

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

30 September 1998 *

In Case T-149/96,

Confederazione Nazionale Coltivatori Diretti (Coldiretti), a trade organisation governed by Italian law, established in Rome,

110 farmers, established in Italy,

represented by Roberto G. Aloisio, of the Rome Bar, and Fabrizio Massoni, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Jim Penning, 31 Grand-Rue,

applicants,

v

Council of the European Union, represented initially by Moyra Sims-Robertson, Legal Adviser, and Marco Umberto Moricca, of its Legal Service, and subsequently by Moyra Sims-Robertson and Ignacio Díez Parra, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

* Language of the case: Italian.

and

Commission of the European Communities, represented by Paolo Ziotti and James Macdonald Flett, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION, first, for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty for the damage allegedly suffered by the applicants as a result of acts and omissions of the Council and the Commission following the outbreak of the disease known as bovine spongiform encephalopathy and, second, annulment of Council Regulation (EC) No 1357/96 of 8 July 1996 providing for additional payments to be made in 1996 with the premiums referred to in Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal and amending that regulation (OJ 1996 L 175, p. 9),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: J. Azizi, President, R. García-Valdecasas and M. Jaeger, Judges,

Registrar: Blanca Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 March 1998,

gives the following

Judgment

Facts

- 1 Bovine spongiform encephalopathy ('BSE'), or 'mad cow disease', is one of a group of diseases known as transmissible spongiform encephalopathies, which are characterised by brain degeneration with a sponge-like appearance of the nerve cells under microscopic analysis.
- 2 The probable origin of BSE is thought to have been a change in the method of preparing cattle feed containing proteins derived from carcasses of sheep affected by scrapie. There is an incubation period lasting several years, during which the disease cannot be detected in living animals.
- 3 BSE was detected for the first time in the United Kingdom in 1986. Since 1988, over 160 000 confirmed cases of BSE have been identified in that Member State, and there have also been sporadic cases of the disease in France, Ireland, Portugal and Switzerland.
- 4 In order to combat the disease and its consequential effects, and to supplement the various measures taken by the United Kingdom, the European Community has since July 1988 adopted a number of decisions including, in particular, those referred to in detail below.

- 5 Commission Decision 89/469/EEC of 28 July 1989 concerning certain protection measures relating to bovine spongiform encephalopathy in the United Kingdom (OJ 1989 L 225, p. 51) introduced a number of restrictions on intra-Community trade in bovine animals born in the United Kingdom before July 1988, that is to say, before the date of the introduction in that country of the ban on the sale of feed for ruminants containing proteins derived from ruminants and on the feeding of ruminants with such feed (the 'ruminant feed ban' contained in the Bovine Spongiform Encephalopathy Order 1988, SI 1988/1039, as subsequently amended).
- 6 That decision was amended by Commission Decision 90/59/EEC of 7 February 1990 (OJ 1990 L 41, p. 23), which extended the ban to all exports of bovine animals from the United Kingdom, apart from those intended for slaughter before the age of 6 months.
- 7 Decision 89/469 was amended a second time by Commission Decision 90/261/EEC of 8 June 1990 (OJ 1990 L 146, p. 29), which provided that observance of the ban imposed in the United Kingdom on exports of animals aged over 6 months should be guaranteed by the affixation to such animals of a special mark and by the use of a system of computer records enabling them to be identified. In addition, it provided for the inclusion of the following sentence in the health certificate accompanying bone-in bovine meat from the United Kingdom: 'Fresh bovine meat derived from bovines which are not from holdings in which BSE has been confirmed in the previous two years'. With regard to boneless meat, it required the health certificate to state that the product concerned was 'fresh meat from which during the cutting process obvious nervous and lymphatic tissue [had] been removed', that is to say, tissue which might, according to expert opinion, contain the infective agent.
- 8 Those decisions were in turn replaced by Commission Decision 94/474/EC of 27 July 1994 concerning certain protection measures relating to bovine spongiform encephalopathy and repealing Decisions 89/469/EEC and 90/200/EEC (OJ 1994 L 194, p. 96), which reproduced their contents with some amendments. The new

decision increased from two to six years the period during which, for the purposes of allowing exports of bone-in meat to other Member States of the Community, it was necessary for no case of BSE to have been confirmed on the holding on which the animals in question had been raised. It prohibited the exportation from the United Kingdom of any materials or products derived from ruminants not treated in accordance with the means permitted under Commission Decision 94/382/EC of 27 June 1994 on the approval of alternative heat treatment systems for processing animal waste of ruminant origin, with a view to the inactivation of spongiform encephalopathy agents (OJ 1994 L 172, p. 5), which entered into force on 1 January 1995.

- 9 The abovementioned Decision 94/474 of 27 July 1994 was in turn amended by Commission Decision 95/287/EC of 18 July 1995 (OJ 1995 L 181, p. 40). That decision required official Elisa tests to be carried out for the identification of ruminant protein in feed intended for ruminants. It also amended the wording of the health certificates accompanying meat sent from the United Kingdom and, consequently, the scope of the checks to be carried out by the competent national authorities. As regards, in particular, meat derived from bovines aged over two and a half years, the certificate was required to affirm that the animals in question had resided in the United Kingdom only on holdings on which no case of BSE had been confirmed during the previous six years, or otherwise that the meat was fresh deboned meat in the form of muscle from which the adherent tissues, including obvious nervous and lymphatic tissues, had been removed.
- 10 Commission Decision 90/134/EEC of 6 March 1990 amending for the second time Council Directive 82/894/EEC on the notification of animal diseases within the Community and temporarily amending the frequency of notification for bovine spongiform encephalopathy (OJ 1990 L 76, p. 23) added BSE to the list of diseases to be notified under Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community (OJ 1982 L 378, p. 58), with a view to ensuring the rapid availability of information essential for the application of the protection measures provided for in Community regulations. That directive was amended for the third time by Commission Decision 92/450/EEC of 30 July 1992 (OJ 1992 L 248, p. 77), which extended until 31 December 1997 the require-

ment of weekly notification of outbreaks of the disease provided for by the above-mentioned Decision 90/134 of 6 March 1990.

