Maduro,
Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and further to the hearing on 30 September 2004,

after considering the observations submitted on behalf of:

— Mr Tempelman, by H. Bronkhorst, advocaat,

— Mr and Mrs Van Schaijk, by A. van Beek, advocaat,

— the Directeur van de Rijksdienst voor de keuring van Vee en Vlees, by E. J. Daalder, advocaat,

— the Netherlands Government, by J.G.M. van Bakel and H.G. Sevenster, acting as Agents,

— the Greek Government, by V. Kontolaimos, S. Charitaki and M. Tassopoulou, acting as Agents,

— the Irish Government, by D. O'Hagan, acting as Agent, with P. McGarry, BL,

— the Italian Government, by I. Braguglia and G. Fiengo, acting as Agents,

— the United Kingdom Government, by R Caudwell and C. Jackson, acting as Agents, and P. Goldsmith QC, C. Vajda QC, and P. Harris, barrister,

— the Commission of the European Communities, by T. van Rijn, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 2 December 2004,

gives the following

Judgment

1 The references for a preliminary ruling concern the interpretation 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) ('Directive 85/11'), and also 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).

2 The references were made in proceedings between Mr Tempelman (C-96/03) and Mr and Mrs Van Schaijk (C-97/03) and the Director van Rijksdienst voor de keuring van Vee en Vlees (Director of the national cattle and meat inspection service; 'the Director of the RVV') concerning certain decisions whereby the Director of the RVV found that the biungulate animals belonging to the parties were suspected of being contaminated by foot-and-mouth disease and ordered their slaughter on the basis of the Gezondheids- en welzijnswet voor dieren (Law on animal health and welfare) of 24 September 1992 (Stbl. 1992, 585).

Applicable rules

3 The basic text defining the Community measures to control foot-and-mouth disease, which are applicable whenever that disease appears, is Directive 85/511. When that directive was amended following the adoption of Directive 90/423, it was decided to prohibit preventive vaccination against foot-and-mouth disease throughout the Community in favour of a control policy based on the total slaughter and destruction of infected animals. Emergency vaccination was still possible, however, on strict conditions and in agreement with the Commission of the European Communities.

4 Directive 85/511 provides in particular, in Article 4, 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.

5 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. Article 5(4) of that directive provides that that authority may extend the measures provided for in paragraph 1 to adjoining holdings should their location, their configuration, or contacts with animals from the holding where the disease has been recorded give reason to suspect possible contamination.

6 Under Article 8 of that directive, holdings are to be placed under official surveillance where the official veterinarian finds, or considers on the basis of confirmed data, that they could have been in contact with the holdings referred to in Article 4 or 5 of the directive as a result of the movement of persons, animals or vehicles or in any other way.

7 By 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), suppressive vaccination was authorised in the Netherlands. Suppressive vaccination was defined as emergency vaccination of animals of susceptible species in identified holdings in a defined area, carried out exclusively in conjunction with pre-emptive killing.

8 Commission Decision 2001/279/EC of 5 April 2001 amending Decision 2001/246 (OJ 2001 L 96, p. 19) authorised, in particular, protective vaccination of bovine animals in an area of about 25 kilometres around Oene.

9 Article 10(1) and (4) of Council 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.'

10 The Law on animal health and welfare of 24 September 1992 provides, by way of a measure to control an infectious disease, that the competent authority may order the slaughter of animals suspected of being affected by the disease. According to the Regeling aanwijzing besmettelijke dierziekten (regulation designating contagious animal diseases) of 12 March 1996 (Stcrt. 1996, p. 61), an animal is regarded as 'suspected' when the designated agent has reason to believe that the animal had the opportunity to be infected or contaminated and where it belongs to a species susceptible to the contagious disease concerned.

