JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

13 December 2006 *

In Case T-304/01,

Julia Abad Pérez, residing in El Barraco (Spain), and the 481 other applicants whose names are listed in the Annex to the present judgment,

Confederación de Organizaciones de Agricultores y Ganaderos, established in Madrid (Spain),

Unió de Pagesos, established in Barcelona (Spain),

represented by M. Roca Junyent, J. Roca Sagarra, M. Pons de Vall Alomar and E. Sagarra Trias, lawyers,

applicants,

* Language of the case: Spanish.

Council of the European Union, represented initially by J. Carbery and F. Florindo Gijón, and subsequently by F. Florindo Gijón and M. Balta, acting as Agents,

and

Commission of the European Communities, represented by G. Berscheid and S. Pardo Quintillán, acting as Agents, assisted by J. Guerra Fernández, lawyer,

defendants,

ACTION for damages pursuant to Article 235 EC and the second paragraph of Article 288 EC for reparation of the harm allegedly suffered by the applicants due to acts and omissions on the part of the Council and the Commission, following the appearance of the disease bovine spongiform encephalopathy in Spain,

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

composed of R. García-Valdecasas, President, J.D. Cooke and I. Labucka, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 February 2006,

gives the following

Judgment

Facts

1 The applicants are 482 Spanish breeders — namely professionals, undertakings in the breeding sector and agricultural cooperatives comprising various undertakings in the bovine sector — supported by two agricultural trade organisations established under Spanish law, the Unió de Pagesos and the Confederación de Organizaciones de Agricultores y Ganaderos ('the COAG').

2 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. The probable origin of BSE is thought to have been a change in the method of preparing bovine animal feed containing proteins derived from carcasses of sheep affected by scrapie. The transmission of the disease was

caused principally by the ingestion of feed, particularly meat-and-bone meal, containing the infectious, non-eliminated agent and also, to a limited extent, by maternal transmission. There is an incubation period lasting several years.

3 BSE was detected for the first time in the United Kingdom of Great Britain and Northern Ireland in 1986. According to Special Report No 14/2001 of the Court of Auditors on BSE of 13 September 2001 (OJ 2001 C 324, p. 1), up to 31 May 2001 almost 180 000 (confirmed) cases of BSE had been identified in the livestock of the United Kingdom, whereas 1 738 cases had been confirmed in the rest of the European Union. The number of cases in the United Kingdom reached record levels in 1992 and then subsided, whereas, since 1996, the incidence of BSE in the rest of the European Union has increased.

4 In July 1988 the United Kingdom introduced a ban on the sale of feed for ruminants containing proteins derived from ruminants and a prohibition for breeders to feed ruminants with such feed ('the Ruminant Feed Ban', contained in the Bovine Spongiform Encephalopathy Order (1988, SI 1988/1039), amended subsequently).

5 Since July 1989 the Community institutions have also adopted provisions to deal with BSE. Most of those measures have been taken 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) 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), which allow the Commission to take safeguard measures when there is a risk for animals or human health.

6 Thus 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 certain number of restrictions on intra-Community trade in bovine animals born in the United Kingdom before July 1988. 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 over six months of age from the United Kingdom. Commission Decision 90/261/EEC of 8 June 1990 amending Decision 89/469 and Decision 90/200/EEC concerning additional requirements for some tissues and organs with respect to Bovine Spongiform Encephalopathy (BSE) (OJ 1990 L 146, p. 29) provided that observance of that ban was to be guaranteed by the affixation to the animals of a special mark and by the use of a system of computer records enabling them to be identified. Moreover, Commission Decision 90/134/EEC of 6 March 1990 (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), establishing the obligation to notify once a week the new outbreaks of BSE identified.

7 Commission Decision 90/200/EEC of 9 April 1990 concerning additional requirements for some tissues and organs with respect to Bovine Spongiform Encephalopathy (BSE) (OJ 1990 L 105, p. 24) introduced a series of measures designed to restrict intra-Community trade between the United Kingdom and the other Member States in certain tissues and organs — brains, spinal cord, tonsils, thymus, spleen and intestines — of bovine origin, in particular tissues and organs derived from bovine animals aged more than six months at slaughter. The sending of other tissues and organs not intended for consumption by humans was also banned and provision was made that any bovine animals showing clinical suspicion of BSE were to be slaughtered separately, and that their brain was to be examined for evidence of the disease. The decision required the animal's carcass and offal to be destroyed if BSE was confirmed. 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. In respect of the United Kingdom, that decision prohibited the export of embryos derived from animals born before 18 July 1988 and required the United Kingdom to adopt the measures necessary to identify donors.

8 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) introduced a Community-wide ban on the use of mammalian-derived protein in ruminant feed; however, those Member States which were in a position to enforce a system that made it possible to distinguish between animal protein from ruminant and non-ruminant species could be authorised by the Commission to permit the feeding of protein from other mammalian species to ruminants. Commission Decision 94/382/EC of 27 June 1994 on the approval of alternative heat treatment systems for treating animal waste of ruminant origin, with a view to the inactivation of spongiform encephalopathy agents (OJ 1994 L 172, p. 25), specified the procedures for processing waste of animal origin which could not be used for ruminant feed because of their ineffectiveness in inactivating the infectious BSE agents and listed the products which did not seem to carry a risk of transmitting the disease and therefore fell outside the scope of application of those provisions — gelatin, hides and skins, glands and organs for pharmaceutical use, blood and blood products, milk, lards and reduced fats, and casings.

9 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) increased from two to six years the period during which, for the purposes of allowing exports of fresh meat from the United Kingdom to other Member States, it was necessary for no case of BSE to have been confirmed on the holding on which the bovine animals had been raised. It also prohibited exports from the United Kingdom of any materials or products covered by Decision 94/382, produced before 1 January 1995.