- 11 Commission Decision 90/200/EEC of 9 April 1990 concerning additional requirements for some tissues and organs with respect to bovine spongiform encephalopathy (OJ 1990 L 105, p. 24) introduced a series of measures designed to restrict intra-Community trade in certain tissues and organs of bovine origin with regard to BSE, in particular tissues and organs derived from bovine animals aged more than six months at slaughter.
- 12 Commission Decision 92/290/EEC of 14 May 1992 concerning certain protection measures relating to bovine embryos in respect of bovine spongiform encephalopathy in the United Kingdom (OJ 1992 L 152, p. 37) required all the Member States to ensure that no embryos of the bovine species derived from females in which BSE was suspected or confirmed were sent to other Member States of the Community.
- 13 Commission Decision 94/381/EC of 27 June 1994 concerning certain protection measures with regard to bovine spongiform encephalopathy and the feeding of mammalian derived protein (OJ 1994 L 172, p. 23) prohibited, throughout the Community, the use of protein derived from all mammalian species in the feeding of ruminants, save that it authorised Member States to adopt a system allowing them to distinguish between protein from ruminants and that from non-ruminant species. The contents of that decision were amended and clarified by Commission Decision 95/60/EC of 6 March 1995 (OJ 1995 L 55, p. 43).
- 14 In a statement dated 20 March 1996, the Spongiform Encephalopathy Advisory Committee ('SEAC'), an independent scientific body which advises the United Kingdom Government, referred to ten cases of a variant of Creutzfeldt-Jakob disease identified in people aged under 42.

15 That statement was in the following terms:

‘Although there is no direct evidence of a link, on current data and in the absence of any credible alternative the most likely explanation at present is that these cases are linked to exposure to BSE before the introduction of the [specified bovine offal] ban in 1989. This is cause for great concern.’

16 On the same day, the United Kingdom Minister of Agriculture, Fisheries and Food took the decision to prohibit the sale or supply of mammalian-derived meat meal and bone meal or its use in feed for any livestock, including poultry, horses and farmed fish, and to prohibit the sale of meat from bovine animals over 30 months old for human consumption.

17 At the same time, a number of Member States and non-member countries took measures banning imports of cattle or beef and veal from the United Kingdom or, in the case of some non-member countries, from the European Union.

18 On 22 March 1996, the Scientific Veterinary Committee of the European Union concluded that, on the available data, it was not possible to prove that BSE was transmissible to humans. However, in view of the risk that existed of such transmissibility, the Committee recommended that the measures recently adopted by the United Kingdom concerning the deboning of carcasses from cattle aged over 30 months in licensed plants should be implemented for intra-Community trade and that the Community should adopt appropriate measures as regards the ban on the use of meat meal and bone meal in animal feed. The Committee further considered that any contact of spinal cord tissue with fat, bone and meat must be

excluded, failing which the carcass should be treated as specified bovine offal. Finally, it recommended that research on the question of transmissibility of BSE to humans be continued.

- 19 On 24 March 1996, SEAC confirmed its previous recommendations; it stressed, however, that it was not in a position to confirm whether or not there was a causal link between BSE and the recently discovered variant of Creutzfeldt-Jakob disease. It stated that this was a question which required further scientific research.
- 20 On 27 March 1996 the Commission adopted Decision 96/239/EC on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 078, p. 47).
- 21 The fifth recital in the preamble to that decision reads as follows:

‘Whereas, under current circumstances, a definitive stance on the transmissibility of BSE to humans is not possible; whereas a risk of transmission cannot be excluded; whereas the resulting uncertainty has created serious concern among consumers; whereas under the circumstances and as an emergency measure, the transport of all bovine animals and all beef and veal or derived products from the United Kingdom to the other Member States should be temporarily banned; whereas the same prohibitions should also apply to exports to non-Member countries so as to prevent deflections of trade’.

22 Article 1 of Decision 96/239 provides:

‘Pending an overall examination of the situation and Community provisions adopted to protect against bovine spongiform encephalopathy notwithstanding, the United Kingdom shall not export from its territory to the other Member States or third countries:

— live bovine animals, their semen and embryos,

— meat of bovine animals slaughtered in the United Kingdom,

— products obtained from bovine animals slaughtered in the United Kingdom which are liable to enter the animal feed or human food chain, and materials destined for use in medicinal products, cosmetics or pharmaceutical products,

— mammalian-derived meat [meal] and bone-meal.’

23 Following the submission by the Scientific Veterinary Committee of two opinions dated 9 and 18 April 1996, Decision 96/239 was amended by Commission Decision 96/362/EC of 11 June 1996 (OJ 1996 L 139, p. 17), which lifts the ban on exports of bovine semen and of various products such as gelatin, di-calcium phosphate, amino acids and peptides, tallow and tallow products, provided that they are produced in accordance with the methods described in the annex to the decision, in establishments under official veterinary control.

24 At the same time, a meeting of international experts was convened in Geneva by the World Health Organisation, with the participation of the United Nations Food and Agriculture Organisation (the FAO) and the Office International des Épizooties (International Office of Epizootic Diseases, the OIE). Those experts also

came to the conclusion that a link had not yet been proven between BSE and the variant of Creutzfeldt-Jakob disease, but that the most likely explanation for the cases of that variant of the disease discovered in the United Kingdom was the exposure of the United Kingdom population to BSE. They recommended, in particular, that all countries should ensure that animals affected by transmissible spongiform encephalopathy were slaughtered and all parts or products of such animals disposed of so that the infective agent could not enter any food chain; and furthermore that all countries should review their rendering procedures so as to ensure that they effectively inactivated the agents of transmissible spongiform encephalopathy.

- 25 Starting in April 1996, the Commission adopted a series of support measures for the beef market in the Community as a whole, considerably broadening, in particular, the conditions for intervention. Those measures included Council Regulation (EC) No 1357/96 of 8 July 1996 providing for additional payments to be made in 1996 with the premiums referred to in Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal and amending that Regulation (OJ 1996 L 175, p. 9).
- 26 By application lodged at the Registry of the Court of First Instance on 21 May 1996 and registered under case number T-76/96, the National Farmers' Union and four companies operating in the British cattle industry brought an action for the annulment of Decision 96/239. By application lodged at the Registry of the Court of First Instance on 25 May 1996 and registered under case number T-76/96 R, they applied under Article 185 of the EC Treaty for suspension of the operation of that decision.
- 27 By application lodged at the Registry of the Court of Justice on 24 May 1996 and registered under case number C-180/96, the United Kingdom brought an action for the annulment of Decision 96/239 and of certain other measures relating to it. By a separate document lodged at the Registry of the Court of Justice on the same day and registered under case number C-180/96 R, it applied for suspension of the operation of Decision 96/239 and/or certain interim measures.

