JUDGMENT OF THE COURT
17 November 1992 *

In Case C-235/91,

Commission of the European Communities, represented by Jose Luis Iglesias Buhigues, Legal Adviser, and Christopher Docksey, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Ireland, represented by Louis J. Dockery, Chief State Solicitor, acting as Agent, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon,

defendant,

APPLICATION for a declaration that, by making all imports of semen originating from domestic bovine and porcine animals subject to a licence and to various restrictive conditions, Ireland has failed to fulfil its obligations under the EEC Treaty.

THE COURT,

composed of: O. Due, President, G. C. Rodríguez Iglesias and M. Zuleeg, (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges,

Advocate General: C. Gulmann,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: English.

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 October 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 September 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by making all imports of semen originating from domestic bovine and porcine animals subject to a licence and to various restrictive conditions, Ireland had failed to fulfil its obligations under Article 30 of the EEC Treaty, Regulation No 805/68/EEC of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), Regulation No 827/68/EEC of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (OJ, English Special Edition 1968 (I), p. 209), Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species (OJ 1977 L 206, p. 8) and Commission Decision 88/124/EEC of 21 January 1988 laying down the specimen pedigree certificates for the semen and embryos of pure-bred breeding animals of the bovine species and the particulars to be entered on those certificates (OJ 1988 L 62, p. 32).

2 The Commission contends that the requirement of an import licence constitutes an impediment to intra-Community trade and that the restrictions imposed by Ireland, which cannot be justified on veterinary grounds, do not comply with the zootechnical standards laid down in the Community rules.

3 Ireland concedes that its legislation does not comply with the Community provisions and that it must be amended in order to do so. It maintains, however, that pending the adoption of the necessary legislation its rules in fact operate in accor-

dance with Community law, which permits national measures governing zootechnical and veterinary checks, and that all the concerns expressed by the Commission in its reasoned opinion have in practice been met.

4 Ireland's argument cannot be accepted.

5 In the first place, Article 30 of the Treaty, the provisions of which were expressly reiterated in Regulations No 805/68 and No 827/68, precludes the application to intra-Community trade of national provisions which require, even as a pure formality, import licences or any other similar procedure (judgment in Case 124/81 *Commission* v *United Kingdom* [1983] ECR 203, at paragraph 9). In that regard, the exception provided for in Article 36 of the Treaty in respect of the protection of health and life of humans and animals cannot be relied upon, even temporarily, to justify the maintenance in force of such legislation when Community directives provide for the harmonization of the measures necessary to guarantee the protection of animal and human health and establish procedures for checking that they are observed (judgment in Case 251/78 *Firma Denkavit Futtermittel GmbH* v *Minister für Ernährung, Landwirtschaft und Forsten des Landes Nordrhein-Westfalen* [1979] ECR 3369, at paragraph 14).

6 Once Community provisions have established harmonized checking procedures, the appropriate checks may be carried out only within the framework of those provisions.

7 As far as the bovine species is concerned, those harmonization measures were laid down in particular by Directive 77/504, cited above, and the Commission decisions adopted in implementation of that directive, including Decision 88/124, cited above, and by Council Directive 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species (OJ 1987 L 167, p. 54) and subsequently by Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species (OJ 1988 L 194, p. 10).

8 With regard to the porcine species, provisions of the same nature have clearly harmonized zootechnical and veterinary checks. Those provisions are to be found in

particular in Council Directive 88/661/EEC of 19 December 1988 on the zootechnical standards applicable to breeding animals of the porcine species (OJ 1988 L 382, p. 36) and Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species (OJ 1990 L 224, p. 62). The periods prescribed for the entry into force of those measures expired after the period laid down by the Commission's reasoned opinion and the Commission does not, in any event, rely on them in this action. However, the Irish Government, which concedes that its legislation must be amended so as to replace the system of import licences by a certification system in accordance with the Community directives and decisions, does not establish, nor does it even exprelly contend that, in so far as its legislation concerns imports of semen of animals of the porcine species, it could be covered, before the definitive entry into force of the harmonizing provisions, by the exception provided for in Article 36 of the Treaty.

9 Secondly, the incompatibility of national legislation with Community provisions, even directly applicable provisions, can be permanently remedied only by legally binding national provisions having the same legal force as those which must be amended.

10 With regard to the implementation of directives, the Court has consistently held that mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the Treaty (judgment in Case 168/85, *Commission* v *Italy* [1986] ECR 2945, at paragraph 13).

11 In consequence Ireland, which does not dispute the fact that its national legislation must be amended because it conflicts with the Community provisions relied upon by the Commission, cannot, even temporarily, evade its obligations by relying on general health grounds and on the application of an administrative practice alleged to be in accordance with those provisions.

12 It follows that the Commission is entitled to a declaration of infringement in the terms sought.

Costs

13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since Ireland has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that by making imports of semen originating from domestic bovine and porcine animals subject to a licence and to various restrictive conditions, Ireland has failed to fulfil its obligations under Article 30 of the EEC Treaty, Regulation No 805/68/EEC of the Council of 27 June 1968 on the common organization of the market in beef and veal, Regulation No 827/68/EEC of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty, Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species and Commission Decision 88/124/EEC of 21 January 1988 laying down the specimen pedigree certificates for the semen and embryos of pure-bred breeding animals of the bovine species and the particulars to be entered on those certificates;

2. Orders Ireland to pay the costs.

Due Rodríguez Iglesias Zuleeg Mancini

Joliet Schockweiler Moitinho de Almeida Grévisse Edward

Delivered in open court in Luxembourg on 17 November 1992.

J.-G. Giraud O. Due

Registrar President