10 On 20 March 1996, the Spongiform Encephalopathy Advisory Committee ('the SEAC'), an independent scientific body which advises the United Kingdom Government on BSE matters, issued a statement in which it referred to 10 cases of a variant of Creutzfeldt-Jakob disease — a fatal neurological disease affecting humans — identified in people aged 42 and under, adding that 'although there is no direct evidence of a link ... the most likely explanation at present is that these cases are linked to exposure to BSE before the introduction of the ban on certain bovine offal in 1989.'

11 On the same day, the United Kingdom Minister for Agriculture, Fisheries and Food took the decision to prohibit the sale or supply of mammalian-derived meat-and-bone meal and their use in feed for any farmed livestock, including poultry, horses and farmed fish, and to prohibit the sale of meat from bovine animals over 30 months old for human consumption. At the same time, a number of Member States and non-member countries took measures banning imports of bovine animals or beef and veal from the United Kingdom or, in the case of some non-member countries, from the European Union.

12 On 22 March 1996, the Scientific Veterinary Committee of the European Union ('the SVC') 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 SVC recommended that the measures adopted by the United Kingdom concerning the deboning of carcasses from bovine animals 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-and-bone meal in animal feed.

13 On 27 March 1996 the Commission adopted Decision 96/239/EC on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 78, p. 47), banning, temporarily, the transport of all bovine animals and all beef and veal

or derived products from the United Kingdom to the other Member States and to non-member countries. That decision provided, inter alia, that the United Kingdom was not to export from its territory: (i) live bovine animals, their semen and embryos; (ii) beef and veal obtained from bovine animals slaughtered in the United Kingdom; (iii) products obtained from bovine animals slaughtered in the United Kingdom which were liable to enter the animal feed or human food chain, and materials destined for use in medicinal products, cosmetics or pharmaceutical products; and (iv) mammalian-derived meat-and-bone-meal. The United Kingdom was to send the Commission every two weeks a report on the application of the protective measures taken against BSE. Lastly, the United Kingdom was requested to present further proposals to control BSE in its territory, with Decision 96/239 to be reviewed once all the elements mentioned in it had been examined.

14 On 26 April 1996, the SVC issued an opinion in which it concluded that bovine semen did not present a risk of transmission of BSE, declared itself in favour of the measures taken by Decision 92/290, pending completion of the scientific studies on the transmissibility of BSE by embryos, and laid down the procedures to be used for processing gelatin and tallow. On 11 June 1996, the Commission, on the basis of inter alia that opinion, adopted Decision 96/362/EC amending Decision 96/239 (OJ 1996 L 139, p. 17), lifting the ban on exports from the United Kingdom of bovine semen and of other products such as gelatin, di-calcium phosphate, amino acids and peptides, tallow and tallow products and derivatives, provided in particular that they were produced in accordance with the methods described in the annex to the decision, in establishments under official veterinary control.

15 On 4 July 1996, Spain banned the entry into its territory of certain at-risk organs and materials derived from bovine animals originating from France, Ireland, Portugal and Switzerland and ordered the destruction of tissue of bovine animals slaughtered in Spain originating from those countries. On 9 October 1996, that measure was extended to include certain organs of ovine and caprine animals originating from the abovementioned countries and the United Kingdom, as the latter was not included in the initial list because of the measures provided for by Decision 96/239.

16 Commission Decision 96/449/EC of 18 July 1996 on the approval of alternative heat treatment systems for processing animal waste with a view to the inactivation of bovine spongiform encephalopathy agents (OJ 1996 L 184, p. 43) replaced Decision 94/382, and laid down, with effect from 1 July 1997, minimum parameters for processing animal waste. By Decision 97/735/EC of 21 October 1997 concerning certain protection measures with regard to trade in certain types of mammalian animal waste (OJ 1997 L 294, p. 7), the Commission prohibited the sending to other Member States and third countries of mammalian meat-and-bone meal not produced in accordance with the system established by Decision 96/449.

17 On 18 July 1996, the European Parliament set up a Temporary Committee of Inquiry into BSE. On 7 February 1997, that committee adopted a Report on alleged contraventions or maladministration in the implementation of Community law in relation to BSE, without prejudice to the jurisdiction of the Community and national courts ('the Report of the Committee of Inquiry'). That report outlined mismanagement of the BSE crisis by the Commission, the Council and the United Kingdom authorities and criticised the workings of the Community committees responsible for veterinary and health matters. On 19 February 1997, the Parliament adopted a resolution on the findings of the Temporary Committee of Inquiry, approving that report and requesting the Commission, the Council and the governments of the Member States to adopt the measures necessary to implement its recommendations.

18 Commission Decision 97/534/EC of 30 July 1997 on the prohibition of the use of material presenting risks as regards transmissible spongiform encephalopathies (OJ 1997 L 216, p. 95) prohibited the use of 'specified risk material' ('SRMs'), namely the skull, including the brain and eyes, tonsils and spinal cord of bovine animals aged over 12 months and of ovine and caprine animals which were aged over 12 months or had a permanent incisor tooth erupted through the gum; and the spleens of ovine and caprine animals. The use of any SRMs was prohibited as of the time that decision entered into force, as was the use of the vertebral column of bovine, ovine and caprine animals for the production of mechanically recovered meat. Moreover, SRMs were to be the subject of specific treatment for their destruction and incinerated, without prejudice to the power of Member States to take further action

in relation to animals slaughtered on their own territory. The initial planned date for the entry into force of that decision, 1 January 1998, was postponed successively until 30 June 2000. On 29 June 2000, however, the Commission adopted Decision 2000/418/EC regulating the use of material presenting risks as regards transmissible spongiform encephalopathies and amending Decision 94/474 (OJ 2000 L 158, p. 76), which repealed and replaced Decision 97/534.