- 28 By order of 12 July 1996 in Case C-180/96 R *United Kingdom v Commission* [1996] ECR I-3903, the Court of Justice dismissed the United Kingdom's application for suspension of the operation of Decision 96/239. By order of 13 July 1996 in Case T-76/96 R *The National Farmers' Union and Others v Commission* [1996] ECR II-815, the President of the Court of First Instance likewise dismissed the application for suspension made in that case.
- 29 By order of 5 December 1996, Case T-76/96 *The National Farmers' Union and Others v Commission* was removed from the register following withdrawal of the proceedings by the applicants.
- 30 By judgment of 5 May 1998 in Case C-180/96 *United Kingdom v Commission* [1998] ECR I-2265, the Court of Justice dismissed the action for annulment brought by the applicant Member State.

Procedure and forms of order sought

- 31 By application lodged at the Registry of the Court of First Instance on 23 September 1996, the applicants, the Confederazione Nazionale Coltivatori Diretti (Coldiretti), a trade organisation governed by Italian law, established in Rome, to which Italian stock farmers are affiliated through the intermediary of the regional and provincial federations, together with 110 individual stock farmers, brought the present action against the Council, the Commission and the Standing Veterinary Committee.
- 32 By order of the Court of First Instance (Fifth Chamber) of 12 March 1997, the action was declared inadmissible as regards the Standing Veterinary Committee.
- 33 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure and to take measures of organisation of pro-

cedure by requesting the Commission to produce the conclusions, delivered on 7 February 1997, of the commission of inquiry set up by the European Parliament to look into BSE. The document requested was produced by the Commission on 9 October 1997.

34 The parties presented oral argument and replied to the questions put to them orally by the Court at the hearing in open court on 10 March 1998.

35 The applicants claim that the Court should:

- order the defendants, in accordance with the second paragraph of Article 215 of the Treaty, jointly and severally to pay the sum due to each of the applicants by way of compensation for damage to be assessed during the proceedings, together with default interest at the rate of 10% and taking inflation into account until actual payment;
- annul Regulation No 1357/96 in so far as it limits the amount of compensation to be paid to farmers and, in any event, in so far as it quantifies that compensation by reference solely to lost income and not to increased costs;
- order the defendants or the defendant held to be liable to pay the costs.

36 The applicants stated at the hearing that, if the Court were to uphold the defendants' argument that Regulation No 1357/96 does not limit the extra-contractual liability of the Community, they would withdraw their claim for annulment of that regulation.

37 The Council contends that the Court should:

- declare the application for compensation manifestly inadmissible as regards Coldiretti;
- in any event, dismiss the application for compensation as unfounded;
- declare the application for annulment of Regulation No 1357/96 manifestly inadmissible;
- in any event, dismiss it as unfounded;
- order the applicants to pay the costs.

38 The Commission contends that the Court should:

- declare the application for annulment of Regulation No 1357/96 inadmissible;
- declare Coldiretti's application for compensation inadmissible;
- declare the application for compensation inadmissible inasmuch as it is based on a right to health protection enjoyed by all Community citizens;
- dismiss the remainder of the application for compensation;
- order the applicants to pay the costs.

- 39 The applicants have requested the commissioning of an experts' report specifying the technical measures needed to prevent the appearance and spread of BSE in relation to bovine meat and quantifying, in terms both of actual damage and of loss of profits, the present and future injury suffered and to be suffered by each of the applicants in this case. In that regard, they reserve the right to make available to the Court and/or to such experts as may be appointed any documents needed for the purposes of the present case.

The claims for compensation

Admissibility

The Council's objection of inadmissibility alleging that the application is not in accordance with Article 44(1)(c) of the Rules of Procedure

— Arguments of the parties

- 40 The Council points out that, according to settled case-law regarding the scope of Article 44(1)(c) of the Rules of Procedure, all applications must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on, in a manner which is sufficiently clear and precise to enable the defendant to prepare his defence and the Court to give a ruling, if appropriate, without other information in support.
- 41 As regards, more particularly, actions for damages such as the present action, the Council relies on well-established case-law according to which an application which does not enable the Court to identify the damage suffered by the applicant does not meet the minimum requirements laid down by Article 44(1)(c) of the

Rules of Procedure as a condition of the admissibility of an action (order of the Court of First Instance in Case T-56/92 *Koelman v Commission* [1993] ECR II-1267).

- 42 It contends that the applicants have clearly failed to fulfil that condition, since they do not state the precise nature or scope of the damage directly suffered by each of them. It points out, in particular, that the applicants request the Court in their application to instruct experts to assess the amount to be paid to each of them, and that they maintain that the damage has affected all cattle farmers in Italy.
- 43 Consequently, according to the Council, the claim for damages must be rejected as manifestly inadmissible, on the ground that it is incoherent, unclear and imprecise.
- 44 At the hearing, the applicants contested that objection of inadmissibility, pointing out that the Council and the Commission recognise the existence of the damage caused to farmers. They added that the precise quantification of the damage would be an unreasonable burden for them the cost of which they would be unable to meet, and that it is for that reason that they have requested the Court to commission an experts' report.

— Findings of the Court

- 45 Under Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, any application must state the subject-matter of the proceedings and contain a summary of the pleas in law on which the application is based.
- 46 Those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, where appropriate, without any other information in support. In order to guarantee legal certainty

and the sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars on which the action is founded be indicated coherently and intelligibly, if only in summary form, in the application itself (see Case C-347/88 *Commission v Greece* [1990] ECR I-4747, paragraph 28, and Case C-52/90 *Commission v Denmark* [1992] ECR I-2187, paragraph 17 et seq.; see also the order in Case T-56/92 *Koelman*, cited above, paragraph 21, the judgment in Case T-387/94 *Asia Motor France and Others v Commission* [1996] ECR II-961, paragraph 106, the order in Case T-53/96 *Syndicat des Producteurs de Viande Bovine and Others v Commission* [1996] ECR II-1579, paragraph 21, and the judgment in Case T-113/96 *Dubois et Fils v Council and Commission* [1998] ECR II-125, paragraph 29).

- 47 In order to satisfy those requirements, an application seeking compensation for damage caused by a Community institution must state the evidence from which, *inter alia*, the damage allegedly sustained by the applicant and, in particular, the nature and extent of that damage can be identified (order in *Koelman*, cited above, paragraphs 22 to 24; judgment in Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others v Commission* [1995] ECR II-2941, paragraph 75).
- 48 In the present case, pages 18 and 19 of the application state the various categories of damage suffered by the beef farmers, namely, first, actual damage resulting from sales of live animals for less than their production cost, at a price which the applicants claim to be 40% lower than that which the farmers expected to obtain; second, actual damage arising from the cost of keeping animals which remain unsold at the end of their fattening cycle; third, loss of the profits which they would otherwise have made on the sale of animals during the current year; and fourth, loss of income resulting from the persistent decline in beef consumption in the years to come.
- 49 Although the applicants' pleadings do not definitively quantify the damage suffered by each farmer, they none the less contain, in Annexes 10 and 11 to the application, detailed estimates of the losses allegedly sustained by the Italian beef

industry generally, and the criteria and parameters applied in arriving at those estimates are set out in those annexes. Notwithstanding the provision of those estimates, the applicants stress the very great difficulties encountered by them in attempting correctly to evaluate and quantify the damage suffered by each farmer. They state that it is for that very reason that they have requested that that complex computation be carried out by a group of experts.