Facts of the main proceedings and questions referred to the Court

11 It is apparent from the order for reference in Case C-96/03 that Mr Tempelman had a number of Angora goats at Wenum, in the area of 25 kilometres around Oene. On 3 April 2001, the Minister for Agriculture decided that all biungulate animals in the Oene area would be vaccinated and slaughtered. The existence of Mr Tempelman's Angora goats was apparently discovered subsequently and the Director of the RVV, by decision of 23 May 2001, informed Mr Tempelman that his goats were regarded as suspected of being infected and must therefore be killed. By decision of 15 November 2001, the Director rejected Mr Tempelman's complaint against that decision. On 17 December 2001, Mr Tempelman challenged that decision before the College van Beroep voor het bedrijfsleven.

12 It is apparent from the order for reference in Case C-97/03 that Mr and Mrs Van Schaijk ran a livestock holding at Ravenstein. By decision of 26 March 2001, the Director of the RVV informed them that all the biungulate animals on their holding were regarded as suspected of being infected by foot-and-mouth disease, on the ground that there was in the vicinity of the holding, at a distance of 772 metres from it, a holding on which one or more animals were strongly suspected of being infected by that disease, and that their animals therefore had to be killed. By decision of 15 November 2001, the Director of the RVV rejected Mr and Mrs Van Schaijk's complaint against that decision. On 20 December 2001, Mr and Mrs Schaijk lodged an appeal against that decision before the College van Beroep voor het bedrijfsleven.

13 Before the national court, Mr Tempelman and Mr and Mrs Van Schaijk put forward a number of pleas in law alleging breach of both international and Community law and national law.

14 Examining the pleas alleging breach of national law, the College van Beroep voor het bedrijfsleven held, in its decision giving rise to Case C-96/03:

'The strategy for preventing any (further) spread of the foot-and-mouth disease virus which the respondent pursued until 3 April 2001, and which consisted in killing all biungulates within a radius of one (later two) kilometres of each source of contamination, was unable to prevent sources of the disease from continuing to appear in the Oene region. Consequently, and also in the light of the high density of livestock in that region, the College van Beroep considers that, from a veterinary point of view, the respondent could reasonably suppose that there might be biungulates carrying pathogenic agents even outside the two-kilometre zones around the contamination sources. In that regard, the College van Beroep takes into account the fact that the foot-and-mouth disease virus is extremely contagious, that it is capable of spreading very rapidly and in various ways and that the respondent consulted veterinary experts about the measures to be taken.

...

In the light of all the relevant circumstances, the College van Beroep sees no reason to consider that the respondent — regard being had [to the wide margin of discretion which it must be recognised as having] — miscalculated the risks in the present case. In the College van Beroep's view, it cannot be maintained that the harm suffered by the appellant as a result of the decision to slaughter his animals was disproportionate to the objectives of that decision. In that regard, the College van Beroep further considers that the appellant's pleas disregard the fact that, as is clear from the respondent's arguments, each suspected animal remaining alive in the Oene region presented a risk from the aspect of controlling the foot-and-mouth disease epidemic. The appellant's argument that there were special circumstances which should have led the respondent to conclude that the suspected animals owned by the appellant presented no relevant veterinary risk lacks conviction.'

15 In its decision which gave rise to Case C-97/03, the College van Beroep held, in particular:

'It may be regarded as sufficiently established that on 23, 24 and 25 march 2001 there were on the primary holding animals in which the clinical symptoms of the disease were observed, so that it could be concluded that the animals were "infected" within the meaning of Article 2(c) of Directive 85/511 and must be killed pursuant to Article 5 of the directive. Contrary to the applicants' contention, it is not necessary, in order for the animals to be classified as "infected", that the clinical symptoms observed be confirmed by a laboratory examination. Nor can the fact that a subsequent laboratory examination was unable to confirm that the primary holding was contaminated by the foot-and-mouth disease virus alter the fact that the respondent, if account is taken of the time when it adopted its initial decision, was reasonably entitled, in the context of the decision-making procedure at issue, to fear that the primary holding was infected by the virus. Accordingly, regard being had to the fact that at the time of the initial decision the appellants' animals were within a one-kilometre radius of the primary holding, it was reasonable for the respondent to believe that the animals had been exposed to infection or contamination by the virus.