19 On 16 March 1998, the Council adopted Decision 98/256/EC concerning emergency measures to protect against BSE, amending Decision 94/474 and repealing Decision 96/239/EC (OJ 1998 L 113, p. 32), by which it relaxed the ban on exports from Northern Ireland for certain meat and meat-based products from bovine animals, subject to the conditions of a scheme based on the certification of herds (the Export Certified Herds Scheme). That decision inter alia lifted the ban on the sending to other Member States and exports to third countries of deboned beef and veal and meat-based products from bovine animals born and reared in Northern Ireland originating from herds certified as being free of BSE and slaughtered in Northern Ireland in slaughterhouses used exclusively for that purpose. The meat was to be deboned in cutting plants and stored in refrigerated chambers in Northern Ireland, used exclusively for products from those slaughterhouses. Subsequently, Commission Decision 98/351 of 29 May 1998 (OJ 1998 L 157, p. 110) set 1 June 1998 as the date from which dispatches from Northern Ireland could commence.

20 On 25 November 1998, the Commission adopted Decision 98/692/EC amending Decision 98/256 (EC) as regards certain emergency measures to protect against bovine spongiform encephalopathy (OJ 1998 L 328, p. 28) and relaxing the ban on exports of certain products from the United Kingdom, on the basis of the principle of authorising dispatches under the Date-Based Export Scheme (DBES). The following products in particular were affected: fresh meat, minced meat and meat preparations, meat products and food destined for domestic carnivores, originating from bovine animals born and reared in the United Kingdom and slaughtered in the United Kingdom in slaughterhouses which were not used for ineligible bovine animals. A bovine animal was eligible under the DBES if it was born and reared in the United Kingdom and if, at the time of slaughter, a certain number of conditions

were met — in particular, the animal had to be identifiable, and its dam and herd of origin had to be capable of being traced; the animal had to be over six months but under 30 months old; the animal's dam had to have survived at least six months after the animal's birth, not developed BSE and not be suspected of having contracted the disease. If an animal presented for slaughter did not meet those requirements, it had to be refused automatically and, if the export had already taken place, the competent authority of the place of destination had to be informed. In addition, the slaughter of eligible animals had to take place in slaughterhouses not used for the slaughter of ineligible bovine animals. The key date for the commencement of dispatches of those products was set at 1 August 1999 by Commission Decision 1999/514/EC of 23 July 1999 (OJ 1999 L 195, p. 42).

21 Decision 2000/418 ultimately regulated the use of SRMs, specifying the materials from bovine, ovine and caprine animals which were to be removed and destroyed after 1 October 2000, according to a specific procedure, intended to guarantee that BSE would not be transmitted. That decision also prohibited the use of bones of the head and vertebral columns of those animals in certain cases and the use of certain slaughtering procedures.

22 Between November and December 2000, a fresh outbreak of BSE occurred in a number of Member States. On 22 November 2000, the first case of mad cow disease appeared in Spain. In November 2001, Spain had 73 diagnosed cases of BSE.

23 On 4 December 2000 the Council adopted Decision 2000/766/EC concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal protein (OJ 2000 L 306, p. 32), which entered into force on 1 January 2001 and required Member States to prohibit the feeding of processed animal proteins to farmed animals kept, fattened or bred for the

production of food. Member States were also required to prohibit the placing on the market, the trade, the importation from third countries and the exportation to third countries of animal proteins intended for the feeding of farmed animals, and to withdraw those proteins from the market, distribution channels and on-farm storage.

Procedure and forms of order sought

24 By application lodged at the Registry of the Court of First Instance on 7 December 2001, the applicants brought the present action.

25 By a separate document lodged at the Court Registry on 27 February 2002, the Commission raised a plea of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance. By order of the Court (Fifth Chamber) of 27 June 2002, the decision on the plea of inadmissibility was reserved for final judgment.

26 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, the Court requested the Council and the Commission to reply to certain questions. The defendants complied with those requests within the prescribed period.

27 The parties presented oral argument and their replies to the Court's questions at the hearing in open court on 15 February 2006.

28 The applicants claim that the Court should:

— declare the action admissible;

— declare that the Council and the Commission acted unlawfully and are therefore liable under Article 288 EC for the spread of the BSE crisis in the territory of the European Union and, consequently, for the loss alleged in the application;

— order the Council and the Commission jointly and severally to compensate the pecuniary loss caused to the applicants, assessed at EUR 19 438 372.69, and also the non-pecuniary loss, estimated at 15% of the abovementioned amount, namely EUR 2 915 755.80;

— order the Council and the Commission to pay the costs.

29 The Council and the Commission contend that the Court should:

— declare the action inadmissible;

— in any event, dismiss the action as unfounded;

— order the applicants to pay the costs.

Admissibility

30 The Council and the Commission, defendants, put forward three pleas of inadmissibility. The first plea alleges that the application does not meet the requirements of Article 44(1)(a) and Article 44(5) of the Rules of Procedure, due to formal defects relating to the identification of the applicants. The second plea alleges that the application does not meet the requirements of Article 44(1)(c) of the Rules of Procedure because the essential points of fact and law on which the application is based are not stated with precision. The third plea alleges that the Unió de Pagesos and the COAG have no legal interest in bringing proceedings.