50 In those circumstances, it must be accepted that the application, supplemented by the information contained in the annexes, is sufficiently precise as regards the nature and character of the damage pleaded, and that details of the approximate extent of the alleged damage have been made available both to the defendants and to the Court. Consequently, the defendants have been able to prepare their defence without any other information in support, and the Court is in a position to rule on the action, subject to the need arising for further details concerning the precise scope of the damage suffered by each of the applicants.

51 The Council is therefore wrong in its assertion that the application does not fulfil the criteria of clarity and precision laid down by Article 44(1)(c) of the Rules of Procedure.

52 It follows that this objection of inadmissibility must be dismissed.

The defendants' objection of inadmissibility alleging that Coldiretti has no legal interest in bringing the proceedings

— Arguments of the parties

53 The defendants dispute the admissibility of the claim for compensation made by Coldiretti. They refer to the relevant case-law, according to which an organisation formed for the defence of the collective interests of a fixed category of persons does not have the requisite standing to bring a claim for compensation for damage

suffered by its members. The Community judicature has held that a trade or professional association has the right to bring proceedings under Article 215 of the Treaty only where it is able to assert in law either a particular interest of its own which is distinct from that of its members or a right to compensation which has been assigned to it by others (Case 72/74 *Union Syndicale and Others v Council* [1975] ECR 401, paragraphs 20 to 22; *Exporteurs in Levende Varkens*, cited above, paragraph 64; order in *Syndicat des Producteurs de Viande Bovine*, cited above, paragraph 28). The application does not show, or even imply, that Coldiretti has suffered damage in its own right or that it is seeking to enforce a right to compensation assigned to it by its members. Coldiretti has not proved, or even maintained, that either of those situations obtains in the present case. Consequently, its application is manifestly inadmissible.

- 54 The applicants acknowledge that Coldiretti is an association without legal personality. Nevertheless, they contend that it has a legal interest in bringing the proceedings. The fact that it lacks legal personality is not significant and does not prevent it in any way from constituting an entity distinct from its members, with the capacity to act in its own right. For that reason, Coldiretti has an interest in establishing liability on the part of the institutions and/or their officials by virtue of their having brought about the damage complained of in the application.
- 55 It has an interest in bringing the proceedings because associations not recognised as having legal personality, such as itself, possess a legal status distinct from the personality of its members, even though — from the point of view of pecuniary liability — they do not have full financial autonomy.

— Findings of the Court

- 56 As the Commission has pointed out, the objection of inadmissibility at issue is not based on arguments concerning the legal form of the applicant or its lack of personality under Italian law but is founded on the criteria laid down by Community case-law with regard to the interest of a trade or professional association in bringing proceedings.

- 57 Such an association has the right to bring proceedings under Article 215 of the Treaty only where it is able to assert in law either a particular interest of its own which is distinct from that of its members or a right to compensation which has been assigned to it by others (Case 238/78 *Ireks-Arkady v Council and Commission* [1979] ECR 2955, paragraph 5; *Exporteurs in Levende Varkens*, cited above, paragraphs 76 and 77; order in *Syndicat des Producteurs de Viande Bovine*, cited above, paragraphs 28 and 29).
- 58 It is true, as the applicants maintained at the hearing, that Coldiretti represents the interests of arable and livestock farmers (Article 2 of its articles of association); nevertheless, only associations, and not individual farmers, can be members, since according to Article 7 of its articles of association, Coldiretti is a confederation made up of regional and provincial federations of farmers owning their own holdings. Article 10 provides that its membership may also include organisations of agricultural operators pursuing objectives analogous to those of Coldiretti.
- 59 Coldiretti has not alleged any damage to its own interests for which it is claiming compensation; nor does it plead any assignment of rights or any express mandate authorising it to bring proceedings for compensation for losses suffered by its member associations or by the individual farmers who are members of those associations.
- 60 It follows that it has not established that it has any interest in bringing proceedings in the present case.
- 61 Consequently, the claims for compensation must be rejected as inadmissible in so far as they are made by Coldiretti.

The Commission's objection of inadmissibility alleging that the action is based on a right to health protection which is enjoyed by all Community citizens

— Arguments of the parties

62 The Commission observes that, in invoking the need to protect the economic interests and health of consumers, and in pleading the damage allegedly suffered by 'Community citizens' as a result of the BSE crisis, the applicants have brought an action not with a view to protecting their own interests but in the general interest of all their fellow European citizens, and that they are thereby implicitly claiming to represent those fellow citizens. In those circumstances, the applicants have confused their own interests with the interests of the public at large or of consumers. Community law does not recognise the concept of an action brought with a view to protecting the general interest.

63 The Commission further refers to the case-law concerning the inadmissibility of actions for compensation which contain no evidence, even of a summary nature, establishing the three key factors involved, namely the damage suffered (both its nature and its gravity), the alleged unlawful conduct of the Community institutions and the existence of a causal link (Case 26/74 *Roquette Frères v Commission* [1976] ECR 677, paragraphs 22 to 24, and Case T-64/89 *Automec v Commission* [1990] ECR II-367, paragraph 73). It concludes that the action is also inadmissible on the ground that it does not specify the damage to health allegedly suffered by the applicants.

— Findings of the Court

64 In claiming that the applicants have brought an action in the general interests of all their fellow European citizens, the Commission is misinterpreting the application.

- 65 It is true that the application contains a passage in which the applicants refer to Articles 3(o), 129 and 129a of the Treaty and point out that those provisions require the Community institutions to contribute towards ensuring a high level of health protection and consumer protection. Nevertheless, having regard to the context in which those statements are made, the wording of the application setting out the forms of order sought and the absence of any reference in the applicants' written pleadings to damage to human health, it is clear that the applicants are not claiming that the health of any person has been damaged and are not seeking compensation in that regard.
- 66 The objection of inadmissibility raised by the Commission must therefore be rejected.

Substance

Arguments of the parties

— Unlawful conduct on the part of the Council and the Commission

- 67 The applicants maintain that the Community institutions, and the Commission in particular, have misused the powers and duties assigned to them by the legislation with a view to preventing the spread of BSE, and that they are thus liable for the serious disturbances which have occurred in the market in beef and veal.
- 68 They observe that the fundamental task of the Community, as laid down in Article 2 of the Treaty, takes the form of a series of specific tasks assigned to the Community by various provisions of the Treaty.