From that viewpoint, the decision taken on 26 March 2001 that the appellants' animals were suspected of being contaminated by the foot-and-mouth disease virus must be regarded as lawful. In that regard, the College van Beroep takes into account that the foot-and-mouth disease virus is extremely contagious and that it may spread very rapidly and in various ways. It also takes into consideration the fact that the respondent consulted veterinary experts about the measures to be taken and that those experts considered that holdings within a radius of one kilometre of an infected holding were at particular risk of contamination. Nor have the appellants validly disputed that expert opinion.'

16 For reasons similar to those set out in its decision which gave rise to Case C-96/03, the College van Beroep concluded in its decision which gave rise to Case C-97/03 that it saw no reason to consider that the respondent in the main proceedings had miscalculated the risks, that the harm sustained by the appellants as a result of the decision to slaughter their animals had been disproportionate to the objectives of that decision or that the respondent had acted in breach of Article 36 of the law on the health and welfare of animals. Nor did that court consider that the respondent, in the context of the procedure conducted by it, had failed to have regard to the principle of proper administration or misused its powers.

17 The College van Beroep voor het bedrijfsleven proceeded to consider the pleas alleging infringement of Community law and found that the decisions to slaughter the animals were taken in circumstances which are not referred to in Directive 85/511. Thus, in the decision giving rise to Case C-96/03, the national court observed that, although the animals were on one of the territories designated in Annex III A to Decision 2001/279, for which suppressive vaccination was envisaged, neither that decision nor Decision 2001/246 was applicable, since the animals in question were not vaccinated at the time when they were slaughtered. In the decision which gave rise to Case C-97/03, the College van Beroep voor het bedrijfsleven found that neither Decision 2001/246 of 27 March 2001 nor the amendments made thereto by Decision 2001/279 of 5 April 2001 were applicable on

26 March 2001, the date of the decision of the Director of the RVV ordering that the animals be slaughtered. In that regard, none of the parties to the main proceedings disputes the fact that the decisions challenged by Mr Tempelman and Mr and Mrs Van Schaijk were adopted under the provisions of national law alone.

18 The College van Beroep voor het bedrijfsleven observes that the Member States could base their own power on Article 10 of Directive 90/425. It wonders, however, whether Directive 85/511 must be regarded as a *lex specialis* in relation to Directive 90/425.

19 The national court considers that it follows from Directive 90/423, and in particular from the preamble thereto and Articles 1, 4, 5 and 16 thereof, that the Community arrangements for controlling foot-and-mouth disease are exhaustive. However, certain provisions of Decision 2001/246 give the impression that the Member States are also competent as regards the preventive slaughter of suspected animals where no foot-and-mouth disease virus infection is found.

20 In the light of those considerations, the College van Beroep voor het Bedrijfsleven decided to stay proceedings and to refer to the Court the following questions, identical in each of the cases before it, for a preliminary ruling:

'(1) May a Member State derive from Community law the power to decide to kill animals which are suspected of being infected or contaminated with the foot-and-mouth virus?

(2) Does Directive 85/511/EEC, as amended by Directive 90/423/EEC, afford the Member States scope to (order or) take supplementary national measures to control foot-and-mouth disease?

(3) What limits does Community law place on a Member State with regard to taking supplementary national measures other than those provided for in Directive 85/511/EEC, as amended by Directive 90/423/EEC?'

21 By order of the President of the Court of 8 April 2003, Cases C-96/03 and C-97/03 were joined for the purposes of the written and oral procedure and also of the judgment.

The questions

22 By the questions which it has referred, and which should be examined together, the national court asks essentially whether Community law confers on Member States the power to adopt measures to control foot-and-mouth disease in addition to those provided for in Directive 85/511, in particular the power to order the slaughter of animals belonging to a holding adjacent to or within a specific radius of a holding containing infected animals and, if so, what limits Community law places on the exercise of such a power.