The first plea of inadmissibility: formal defects concerning the identification of the applicants

Arguments of the parties

31 First, the Commission states that the application does not indicate the address of the applicants. Under Article 44(1)(a) and Article 44(6) of the Rules of Procedure, that omission is a breach of the essential procedural requirements and cannot be remedied.

32 The applicants reply that their addresses are contained in the spreadsheets attached to the application as a separate annex. In any event, the identification of the address is not an essential condition liable to lead to the inadmissibility of the action and can be remedied.

33 Second, the defendants maintain that the application does not identify correctly the legal persons among the applicants. In particular, contrary to the requirements of Article 44(5) of the Rules of Procedure, some of the applicant legal persons did not attach the instruments constituting and regulating them whilst others did not produce proof that the authority granted to their lawyers had been properly conferred on them by someone authorised for the purpose. Lastly, the Council observes that some of the applicants did not provide authority for the lawyers lodging the application.

34 The applicants observe that, under Article 44(5)(a) of the Rules of Procedure, the production of instruments constituting and regulating legal persons is only one of the possible means of proving their legal existence and that other means of proof are also permitted. The original invoices attached to the application, which indicate the identity of each applicant, its tax identification number and address, provide sufficient proof of the existence of the legal persons in question. The applicants, in any event, attached to their observations on the objection of inadmissibility certified copies of the instruments constituting and regulating those legal persons. As to the alleged lack of properly-granted authority in respect of some of the companies, the applicants maintain that, in a number of cases, the proof of authorisation of the signatories for the grants of authority is in the file, because this is clear from the constitutive instruments of the companies as provided. For the companies for which this was not provided, the applicants did produce, during the written procedure, the granting of the authority to the lawyers by a person authorised for the purpose.

35 Third, the Commission submits that, in the absence of their constitutive instruments, it is not possible to check the object of certain legal persons listed as applicants. In any event, the company names of certain applicant legal persons do not suggest any apparent link with farming. Companies which are not involved in the production or sale of beef or veal do not have any legal interest in bringing the present action.

36 The applicants submit that the Rules of Procedure do not require that the object of an applicant be identified. It is, in any event, entirely clear from their constitutive instruments that all of the applicant legal persons are involved in agriculture-related activities. They therefore have a legal interest in bringing the present action.

Findings of the Court

37 First, as regards the plea alleging the absence of the applicants' addresses, the Court notes that Article 44(1)(a) of the Rules of Procedure provides that the application must contain their names and addresses. In the present case, although the applicants' addresses are not listed in the application itself, they are nevertheless in the documents attached in the annex thereto. In addition, the Court notes that the applicants did produce, by way of attachment to their observations on the objection of inadmissibility, a list of their addresses. This plea must accordingly be rejected.

38 Second, as to the plea alleging the absence of the instruments constituting and regulating the applicant legal persons, the lack of properly-conferred powers and the lack of authority conferred on the lawyers, it should be borne in mind that Article 44(5)(a) and (b) of the Rules of Procedure provides that, if the applicant is a legal person governed by private law, its application is to be accompanied by the instrument or instruments constituting and regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law and also proof that the authority granted to the applicant's lawyer has been properly conferred on him or her by someone authorised for the purpose. Article 44(6) nevertheless provides that, if the application does not meet the abovementioned conditions, the applicant may remedy the situation subsequently by producing the documents which are lacking. The Court finds, in the present case, that during the procedure the applicants did produce the powers, constitutive instruments and authorities which had not been produced initially by way of attachment to their application. This plea must accordingly be rejected.

39 Third, regarding the plea alleging that certain legal persons did not indicate their object and the fact that the company names of some of them do not suggest any apparent link with the production and sale of beef and veal, the Court notes that Article 44(5) of the Rules of Procedure merely requires legal persons to furnish only proof of their legal existence. In an action for damages, a legal person's interest in bringing proceedings depends less on the provisions of its constitutive instruments relating to its object than on the actual activities of the entity in question and, more specifically, on the alleged loss suffered by it because of those activities. In the present case, the applicants produced invoices relating to their activities in the farming of bovine animals, in order to demonstrate the nature and extent of the loss suffered by each of them. It has therefore been proven that the applicant legal persons were active in that sector. This plea must accordingly also be rejected.

40 In the light of the foregoing, this plea of inadmissibility must be rejected.

The second plea: the lack of precision of the essential points of fact and law on which the application is based

Arguments of the parties

41 The Commission observes that, according to Article 21 of the 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 indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. An application for reparation of damage alleged to have been caused by a Community institution which does not provide the slightest evidence of either the nature of the alleged damage or of the way in which it was caused by the conduct of the defendant institution does not satisfy those requirements (Order in Case T-53/96 *Syndicat des producteurs de viande bovine and Others* v *Commission* [1996] ECR II-1579, paragraph 23).

42 In the present case, the application does not set out with the required clarity the allegedly unlawful conduct on the part of the defendant institutions and does not state the reasons for that unlawfulness. Nor does the application specify the Community provisions which impose an obligation to act on the institutions, an obligation of which the applicants believe these to have been a breach. Put succinctly, the defendants do not know exactly for which unlawful acts or omissions they are being criticised and are therefore not in a position to formulate their defence properly. Likewise, nor has the causal link between the allegedly unlawful conduct and the loss alleged been sufficiently set out. The application does not state which Community measures led to the appearance of BSE in Spain, does not identify the products or substances the marketing of which led to the appearance of the disease and does not explain the link between the sale of those products and the Community rules which authorised the import or marketing.

43 The applicants maintain that the application does identify the subject-matter of the proceedings and the pleas and points of law and fact on which it is based. It thus contains a table listing the actions and failures to act for which the institutions are criticised and which have caused loss to the farmers. Likewise, the truth of the loss suffered has been duly proven by the invoices produced.