69 The applicants observe, in particular, that:

- according to Article 39 of the Treaty, the objectives of the common agricultural policy are to increase productivity, to increase the individual earnings of persons engaged in agriculture, to stabilise markets, to assure the availability of supplies and to ensure that the prices payable by consumers are reasonable;
- under Article 129 of the Treaty, the Community is to contribute towards ensuring a high level of human health protection;
- Article 129a is concerned with consumer protection.

70 The applicants submit that although the Commission was informed, from 1989 onwards, of the discovery of numerous outbreaks of BSE in the United Kingdom, and of the serious risk of transmission of the disease by live animals, the Community institutions failed to take the necessary precautions to prevent the epidemic from spreading and merely took steps which subsequently proved to be inadequate and ineffective.

71 More particularly, the applicants maintain that the Commission:

- failed to exercise its supervisory powers in order to ensure that the Member States took the necessary steps to prevent bovine animals and pigs farmed for breeding, production or slaughter with a view to intra-Community trade from constituting a source from which infectious diseases could spread;
- failed, in relation to completion of the internal market, to take the necessary action to protect the health and economic interests of consumers as regards intra-Community trade in foodstuffs by harmonising official controls of such foodstuffs and, to that end, making them more effective, pursuant to Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs (OJ

1989 L 186, p. 23), Council Directive 92/59/EEC of 29 June 1992 on general product safety (OJ 1992 L 228, p. 24) and Council Directive 93/99/EEC of 29 October 1993 on the subject of additional measures concerning the official control of foodstuffs (OJ 1993 L 290, p. 14);

- failed to adopt the measures relating to protection and control which were needed in order to prevent the spread of diseases likely to constitute a serious hazard to animals or to human health, such as those referred to in 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) and 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).

72 In particular, the applicants complain that the Commission failed to exercise the following powers conferred by the abovementioned Directive 89/662:

- the power, provided for in Article 8(1), to send a mission of inspection to carry out an on-the-spot check, to instruct an official veterinarian to check the facts and to request the Member State concerned to intensify checks;
- the power, provided for in Articles 9(2) and 15, to send its representatives to the place concerned to examine the measures taken by the national authorities and to issue an opinion on those measures;
- the power, provided for in Article 9(3), to take interim protective measures and thereafter to submit them to the Standing Veterinary Committee;
- the power, provided for in Articles 9(4), 16(2) and (3) and 17, to adopt the necessary measures, recommendations and decisions.

- 73 They further argue that several of the measures and procedures adopted by the institutions indicate negligence on the part of those institutions.
- 74 First, the abovementioned Decision 94/474 concerning certain protection measures relating to BSE authorised exports of fresh bovine meat from the United Kingdom, subject only to the addition of the following neutral wording to the health certificate: 'Fresh deboned bovine meat in the form of muscle from which the adherent tissues, including obvious nervous and lymphatic tissues, have been removed'. According to the applicants, such a measure was manifestly incapable of stopping the epidemic from spreading.
- 75 Second, the abovementioned Decision 95/287 authorised, on wholly unjustified grounds, exports of bovine meat originating in the United Kingdom, and even of meat from holdings on which one or more cases of BSE had been confirmed, subject only to the addition to the health certificate of the anodyne formula set out above.
- 76 In support of the foregoing observations and of their allegation that the Community is liable under Article 215 of the Treaty, the applicants rely on the conclusions contained in the report of the commission of inquiry set up by the European Parliament to look into BSE and to determine the political liability, if any, of the Commission and the Council in the matter. They refer, in particular, to certain passages from that report.
- 77 As regards the legal nature of the liability alleged, the applicants argue that objective liability, based on wrongful conduct, has been incurred in the present case. They maintain that the defendants were at fault, in that they did not discharge their duty to take steps to limit the spread of an epidemic and to take action regarding the United Kingdom's continuing failure to fulfil its obligations under the legislation adopted to combat the disease. Since the requisite 'result' was not achieved in any way, and since, on the contrary, the conduct of the institutions led to the opposite result from that which they should have sought to achieve, they are

clearly liable to pay compensation, without there even being any need to examine each of the negligent acts of the defendants for the purposes of establishing such liability.

- 78 The Community institutions cannot shelter behind such concepts as 'legislative activity' and 'discretionary power', because the applicants also complain that they were guilty of various omissions and acts of an administrative nature and that their discretionary power to decide whether or not to adopt a given piece of legislation does not entitle them to act in an arbitrary manner.
- 79 At the hearing, the applicants stated that their complaint against the Community institutions concerned, ultimately, the latter's failure to adopt in 1990 the measures which they adopted in 1996, namely a ban on sales of beef from the United Kingdom to continental Europe.
- 80 The Commission refers to the legislation adopted by the Community in order to deal with the BSE crisis. In the light of the knowledge progressively acquired with regard to the epidemiology of the disease, the Commission adopted various measures from 1989 onwards in order, first, to prevent BSE from spreading to Member States other than the United Kingdom, where the first outbreaks had been recorded, and, second, to eradicate the disease. Those measures coincided with measures taken at the same time by the United Kingdom authorities.
- 81 The Commission observes that any conclusion that it acted unlawfully must be preceded by an examination of the adequacy of the measures adopted from July 1989 onwards, following publication of the SEAC report on the development of the disease in the United Kingdom, which established the first cases of BSE and which described the state of scientific knowledge on the subject. The adequacy of those measures must be assessed in the light of the scientific knowledge available at the time of their adoption. The Commission points out in that regard that, on a number of occasions, it requested the Scientific Veterinary Committee, and in particular the BSE Subcommittee specially set up, to discuss the matter and to give its opinion on various problems connected with the disease. It adds that it organised

two international symposia on the subject in November 1990 and September 1993, that it participated in the organisation of an international conference held in September 1993 and, moreover, that it contributed to the financing of research into the matter.

82 According to the Commission, to adopt, in response to the appearance of a given disease, restrictive measures for which there was no justification or reasonable scientific basis would be incompatible with the institutions' responsibilities under Article 39 of the Treaty. In fact, the long-held view in scientific circles was that it was relatively unlikely that the disease could be transmitted to humans, and the Scientific Veterinary Committee had expressed a view to that effect in its opinions of 27 September 1989, 8 January 1990, 6 June 1990 and 17 January 1992. Moreover, that view was also expressed by the OIE in its report of September 1990 and by the World Health Organisation in a report published in 1991.