23 Mr Tempelman and Mr and Mrs Van Schaijk submit that Directive 85/511 precludes Member States from adopting additional national measures to control foot-and-mouth disease and that no provision of Community law, particularly not Article 10 of Directive 90/425, confers on Member States the power to decide to order the slaughter of animals suspected of being infected or contaminated by the foot-and-mouth disease virus. In the alternative, as regards the third question, Mr and Mrs Van Schaijk claim that the national measures adopted had to respect the principles of proportionality and subsidiarity, which was not the situation in the main proceedings.

24 The Netherlands, Greek, Irish, Italian and United Kingdom Governments and the Commission maintain that Community law confers on Member States the power to decide to order the slaughter of animals suspected of being infected or contaminated by the foot-and-mouth disease virus and to adopt national measures going further than those provided for in Directive 85/511. The power thus conferred on Member States is limited by the obligation to comply with the express requirements, the object and the aim of Directive 85/511 and also with the principle of proportionality. The Commission further contends that the measures adopted by a Member State must be communicated to it and also to the other Member States.

25 As the Advocate General observed at point 30 of his Opinion, Directive 85/511 does not expressly provide that an official veterinarian may order the slaughter of animals belonging to an adjoining holding or to one within a specific radius of a holding containing animals infected by the foot-and-mouth disease virus.

26 Without its being necessary to consider the fact that, as the Commission points out, it may be as a result of an error in drafting Directive 85/511 that Article 5(4) of that directive refers only to subparagraph 1 of that article and not to subparagraph 2, it is sufficient to observe that that directive cannot be interpreted without taking account of Directive 90/425, which constitutes a basic text as regards free movement of animals and agricultural products.

27 Directive 90/425, which was adopted with a view to the establishment of the internal market, proceeds from the assertion, set out in the third recital in the preamble thereto, that frontiers are used for carrying out checks aimed at safeguarding public health and animal health. As indicated in the fourth recital, that directive implies the harmonisation of the basic requirements relating to the safeguarding of animal health. It establishes the nature of the checks that must or may be carried out by the Member States of expedition and of destination of the animals and also the measures that must or may be adopted by those Member States.

28 Articles 8 to 10 of that directive refer to zoonoses, diseases or other causes likely to constitute a serious hazard to animals or humans. Article 10, in particular, defines the protective measures that may be adopted by Member States and by the Commission, the obligations of each authority involved and also the procedures which must be followed in order that the problems for animal and human health may be resolved as rapidly as possible and with the maximum degree of coordination.

29 Directive 90/425 applies where no other provision of Community law lays down the measures that may be adopted or the procedure that must be followed in a case of zoonosis, disease or any other cause likely to constitute a serious hazard to animals or humans.

30 In the light of its broad scope and its general objective, that directive must likewise be considered to be applicable where the Community provisions appear insufficient to meet specific problems encountered in situations likely to constitute a serious hazard to animal or human health. In that regard, the Court has held that Article 8 of Directive 90/425 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 (Case C-428/99 *Van den Bor* [2002] ECR I-127, paragraph 38).

31 It should none the less be noted that the Commission and the Member States can adopt protective measures in accordance with Article 10 of Directive 90/425 only in compliance with Community law. They are thus required to respect the objectives pursued by the Community legislation in force and the general principles of Community law, such as the principle of proportionality. Furthermore, the obligation which Article 10 places on Member States to inform the Commission and the other Member States must be scrupulously observed, in order to allow close cooperation between the authorities of the Member States and the Commission.

32 As regards the objective pursued by Directive 85/511, the third recital of the preamble to that directive provides that action must be taken as soon as the presence of foot-and-mouth disease is suspected so that immediate and effective control measures can be implemented as soon as its presence is confirmed.

33 According to the final recital to that directive, the arrangements introduced by the directive are of an experimental nature and must be reviewed in keeping with developments in the situation. The arrangements initially introduced in 1985 were reviewed and substantially amended in 1990 by Directive 90/423, which established a policy of non-vaccination and sanitary killing. The arrangements introduced in 1990 were likewise reviewed following the epidemic in 2001 in order to take account of the experience acquired during that crisis, as is apparent from the preamble to Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511 (OJ 2003 L 306, p. 1).