Findings of the Court

44 Pursuant to Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure, an application must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible the essential points of fact and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible (orders in Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraph 21, and Case T-262/97 *Goldstein* v *Commission* [1998] ECR II-2175, paragraph 21). It is settled case-law that, in order to satisfy those requirements, an application seeking compensation for damage

caused by a Community institution must state the evidence from which the conduct alleged against the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 107, and order in *Syndicat des producteurs de viande bovine and Others* v *Commission*, paragraph 22).

45 In the present case, moreover, the application does satisfy the abovementioned requirements. First, it identifies the actions and failures to act alleged against the defendant institutions, and also the provisions and principles which were infringed by them. Second, the application sets out in detail the nature and extent of the loss allegedly suffered by the applicants, whilst quantifying that loss for each of them. Third and lastly, the applicants set out the reasons why they consider that there is a causal link between the conduct complained of against the Council and the Commission and the loss they claim to have suffered.

46 Accordingly, the Court finds that the conditions of Article 44(1)(c) of the Rules of Procedure have been satisfied in the present case.

47 Consequently, this plea of inadmissibility must be rejected.

The third plea of inadmissibility: the Unió de pagesos and the COAG have no legal interest in bringing proceedings

48 The Council challenges the procedural approach of the Unió de Pagesos and the COAG, which consists in 'supporting' the applicants. Under the Rules of Procedure,

the only manner in which a person or association may support the applicants' claims is to apply for leave to intervene. The Unió de Pagesos and the COAG have not made such an application. The Commission states that it does not know what scope the applicants intend to give to the intervention by the Unió de Pagesos and the COAG in the present proceedings. It submits that, in any event, the two trade organisations do not have a legal interest in bringing proceedings because they have not demonstrated that they are acting on behalf of their members.

49 The applicants claim that the Unió de Pagesos and the COAG do have a legal interest in the proceedings because of the loss suffered by them, consisting of the sum of all the losses suffered by their members and the non-pecuniary loss suffered by them personally. The Unió de Pagesos and the COAG are not seeking pecuniary damages but rather damages for non-pecuniary loss, in particular a declaration of insufficient action by the Community institutions in the management of the BSE crisis. They appeared solely for the purpose of supporting their members.

50 At the hearing, the Unió de Pagesos and the COAG stated that they intended to participate in the present proceedings as interveners. The Court points out that, under Articles 115 and 116 of the Rules of Procedure, in conjunction with Article 40 of the Statute of the Court of Justice, any person or association wishing to intervene in a case before the Court must submit an application for leave to intervene by separate document.

51 In the present case, the Unió de Pagesos and the COAG did not comply with that formality. The Court accordingly cannot grant them the status of interveners for the purposes of the present proceedings.

52 The Court further notes that such an association has the right to bring proceedings under Article 288 EC 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 T-149/96 *Coldiretti and Others* v *Council and Commission* [1998] ECR II-3841, paragraph 57; see also, to that effect, Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraphs 76 and 77).

53 In the present case, the Unió de Pagesos and the COAG do not plead any assignment of rights or any express mandate authorising them to bring proceedings for compensation of losses suffered by their members. Moreover, they state that they are not seeking pecuniary damages, but that the loss suffered by them consists of the sum of all the losses suffered by their members and by the non-pecuniary damage suffered by the Unió de Pagesos and the COAG themselves. That alleged non-pecuniary loss suffered by the Unió de Pagesos and the COAG themselves is not supported in any way, however.

54 It follows that the Unió de Pagesos and the COAG have not established that they have any interest in bringing proceedings in the present case.

55 Accordingly, the action must be dismissed as inadmissible in so far as it concerns those two agricultural trade organisations.

Substance

Arguments of the parties

56 The applicants claim that the conditions conferring entitlement to compensation on the basis of the non-contractual liability of the Community institutions under

Article 288 EC, namely that there must be an unlawful act or unlawful conduct attributable to a Community institution, actual damage and a causal link between the unlawful act and the loss alleged, are satisfied in the present case. The applicants maintain that between 1990 and 2000 the Council and the Commission adopted insufficient, incorrect, inadequate and tardy rules and measures to deal with BSE and are, therefore, liable for the spread of the disease in a number of Member States, including Spain, which caused considerable loss for the applicants, in particular due to the drop in the consumption of beef and veal and the drop in beef and veal prices in Spain.

57 The defendants maintain that their conduct in relation to BSE has never been unlawful and that, in any event, there is no causal link between that conduct and the loss alleged.

1. The existence of unlawful conduct on the part of the Council and the Commission

58 The applicants maintain that the defendant institutions acted in breach of the Community rules relating to the protection of animal and public health, and also the principles of sound administration and the protection of legitimate expectations and the precautionary principle, which are higher-ranking rules of law for the protection of individuals. They observe that omissions by the Community institutions can give rise to liability on the part of the Community where the institutions have infringed a legal obligation to act under a provision of Community law (Case T-572/93 *Odigitria* v *Council and Commission* [1995] ECR II-2025, paragraph 35).

59 The defendants state that the unlawful conduct which the applicants allege against them is related to the field of their legislative activity, in which the Community may

be held liable only exceptionally (Case 238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, paragraph 9) and where there is a higher-ranking rule of law for the protection of individuals (*Exporteurs in Levende Varkens and Others* v *Commission*, paragraph 81). Where the institutions have adopted a legislative measure in the exercise of a wide discretion, the Community cannot be held liable unless, in addition, the breach is clear, that is to say, it is of a manifest and serious nature (Joined Cases 83/76, 94/76, 4/77, 15/77 and 40/77 *HNL and Others* v *Council and Commission* [1978] ECR 1209, paragraph 6). It is therefore necessary that the institution in question has seriously disregarded the limits on the exercise of its powers (Case 106/81 *Kind* v *EEC* [1982] ECR 2885, paragraph 12). Proof of such unlawfulness must be provided by the applicants (Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraphs 43 and 44). The Council and the Commission have done nothing unlawful in their efforts to combat BSE.