83 It was not until 1993 that there was any detailed consideration or verification of the possibility of a link between BSE and Creutzfeldt-Jakob disease in humans, and, even then, this involved only a 'working hypothesis' for which there was, at the time, no support in medical and scientific circles.

84 The Commission refers in that regard to the World Health Organisation's memorandum of 1993 concerning the development of BSE in the United Kingdom, to the conclusions of the experts comprising the OIE Ad hoc Group on BSE delivered at the symposium held in Paris in September 1994, to the conclusions reached by the World Health Organisation at the end of a symposium on BSE held in Geneva from 17 to 19 May 1995 and, lastly, to the opinions of the Scientific Committee for Food of 21 September 1995 and of the Scientific Veterinary Committee of 7 and 20 November 1995.

85 According to the Commission, it was as a result of new information published on 20 March 1996 in the context of the SEAC statement that it became necessary to adopt, as a matter of urgency, the restrictive measures forming the subject-matter of Decision 96/239, inasmuch as that statement contained the first affirmation by scientists that the agent responsible for BSE was probably a pathogenic agent hazardous to human health.

86 It is incorrect, therefore, to assess the conduct of the Community institutions prior to that date on an *a posteriori* basis. For as long as the possible transmission of BSE to humans remained a mere scientific hypothesis, the Commission considered that the different interests involved, namely those of operators in the sector relating, in particular, to the stability of the market and those of consumers, were adequately reconciled by the ban on shipments from the United Kingdom of live bovine animals aged over six months and of an entire range of products liable to carry the disease. According to settled case-law, 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 (Joined Cases C-296/93 and C-307/93 *France and Ireland v Commission* [1996] ECR I-795, paragraph 30). Consequently, the Commission cannot be held to have erred as regards the way in which, prior to 20 March 1996, it assessed the risks associated with BSE in the light of contemporary scientific knowledge.

87 The Commission contends that its conduct was not illegal and that the action should therefore be dismissed as to its substance.

88 The Council likewise maintains that the action for compensation is unfounded. It recalls the criteria which must be fulfilled in order for the Community to incur

non-contractual liability and observes that it is for the applicants to establish that the Community acted illegally in response to the spread of the BSE epidemic.

89 As to the acts adopted by the Council and the Commission in the veterinary sector, which the applicants regard as inadequate to stem the spread of BSE, the Council refers to settled case-law of the Court of Justice, according to which, in the context of Community legislation characterised by the exercise of a wide discretionary power essential for the implementation of the common agricultural policy, the Community can incur liability only exceptionally, in cases in which the institution concerned has manifestly and seriously disregarded the limits on the exercise of its powers (Case 5/71 *Zuckerfabrik Schöppenstedt v Council* [1971] ECR 975, paragraph 11, and Joined Cases 116/77 and 124/77 *Amylum v Council and Commission* [1979] ECR 3497, paragraph 13).

90 The Council observes that it has conferred on the Commission the power to adopt measures to protect human and animal health, whilst reserving powers of implementation to the Member States.

91 In addition, it points out that in the veterinary sphere its powers are shared by the Commission. It observes that it is apparent from the Treaty itself, in particular Articles 5, 145 and 155, that legislation in that field is to be implemented jointly by the Member States and by the Commission. It adds that it is for the Commission to submit proposals to it, in order to enable it to adopt specific legislation concerning BSE and that, since the epidemic first manifested itself in 1986, it has never received any proposal from the Commission specifically designed to combat BSE. Consequently, it denies that the framework legislation was inadequate, since it had already empowered the Commission to take such measures as the latter institution might, in exercise of its discretionary powers, consider necessary in order to deal with zoonoses, including new ones, whilst reserving certain powers to the Member States.

92 In the Council's view, the applicants have not shown that it adopted acts constituting a serious and manifest breach of a superior rule of law for the protection of the individual or that it failed to discharge any obligation to act, since it has no power to act on its own initiative in the absence of proposals from the Commission.

93 It therefore considers that one of the criteria for establishing liability on its part has not been fulfilled and, consequently, that the application for compensation must be rejected, without there being any need to examine the question as to the existence of damage or of a causal link.

— The existence of damage and of a causal link

94 The applicants allege that the damage to be compensated consists, first, in the loss arising from the sale of live animals at below the normal price as a result of the slump in market prices and the increased cost of keeping animals which remain unsold at the end of their fattening cycle and, second, in the loss of profits arising from lost sales during the current year and from the persistent decline in beef consumption in the years to come.

95 They request the commissioning of an experts' report with a view to the determination of the amount of damage suffered by each of the farmers, and reserve the right to make available to the Court and/or to such experts as may be appointed any documents needed for that purpose.

96 The applicants stated at the hearing that, if the institutions had decided in 1990 to place a total ban on sales of bovine products from the United Kingdom, the bovine meat market in the other Member States would not have collapsed, since such measures would have immediately limited the outbreak of the infection to the

United Kingdom and would have been interpreted by consumers as a very strong signal that control was being exercised by the Community institutions. Consequently, the failure of those institutions to act constitutes the factor giving rise to the damage caused by the collapse of the market.

- 97 The Commission does not deny the extent of the economic losses suffered, particularly by farmers, as a result of the BSE crisis. It considers, however, that the applicants have failed entirely to show that the damage suffered by them arose from the conduct of the Community institutions. The fall in demand for bovine meat which caused the alleged damage was prompted, as the Court of Justice acknowledged in paragraph 87 of its order in Case C-180/96 R *United Kingdom v Commission*, cited above, and as the applicants themselves tacitly admit in their application (p. 18), by the SEAC statement of 20 March 1996 concerning the probable existence of a link between BSE and the variant of Creutzfeldt-Jakob disease.
- 98 The Council does not deny that damage may have been suffered. However, it argues that the applicants have failed to state either the precise nature or the extent of the damage directly suffered by each of them, as is shown, in particular, by the fact that they have requested the Court to commission an experts' report.

Findings of the Court

- 99 The Community's non-contractual liability under the second paragraph of Article 215 of the Treaty is dependent on the fulfilment of a series of conditions as regards the unlawfulness of the acts alleged against the Community institutions, the fact of damage and the existence of a causal link between the conduct of the institution concerned and the damage complained of (see Case C-308/87 *Grifoni v EAEC* [1990] ECR I-1203, paragraph 6, Joined Cases C-258/90 and C-259/90 *Pesqueras De Bermeo and Naviera Laida v Commission* [1992] ECR I-2901, paragraph 42, and Case T-168/94 *Blackspur and Others v Council and Commission* [1995] ECR II-2627, paragraph 38).

