

Case C-180/96

United Kingdom of Great Britain and Northern Ireland

v

Commission of the European Communities

(Agriculture — Animal health — Emergency measures against
bovine spongiform encephalopathy — ‘Mad cow disease’)

Opinion of Advocate General Tesouro delivered on 30 September 1997 I - 2268
Judgment of the Court, 5 May 1998 I - 2269

Summary of the Judgment

1. *Actions for annulment — Actionable measures — Acts intended to produce legal effects — Act reflecting the Commission’s intention to follow a certain line of conduct or confirming a previous act — Excluded*
(*EC Treaty, Art. 173, first para.*)
2. *Agriculture — Approximation of laws concerning animal health — Veterinary and zootechnical checks in intra-Community trade in live animals and products of animal origin — Directives 89/662 and 90/425 — Emergency measures to protect against bovine spongiform encephalopathy — Ban on exports of bovine animals, bovine meat and derived products from the territory of the United Kingdom — Whether consistent with the directives*
(*Council Directives 89/662 and 90/425; Commission Decision 96/239*)

3. *Agriculture — Approximation of laws concerning animal health — Veterinary and zootechnical checks in intra-Community trade in live animals and products of animal origin — Directives 89/662 and 90/425 — Emergency measures to protect against bovine spongiform encephalopathy — Ban on exports of bovine animals, bovine meat and derived products from the territory of the United Kingdom — Obligation to state reasons — Principles of proportionality, non-discrimination and legal certainty — Breach — None — Objectives of the common agricultural policy — Whether consistent*
(EC Treaty, Arts 39(1), 40(3) and 190; Council Directives 89/662 and 90/425; Commission Decision 96/239)
4. *Agriculture — Approximation of laws — Directives 89/662 and 90/425 — Legal basis*
(EC Treaty, Arts 39(1) and 43; Council Directives 89/662 and 90/425)

1. In order for an act of the Council or the Commission to form the subject-matter of an action for annulment, it must be intended to have legal effects. That is not the position in the case of an act of the Commission which reflects its intention, or that of one of its departments, to follow a particular line of conduct or which merely confirms a previous act in such a way that annulment of the confirmatory act would follow from annulment of the previous act.

veterinary and zootechnical checks applicable in intra-Community trade.

2. In adopting Decision 96/239 on emergency measures to protect against bovine spongiform encephalopathy, which imposes, on a temporary basis, a total ban on exports of bovine animals, bovine meat and derived products from the territory of the United Kingdom to the other Member States and to third countries, the Commission acted within the framework of the powers conferred on it by Directives 90/425 and 89/662 concerning

First, the conditions governing the adoption of safeguard measures in accordance with those two directives were fulfilled, particularly since the power to adopt such measures is justified by the fact that a zoonosis, disease or other cause is likely to constitute a serious hazard. Second, having regard, in particular, to the fact that the directives are drafted in very wide terms, without imposing any restrictions as to the temporal or territorial scope of the measures concerned, it does not appear that the Commission clearly exceeded the bounds of its broad discretion in seeking to contain the disease within the territory of the United Kingdom by banning exports from that territory to other Member States and to third

countries. Lastly, the decision is not vitiated by misuse of powers, since the Commission was prompted to act by concerns as to the risk of transmissibility of bovine spongiform encephalopathy to humans, after examining the measures adopted by the United Kingdom and consulting the Scientific Veterinary Committee and the Standing Veterinary Committee, its exclusive or main purpose not being to protect economic interests rather than health.

3. Decision 96/239 on emergency measures to protect against bovine spongiform encephalopathy, which imposes, on a temporary basis, a total ban on exports of bovine animals, bovine meat and derived products from the territory of the United Kingdom to the other Member States and to third countries, fulfils the requirement to provide a statement of reasons, does not breach the principles of proportionality, non-discrimination or legal certainty and is in accordance with the objectives of the common agricultural policy set out in Article 39(1) of the Treaty.

As regards, more particularly, the principle of proportionality, it was open to the Commission, in view of the great uncertainty as to the risks posed by the animals and products concerned, to take the protective measures in issue without having to wait until the reality and seriousness of those risks became fully apparent. As regards the principle of non-

discrimination laid down in the second subparagraph of Article 40(3) of the Treaty, the fact that, at the time of adoption of the decision, almost all the cases of bovine spongiform encephalopathy in Europe were recorded in the United Kingdom meant that the situation in that Member State could not be regarded as comparable with that in the other Member States.

4. Article 43 of the Treaty is the appropriate legal basis for any legislation concerning the production and marketing of agricultural products listed in Annex II to the Treaty which contributes to the achievement of one or more of the objectives of the common agricultural policy set out in Article 39 of the Treaty.

In that connection, and having regard to the importance of the role played by the free movement of animals, animal products and products of animal origin in achieving those objectives, Article 43 constituted the appropriate legal basis for the adoption of Directives 90/425 and 89/662 concerning veterinary and zootechnical checks applicable in intra-Community trade, even though those directives authorise the Commission incidentally to adopt safeguard measures covering 'products of animal origin', 'products derived from those products' and 'products derived' from animals which are not included in Annex II to the Treaty.