— Breach of the Community rules on the protection of animal health and public health

60 The applicants submit that, when BSE appeared, the Council and the Commission had a sufficient legal basis on which to adopt the legal instruments necessary to prevent the spread of the disease. They refer, first, to the competences governing the protection of animal health, provided for in Article 32 EC et seq. relating to the common agricultural policy, and to the regulations introducing the common organisation of the markets in the pig and bovine sectors. The applicants also refer to Article 100 of the EC Treaty (now Article 94 EC), the general legal basis allowing for the adoption of the directives necessary for the smooth functioning of the common market. In addition, Directive 89/662 requires the Commission to monitor the programmes of checks implemented by the national authorities, and also to carry out on-site inspections to ensure the effectiveness of those checks. The applicants refer, second, to the Community competences in the area of public health,

expressly recognised in the Maastricht Treaty and extended by the Treaty of Amsterdam (Article 152 EC). The protection of public health is an overriding public interest and must take precedence over economic considerations (order in Case C-180/96 R *United Kingdom* v *Commission* [1996] ECR I-3903, paragraphs 91 to 93, and Case C-183/95 *Affish* [1997] ECR I-4315, paragraphs 43 and 57).

61 The applicants maintain that the Commission and the Council acted in breach of the Community rules governing animal health and public health. In support of that position, they refer to the report of the Committee of Inquiry, in which the Parliament found that the Council and the Commission were liable in the BSE crisis. With respect to the Commission in particular, that report contains the following criticisms: the suspension of veterinary inspection missions in the United Kingdom between 1990 and 1994; the lack of coordination between the different competent Directorates General; the lack of transparency in the workings of the SVC, as its BSE sub-group has almost always been presided over by a British national and made up of numerous British scientists; the failure to guarantee proper execution of the veterinary checks and to comply with the obligations provided for by Directive 89/662, and the tardiness and ineffectiveness of the rules adopted on meat-and-bone meal. The applicants state that the action is brought against the Council and the Commission because they shared the competences to be exercised to deal with the BSE crisis. The conduct for which the Council is criticised is in particular the failure to implement either Article 152(4)(b) and (c) EC or the provisions of Directive 89/662 and the adoption of Decision 98/256, lifting the ban imposed on the United Kingdom. The Commission is criticised in particular because it failed to exercise the powers of implementation, surveillance and monitoring under Directives 89/662 and 90/425.

62 The defendants contend that they have always acted strictly in accordance with the applicable legal rules and with resolve, within the limits of their respective spheres of competence and in adapting their action to the scientific knowledge available on the epizootics and their consequences for public and animal health. They point out that they have broad discretion, both in the common agricultural policy and in the

implementation of Article 152 EC. More specifically, with respect to combating BSE, the case-law has recognised that the institutions have broad discretion in the adoption of safeguard measures (Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211, paragraph 61 et seq., and Case C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265, paragraph 37).

63 The defendants further contend that their 'omissions' can give rise to liability on the part of the Community only where the institutions have infringed a legal obligation to act under a provision of Community law (Case T-196/99 *Area Cova and Others* v *Council and Commission* [2001] ECR II-3597, paragraph 84). Article 152(4)(b) and (c) EC merely set out the Community's public health objectives, without laying down a legal obligation to act. Likewise, Directives 89/662 and 90/425 give the Member States primary responsibility for monitoring health policy and inspection of animal products (order in *United Kingdom* v *Commission*, paragraphs 53 and 54), conferring only supervisory powers on the Commission. It is the Member States that have responsibility for the actual monitoring of the application of Community legislation, whilst the Commission's role consists essentially in monitoring national authorities' compliance with that obligation, as noted in the consolidated final report of the Temporary Committee of Inquiry of the Parliament of 20 October 1997 (COM(97) 509 final, p. 5).

64 The applicants elaborate on their criticism of the institutions' conduct, distinguishing between three main stages. The first stage went from the discovery of BSE, in the mid-1980s, until 1994, when the Commission, in banning the use of meal of animal origin, first dealt with the causes of the disease. That stage was marked by the wrongful failure by the Community institutions to act, in terms of legislation and in terms of their surveillance and monitoring obligations. The second stage, from 1994 to 1998, was marked by patently insufficient, tardy and inconsistent action by the Commission and the Council in order to eradicate the disease, with them adopting often contradictory measures in disregard of available scientific opinion. The third

stage, from 1998 to 2000, was characterised by passivity on the part of the institutions and by a relaxation of monitoring and inspections, which made possible a massive outbreak of new cases in November 2000.

65 The applicants maintain, more specifically, that although the Commission was aware as early as 1989 of numerous outbreaks of BSE in the United Kingdom, and of the considerable risks of transmission of the disease, the Community institutions failed for a number of years to take the necessary precautions to prevent it from spreading. Thus, between 1990 and 1994, Community legislative action regarding BSE virtually came to a halt, with the Council not having held any talks about the disease. The applicants also criticise the Commission for having neglected its statutory surveillance duties, in particular for having failed to take the safeguard and monitoring measures provided for by Directives 89/662 and 90/425. As evidenced by the Committee of Inquiry's report, the Commission even suspended its veterinary inspection missions in the United Kingdom during that time. Lastly, a number of internal memoranda written in 1990 in the Commission show that, at that time, only a disinformation policy was suggested.