- 100 In this case, it is necessary to examine, first, whether there is a causal link between the allegedly unlawful conduct of the Community institutions and the damage pleaded by the applicants.
- 101 There is a causal link for the purposes of the second paragraph of Article 215 of the Treaty where there is a direct causal nexus between the fault committed by the institution concerned and the injury pleaded, the burden of proof of which rests on the applicants (Joined Cases 9/60 and 12/60 *Vloeberghs v High Authority* [1961] ECR 197, at 216, Joined Cases C-363/88 and C-364/88 *Finsider and Others v Commission* [1992] ECR I-359, paragraph 25, and *Blackspur*, cited above, paragraph 40).
- 102 The fault alleged by the applicants consists, in essence, in the adoption of insufficient, incorrect or inadequate legislation and measures in response to BSE. In particular, it consists in the failure to adopt in 1990 a decision of the kind taken in March 1996, confining United Kingdom bovine meat products wholly within that country or prohibiting their shipment to continental Europe. Thus, it is not only the institutions' persistent failure to act between 1990 and 1996 but also the inadequacy of the measures adopted during that period which constitute the unlawful conduct alleged against them.
- 103 The defendants do not deny that cattle farmers on the continent suffered economic damage as a result of the events which occurred in March 1996.
- 104 It would seem, first, that the existence of BSE amongst cattle in the United Kingdom, which was first discovered in 1986, is a phenomenon of which most people are aware, over 160 000 cases of the disease having been confirmed in that Member State since 1988, and, second, that sporadic cases of BSE have also been reported in France, Ireland, Portugal and Switzerland.

105 From 1989 onwards the Community institutions adopted a series of measures in response to the BSE crisis (see paragraphs 4 to 13 above). However, although those measures were designed to prevent the spread of BSE in Member States of the Community other than the United Kingdom, to eradicate the disease and to eliminate its harmful effects, they did not involve the total confinement of United Kingdom cattle and bovine meat products within the territory of that Member State, since certain live animals aged under six months born to females in which BSE was neither suspected nor confirmed, and certain bovine meat products, semen and embryos were permitted to continue to be sold on the continent until the Commission adopted Decision 96/239.

106 Despite the fact that the disease was known about, and notwithstanding the absence of any total ban prior to March 1996, consumer confidence in bovine meat remained unaffected, as is shown by the fact that there was no sharp fall in demand until 20 March 1996. In that regard, neither knowledge of the existence of the disease amongst cattle in the United Kingdom and awareness of its seriousness and of the possibility of its spreading amongst animals on the continent, nor the absence of any certainty as to whether or not meat sold on the continent might derive from contaminated animals, nor, finally, the view taken by the general public of the defendants' conduct in combating BSE, provoked a reaction amongst consumers comparable to that produced by the SEAC statement in March 1996.

107 As the Commission rightly points out, the applicants themselves acknowledge in their application (p. 18) that they had no reason to anticipate any change in demand and that, when the fattening cycle commenced in November 1995, they could legitimately expect that demand for bovine meat would be at least as great as in the preceding year.

108 It was not until 20 March 1996 that the probable transmissibility of the disease to humans was announced by SEAC, when it described ten cases of a variant of Creutzfeldt-Jakob disease identified in persons aged under 42 and stated: 'Although there is no direct evidence of a link, on current data and in the absence

of any credible alternative the most likely explanation at present is that these cases are linked to exposure to BSE before the introduction of the [specified bovine offal] ban in 1989. This is cause for great concern.'

- 109 The new information contained in that announcement was that a link between BSE and Creutzfeldt-Jakob disease had ceased to be a theoretical hypothesis and had become a possibility. Consequently, despite the fact that BSE previously existed, it was that new information which significantly altered the perception among consumers of the risk which that disease represented for human health (judgment in Case C-180/96 *United Kingdom v Commission*, cited above, paragraphs 52 and 53).
- 110 Following the issue of the statement in question, the United Kingdom authorities adopted emergency measures including the decision to prohibit, first, the sale or supply of mammalian-derived meat meal and bone meal or its use in feed for any livestock, including poultry, horses and farmed fish, and, second, the sale of meat from bovine animals over 30 months old for human consumption. At the same time, a number of Member States and third countries took measures banning imports of cattle or beef and veal from the United Kingdom or, in the case of some third countries, from the European Union.
- 111 As the applicants themselves have acknowledged, the SEAC statement and the measures adopted by Member States received wide media coverage within the Community; the nature and extent of that coverage in turn had a significant and direct effect on the immediate concerns of consumers. The Court notes in that regard that, in certain passages in Annex 8 to their application, the applicants themselves attribute the crisis in the industry in large measure to the alarmist way — described as 'irresponsible' by the applicants — in which the press and television treated the discovery of the possible transmissibility of the disease to humans. Thus, on page 1 of the document entitled 'Beef and veal production in Italy: BSE — The current situation and future prospects', the following passage appears: 'Beef and veal production within the European Union and in Italy is currently experi-

encing severe difficulties, aggravated by alarmist information circulated in the press and on television concerning the possible transmission of BSE to humans, which has brought about an appreciable and unforeseen fall in consumption and which, in the absence of adequate counter-measures, threatens to plunge the industry into an irreversible crisis.' That document goes on to state, on page 4: 'The BSE factor may destroy the industry, given the unjustified and irresponsible alarmism of reports in the press and on television, which are solely concerned with stories of a sensational nature and which make no attempt whatever to present information clearly and objectively.'

- 112 It is not disputed that it was from that time that the slump in the beef and veal market started to occur, brought about by an appreciable decline in demand.
- 113 It must therefore be concluded that the fall in demand which gave rise to the damage pleaded in the present case was caused by the effect which the SEAC statement had on public opinion, that is to say, by the concern which knowledge of the possible transmissibility of BSE to humans prompted amongst European consumers of beef and veal.
- 114 Moreover, it was on the basis of that consideration that the Court of Justice held, in paragraph 87 of its order in Case C-180/96 R *United Kingdom v Commission*, that the fall in demand for beef and veal was provoked, a week before Decision 96/239 was adopted, by the announcement on 20 March 1996, by SEAC and by the United Kingdom Government itself, of a likely link between BSE and the variant of Creutzfeldt-Jakob disease.
- 115 It is necessary, however, to consider whether the applicants have adduced any evidence or indication of a causal link between the allegedly wrongful acts and omissions of the defendants and the damage pleaded.