34 Although, as stated at paragraph 25 of this judgment, Directive 85/511 does not provide for the slaughter of animals belonging to an adjoining holding or to one within a specific radius of a holding containing infected animals, it cannot be interpreted as precluding such a measure.

35 That interpretation would not allow the objective of the effective control of the disease pursued by that directive to be obtained. As the governments which have submitted observations pointed out, there are situations in which such preventive slaughter is necessary, owing to the speed at which the virus spreads, in the light of matters such as the virulence of the disease, the animal types concerned or climatic conditions.

36 In the observations submitted by the United Kingdom, a Member State particularly affected by the 2001 epidemic, reference is made to the witness statement made before the High Court of Justice by Mr James Marshall Scudamore, the Chief

Veterinary Officer of the United Kingdom, dated 29 March 2001, which shows that the epidemic would not have been controlled without the intensification of the slaughter policy, which initially concerned infected animals or those which had been in direct contact with such animals, then suspected animals and those on nearby holdings and, finally, in certain areas, sheep, goats and pigs within a three-kilometre radius of an infected holding.

37 Thus, by Decision 2001/246, based on Article 10 of Directive 90/425 and Article 13 (3) of Directive 85/511, the Commission authorised the suppressive vaccination and pre-emptive killing of animals, the latter measure designating, according to Article 1 of that decision, the killing of susceptible animals on holdings within a certain radius around holdings placed under the restrictions defined in Article 4 or 5 of Directive 85/511, aimed at the urgent reduction of numbers of animals of susceptible species in an infected area.

38 The reason for the pre-emptive killing was stated as follows in the fourth recital to Decision 2001/246:

'In addition to the measures within the framework of Directive 85/511/EEC, the Netherlands apply as a precautionary measure the pre-emptive killing of susceptible animals in holdings situated in close proximity to infected or suspect holdings, taking into account the epidemiological situation and the high density of susceptible animals in certain parts of the territory.'

39 The Court has held that the provisions referred to in Decision 2001/246 constituted an adequate legal basis for the adoption by the Commission of Decision 2001/246 (Case C-189/01 *Jippes and Others* [2000] ECR I-5689, paragraph 127).

40 It follows from the foregoing that Directive 85/511 cannot be interpreted as meaning that the measures which it lays down could not be supplemented by Community or national measures adopted on the basis of Directive 90/425.

41 In that regard, the deletion of the word 'minimum' in Article 1 of Directive 85/511 when it was amended by Directive 90/423 cannot be interpreted, as Mr Tempelman and Mr and Mrs Van Schaijk contend, as representing the Community legislature's intention to limit precisely the control measures which can be adopted in the event of an epidemic. As the Advocate General has stated at point 35 of his Opinion, the deletion of that word must be understood in the context of the adoption of a uniform policy of no suppressive vaccination. Furthermore, the interpretation proposed by the appellants in the main proceedings would be contrary to the wish to improve the arrangements for controlling the disease set out in the first recital to Directive 85/511, the terms of which were not altered when Directive 90/423 was adopted.

42 As regards the powers of the Member States pending the adoption of measures by the Commission, the second subparagraph of Article 10(1) of Directive 90/425 provides that, in the event of zoonosis, disease or cause likely to constitute a serious hazard to animals or to human health, the Member State of dispatch is immediately to implement the control or precautionary measures provided for in Community rules or adopt any other measure which it deems appropriate.

43 Contrary to Mr and Mrs Van Schaijk's contention, the use of the conjunction 'or' to introduce the last clause of that subparagraph must be interpreted as not imposing on the Member State a choice between the measures provided for in the Community rules and other measures which it deems appropriate. An interpretation of that provision, in accordance with the objective of protecting animal and human health to which it refers, requires that it be understood as not precluding a Member State from adopting such measures as it may deem appropriate in addition to implementing the control or precautionary measures provided for in the Community rules.