66 The Commission contends that the Community institutions cannot be criticised for a lack of vigilance or breach of legal obligations to act by which they are allegedly bound. It observes that the legality of a measure must be assessed on the basis of the points of fact and law existing at the time it was taken (Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 7). Accordingly, the issue of whether the measures adopted were adequate must be assessed in the light of the scientific knowledge available at the time they were taken. Since the publication, in February 1989, of the Southwood Report, which gives an account of the first cases of BSE in the United Kingdom, the Community institutions have requested the SVC and scientists to offer their views on the various problems associated with the disease and financed research in the area. However, scientists considered for a long time that the transmission of the disease to humans was rather unlikely. It was the

information highlighted by the bulletin from the SEAC of 20 March 1996 which made necessary the adoption of the emergency measures provided for in Decision 96/239.

67 The Commission observes that, for as long as the possibility of transmission of BSE to humans was a mere scientific hypothesis, it took the view that the balancing of the interests of traders in the sector and those of consumers was adequately ensured by the prohibition on exporting from the United Kingdom live bovine animals over six months old and a whole range of products likely to transmit the disease. The Commission adds that although it could in certain circumstances carry out inspections, it was not required to do so. In any event, numerous inspection visits have been carried out in the United Kingdom since 1990.

68 The applicants direct particular criticism towards the delay by the Community institutions in banning the use of meat-and-bone meal in farmed animal feed, taking the view that they were the primary carrier for transmission of the disease. They observe that, in 1989, the United Kingdom banned the use of those meals in animal feed, although without banning the production or export thereof. Thus, sales of British meal to other Member States increased from 12 500 tonnes in 1988 to 25 000 tonnes in 1989. The Commission, however, banned the use of mammalian proteins in ruminant feed only in July 1994, with Decision 94/381. That delay explains why the cases of BSE decreased in the United Kingdom, but increased in the other Member States. Moreover, that decision banned only the use of protein derived from mammalian tissues in ruminant feed alone. That partial prohibition of meal later turned out to be the cause of cross-contamination and therefore of the spread of the disease. The total ban on the use of animal protein in farmed animal feed was introduced only with Decision 2000/766.

69 The applicants also note that the Parliament had been requesting since 1993 that a specific process for processing mammalian animal waste be applied so as to ensure the inactivation of BSE agents, but that nothing was done in that regard until Decision 96/449, which entered into force on 1 April 1997. Lastly, the applicants criticise the Community institutions for having reacted too late to the recommendations of the group of experts brought together by the World Health Organisation (WHO) in April 1996 and to the findings of the SVC of October 1996 on the need to eliminate SRMs from all feed and food chains. The entry into force of the ban on the use of all types of SRMs, introduced initially by Decision 97/534, was delayed successively by almost three years by the Commission and the Council, and the ban was applied only as from 1 October 2000, with Decision 2000/418.

70 The Commission claims that the applicants have not produced any scientific report prior to the date of adoption of the measures in question showing that they were inadequate or insufficient. It states that the adoption of Decision 94/381 was consistent with the opinion of the standing veterinary committee, whilst pointing out that, at that time, protein derived from ruminant tissue was considered to be the only potential source of BSE agents and that, accordingly, excluding them from ruminant feed brought the risk of infection down to a minimum. It adds that Decision 94/474 prohibited exports from the United Kingdom of meat-and-bone meal containing ruminant protein not produced in accordance with the new Community rules. The Commission acknowledges that the application of the rules governing the treatment of meat-and-bone meal in the Member States was initially unsatisfactory but points out that that is why it brought infringement proceedings against 10 Member States, including Spain, in 1997.

71 The applicants also claim that the Community institutions' action was inconsistent and contradictory. In particular, the embargo imposed by Decision 96/239 on bovine animals and meat-and-bone meal originating from the United Kingdom, which had been held by the Court of Justice to be necessary, appropriate and not disproportionate (order in *United Kingdom* v *Commission*), was limited immediately, as derogations were allowed and much less stringent measures substituted for it. Thus, Decision 96/362 lifted the ban on exports of a number of products, such as

semen, gelatin, tallow and tallow products. Subsequently, Decision 98/256 very subtly lifted the ban on exports of bovine products from the United Kingdom by changing, in the applicable text, the reference 'the United Kingdom shall not export from its territory' to the reference 'the United Kingdom shall ensure that the following are not dispatched from its territory', with the latter formulation not being very restrictive. Thus, in 1998 the responsibility for the surveillance of exports of bovine products was transferred from the Commission to the United Kingdom, which is an abdication of responsibilities. Lastly, the adoption of Decision 98/692 marked the final stage of the progressive, conditional lifting of the embargo on the United Kingdom.

72 The Commission maintains that the adoption of Decision 96/362 was completely justified in the light of, inter alia, the SVC's opinions of 9 and 18 April 1996. As to Decision 98/256, the defendants contend that that measure did not lift the ban on exports of bovine products from the United Kingdom, but merely allowed exports of certain products originating from Northern Ireland, subject to stringent conditions. The change in wording referred to by the applicants is merely a linguistic improvement, in the sense that it is not the United Kingdom which 'exports', but rather persons established there; the scope of the ban is therefore the same. The bodies responsible for applying that decision and the Commission's inspection obligations also remained the same. The Commission adds that Decision 96/239 was a transitional safeguard measure and that there had already been plans to revise it. Lastly, the adequacy of the lifting of the embargo for the protection of human health has already been considered by the Court of Justice in Case C-1/00 *Commission* v *France* [2001] ECR I-9989, in which it was held that, by failing to take the measures necessary to comply with Decisions 98/256 and 1999/514, the French Republic had failed to fulfil its obligations.