- 116 The Court observes in that regard that the applicants have merely asserted that, if rigorous steps had been taken in good time, that would have had the effect of immediately confining the incidence of the disease to the United Kingdom and would have prevented the continental European market from being affected. It is true that it is difficult, in the circumstances of the case, to determine what would have happened if the Community institutions had decided in 1990 to impose a total ban with regard to the United Kingdom market. Nevertheless, the applicants have produced no evidence or indication whatever in support of their argument, showing that such measures could have prevented the fall in demand following the announcement on 20 March 1996 of the possible transmissibility of the disease to humans.
- 117 There is nothing to show that, even if a total ban had been imposed with effect from 1990, there would not in any event have been a fall in the market upon the publication of information concerning the transmissibility of the disease to humans, resulting from the concern, similar to that created by the statement of 20 March 1996, which such publication would have provoked amongst consumers.
- 118 Consumer anxiety is not directly linked to imports of contaminated meat from the United Kingdom but to the possibility that the disease may be transmissible to humans. Consequently, if, in such hypothetical circumstances, it had been announced as early as 1990 that all necessary measures had been adopted to combat the spread of the disease, it is unlikely that this could have prevented the arousal of grave fears amongst consumers.
- 119 It should be noted in that regard that the conclusions in the SEAC statement which triggered the loss of consumer confidence were drawn from a study of ten cases of Creutzfeldt-Jakob disease which had manifested themselves in consumers and that, in SEAC's view, the most likely explanation for those cases was to be found in exposure to the BSE agent prior to 1989, that is to say, during a period preceding the date on which the Community should, according to the applicants, have adopted the measures demanded by them.

120 Furthermore, there were other circumstances which could have given rise to anxiety amongst consumers, such as:

- the fact that since 1988 cases of BSE had also been recorded on the continent, which could have made measures to contain the United Kingdom market less effective;
- the possibility that, despite such a ban, beef and veal from the United Kingdom could have found its way to continental Europe;
- the very long incubation period of BSE in bovine animals, lasting between five and ten years, which meant that animals might have contracted the disease during that period without showing any clinical signs of infection;
- the serious doubt which still subsists regarding the way in which animals may become contaminated.

121 Lastly, it should be noted that, in its conclusions, SEAC referred in any event to the uncertainty concerning the number of cases which might manifest themselves in the future.

122 In those circumstances, the applicants have not established that the fall in demand was caused by allegedly wrongful acts and omissions on the part of the defendants. Furthermore, they have not shown that, even if the defendants had adopted the measures which the applicants complain that they failed to take, cattle farmers would not in any event have suffered damage as a result of a fall in the market.

123 In view of the foregoing, the Court considers that no causal link has been established between the damage pleaded and the allegedly wrongful conduct of the Community institutions.

- 124 Consequently, the claim for compensation must be dismissed as unfounded, without there being any need to rule, first, on the question whether the other criteria giving rise to non-contractual liability on the part of the Community, namely, the unlawful nature of the alleged conduct of the institutions and actual damage, were fulfilled in the present case or, second, on the applicants' request for the commissioning of an experts' report.

The application for annulment of Regulation No 1357/96

Arguments of the parties

- 125 The applicants seek annulment of Regulation No 1357/96, which provided for the payment to cattle farmers of additional premiums 'with a view to ensuring the future of the sector'. They claim that those provisions are illegal, inasmuch as they provide for farmers to receive additional premiums for the loss of income suffered by them and not for the increased costs which they have been forced to bear. Payment of those additional premiums cannot operate to deprive victims of the damage of their right to receive full compensation for that damage.
- 126 According to the applicants, the contested regulation is vitiated by the absence of an adequate statement of the reasons on which it is based, and thus infringes Article 190 of the Treaty. In particular, it does not indicate why the Council had recourse to the payment of additional premiums instead of making good the damage, why the amount of the compensatory premiums was severely limited by comparison with the damage actually caused or, finally, why the Council omitted to take account of the increased costs which the farmers are now having to bear.
- 127 The applicants state, nevertheless, that they are seeking annulment of that regulation only in so far as it precludes them from claiming full compensation for the damage suffered.

- 128 The Council and the Commission raise an objection of inadmissibility as regards the application for annulment of the regulation. They maintain that it is not of individual concern to the applicants other than Coldiretti. As to Coldiretti, that organisation has not shown that its position as a negotiator has been affected by the act in issue, or that it is entitled to substitute for its members who could themselves have brought proceedings.
- 129 The Commission submits that the objective of the contested regulation is not, as the applicants wrongly argue, to limit the potential liability of the Community for its alleged delay in responding to the urgent threat to health, but to lay down emergency measures to support the income of farmers, thereby enabling them to overcome the exceptional difficulties facing the market as a result of the BSE crisis. It observes that that limit does not in any event reflect any desire whatever on the part of the Community institutions to restrict the compensation to which the applicants claim to be entitled.
- 130 The Council likewise maintains that the objective of the regulation is clearly wholly unconnected with the right to bring proceedings under Article 215 of the Treaty.
- 131 In their reply, the applicants submit that, in so far as the Council and the Commission have ruled out any possibility that Regulation No 1357/96 might affect their non-contractual liability, there is no need to reply to the objections of inadmissibility which have been raised. They claim that, if the Court upholds the defendants' position, there will no longer be any point in dealing with the question of annulment of the regulation.
- 132 They repeated at the hearing that, if the Court were to uphold that argument, their application for annulment could be deemed to have been withdrawn.

Findings of the Court

- 133 The Court finds that, both in their written pleadings and at the hearing, the Council and the Commission confirmed that Regulation No 1357/96 does not operate to limit the non-contractual liability of the Community.
- 134 It is in fact clear from the wording of the first and second recitals in the preamble to the regulation that the objective which it pursues is not, as the applicants have wrongly maintained, to limit the potential liability of the Community for its alleged delay in responding to the urgent threat to health, but to lay down emergency measures to support the income of farmers, thereby enabling them to overcome the exceptional difficulties facing the market as a result of the BSE crisis, with a view to safeguarding the future of that sector.
- 135 In those circumstances, it is not necessary to rule either on the admissibility or on the substance of the claim. It is sufficient to take formal note of the applicants' withdrawal of their application for annulment and to state that there is no need to give a decision on that application.

Costs

- 136 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs as applied for by the defendants.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses as inadmissible the application for compensation made by **Confederazione Nazionale Coltivatori Diretti (Coldiretti)**;
2. Dismisses as unfounded the applications for compensation made by the other applicants (the individual farmers);
3. Rules that there is no need to give a decision on the application for annulment of Council Regulation (EC) No 1357/96 of 8 July 1996 providing for additional payments to be made in 1996 with the premiums referred to in Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal and amending that regulation;
4. Orders the applicants to pay the costs.

Azizi

García-Valdecasas

Jaeger

Delivered in open court in Luxembourg on 30 September 1998.

H. Jung

J. Azizi

Registrar

President

II - 3882

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