44 Furthermore, the expression 'protective measures' in the fourth subparagraph of Article 10(1) of Directive 90/425 must be interpreted in the light of the general objective of protecting animal and human health and not as meaning that it precludes any other measure not designed to conserve each animal in particular and, notably, measures involving the killing of animals likely to be infected.

45 It is thus that, in the circumstances of the cases before the national court, the Netherlands authorities deemed it necessary to order the preventive killing of the animals belonging to Mr Tempelman and to Mr and Mrs Van Schaijk.

46 Whether they are adopted by a Member State on the basis of Article 10(1) of Directive 90/425 or by the Commission on the basis of Article 10(4) of that directive, precautionary measures must observe the principle of proportionality (see, to that effect, in relation to measures adopted by a Member State of destination, Case C-220/01 *Lennox* [2003] ECR I-7091, paragraph 76; in relation to measures adopted by the Commission, Case C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265, paragraphs 96 to 111, and *Jippes*, cited above, paragraph 113).

47 It is settled case-law that the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted 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 (*Jippes and Others*, cited above, paragraph 81, and *Lennox*, cited above, paragraph 76).

48 In making that assessment, it is necessary to take into account all the protected interests involved and, in particular, the right to property (see, to that affect, Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 79) and also the welfare requirements of animals (see, to that effect, *Jippes and Others*, paragraph 79).

49 It follows from the orders for reference that the College van Beroep voor het bedrijfsleven reviewed the application of the national law in a manner comparable to that required in a review of compliance with the principle of proportionality in Community law and considered that the measures at issue in the main proceedings were not disproportionate. However, it is for that court to ascertain whether it may be inferred from an examination in the light of Community law of the circumstances in which the decisions ordering the animals' slaughter which are contested in the main proceedings that the principle of proportionality was observed.

50 Quite apart from the principle of proportionality, a Member State which adopts protective measures in accordance with Directive 90/425 must comply with the obligations which that directive establishes and the procedure which it lays down. In that regard, the fifth subparagraph of Article 10(1) of that directive provides that the measures are to be communicated immediately to the Commission and the other Member States (*Lennox*, paragraph 75; on the obligation to communicate without delay and to cooperate loyally where conservation measures are adopted on the basis of Article 8 of Directive 90/425, see *Van den Bor*, paragraphs 45 to 48; see also, by analogy, in relation to measures adopted on the basis of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13), Case C-241/01 *National Farmers' Union* [2002] ECR I-9079, paragraph 60).

51 The Commission has observed in that regard that the measures adopted in this instance by the Netherlands authorities were adopted in the context of close cooperation with it.

52 It follows from all the foregoing that the questions referred by the College van Beroep voor het bedrijfsleven must be answered as follows:

Since foot-and-mouth disease is a disease which constitutes a serious hazard for animals, Article 10(1) of Directive 90/425 confers on Member States the power to adopt measures to control the disease in addition to those provided for in Directive 85/511, in particular the power to order the slaughter of animals belonging to a holding adjacent to or within a specific radius of a holding containing infected animals.

Such additional measures must be adopted in compliance with the objectives pursued by the Community rules in force and, more particularly, by Directive 85/511, the general principles of Community law, such as the principle of proportionality, and the obligation to communicate laid down in Article 10(1) of Directive 90/425.

Costs

53 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. The costs incurred in submitting observations to the Court, other than those submitted by those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Since foot-and-mouth disease is a disease which constitutes a serious hazard for animals, Article 10(1) 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 confers on Member States the power to adopt measures to control the disease in addition to those provided for in 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, in particular the power to order the slaughter of animals belonging to a holding adjacent to or within a specific radius of a holding containing infected animals.

Such measures must be adopted in compliance with the objectives pursued by the Community rules in force and, more particularly, Directive 85/511, as amended by Directive 90/423, the general principles of Community law, such as the principle of proportionality, and the obligation to communicate laid down in Article 10(1) of Directive 90/425.

[Signatures]