73 The applicants conclude that the Council and the Commission's failure to act made possible a massive new outbreak of BSE in November 2000. The applicants state in that respect that BSE spread because, in a number of Member States (Spain, Portugal, France), the animals had consumed animal-derived meal originating from the United Kingdom. The consequences of the serious crisis in consumer

confidence, which began in November and December 2000 in a number of Member States, including Spain, ultimately caused the Commission and the Council to react and adopt the appropriate measures, including in particular Decision 2000/766. For 12 years, from the time of the ban by the United Kingdom on the use of meat meal in ruminant feed, the Commission and the Council failed to react to the seriousness of the crisis and its consequences.

74 The Commission considers that, in the light of the many specific provisions adopted, the institutions cannot be criticised for having done nothing about the disease. Those measures in fact helped to reduce and deal with the crisis.

— Breach of the principles of sound administration and the protection of legitimate expectations and the precautionary principle

75 The applicants claim, first, that the Commission acted in breach of the principle of sound administration. In showing an inexplicable lack of diligence, the Commission disregarded its duty of vigilance and, in ignoring the interest of public health by prioritising the protection of the economic interests of the United Kingdom, it failed in its duty to strike a proper balance between the interests at issue. The principle of sound administration especially required the Community institutions to take into account the impact that the relaxation of the previously-introduced measures to control BSE was likely to have on the farming sector (see, to that effect, Case T-73/95 *Oliveira* v *Commission* [1997] ECR II-381, paragraph 32), which it failed to do.

76 The defendants contend that the principle of sound administration was complied with scrupulously in this case. Where the Community legislature is obliged, in connection with the adoption of rules, to assess their future effects, which cannot be

accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question (Joined Cases C-267/88 to C-285/88 *Wuidart and Others* [1990] ECR I-435, paragraph 14, and Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 90). In the present case, the applicants have merely made general statements about their disagreement with the weighing of interests at issue by the Community institutions, without proving that the relevant provisions were, at the time they were adopted, manifestly incorrect (see, to that effect, *KYDEP* v *Council and Commission*, paragraph 47).

77 Second, the applicants claim that the Commission acted in breach of the principle of the protection of legitimate expectations in adopting, in 1998, the lifting of the embargo established in 1996 on products originating from the United Kingdom. That embargo created a legitimate expectation in the farming sector that the same level of control would be maintained in future. Thus, if the traders had not had expectations in the control of the situation by the Community institutions, they would have established a set of specific preventive measures in order to prevent the crisis from affecting them directly.

78 The defendants point out that traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained (Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 33). Likewise, the concept of protection of legitimate expectations presupposes that the person concerned entertains hopes based on specific assurances given by the Community administration (order in Case T-195/95 *Guérin Automobiles* v *Commission* [1996] ECR II-171, paragraph 20). The applicants have not adduced any evidence of the institutions' having given them such assurances, and Decision 96/239 also gives clear indication of its temporary and transitional nature. It is, in any event, obvious that the institutions could not guarantee that the disease would not reach Spanish territory and even less offer specific assurances on the matter.

79 Third, the applicants maintain that the Commission and the Council disregarded the requirements of the precautionary principle, especially in failing to adopt more stringent control measures. In the present case, appropriate measures were introduced only in 2000, although the risks associated with BSE had been scientifically proven since the end of the 1980s for animal health and since 1996 for human health. In any event, even if the Commission and the Council were able to consider that the risk had not been fully demonstrated, they should have taken much stronger protection measures, after carrying out an appropriate assessment of all the risks, even going beyond available scientific information.

80 The defendants contend that their management of the BSE crisis has never infringed the precautionary principle. They maintain that the measures based on that principle must be proportionate to the level of protection sought — without, however, 'aiming for zero risk' — and also non-discriminatory, coherent and based on an assessment of the potential advantages and disadvantages of the action or non-action. The Court of Justice and the Court of First Instance, ruling on the application of that principle in cases relating to the validity of Decision 96/239, have stated that, where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent (*United Kingdom* v *Commission*, paragraph 99; Case T-199/96 *Bergaderm and Goupil* v *Commission* [1998] ECR II-2805, paragraph 66). The precautionary principle does not, however, oblige the Community institutions to follow all scientific opinion without any margin for assessment. The measures adopted to manage the BSE crisis have always been adapted to the existing risks, in accordance with the assessment carried out by the Community institutions.

2. The existence of loss

81 The applicants claim, first, pecuniary loss and, second, non-pecuniary loss.

82 Thus they claim in the first place, that they suffered direct, actual and certain pecuniary loss due to the appearance of the BSE crisis in Spain, both in the form of increased costs (damnum emergens) and in the form of lost profits which they would have obtained if the crisis had not occurred (lucrum cessans). The loss suffered was entirely unforeseeable and goes beyond the usual limits of the economic risks inherent in the business in issue (Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 28). The applicants base the calculation of the amount of that loss on three criteria. First, they observe that the appearance of the first case of BSE in Spain provoked a drop of between 25% and 47% of beef and veal consumption in that country, which led to a reduction of up to 70% in slaughter volume. Second, they state that that reduction in consumption led to a significant drop in beef and veal prices in Spain, from ESP 484 per kilogramme in 2000 to ESP 331 per kilogramme in the first five months of 2001. Third, the applicants identify 'collateral' damage, including in particular: the keeping of cattle in sheds beyond the normal fattening cycle, the increase in the price of animal feed (following the ban on the use of animal meal), the costs of extracting the SRMs and the losses associated with the drop in the market value of carcasses with the spinal cord removed and, lastly, the removal, transport and destruction of the cadavers as a result of the measures adopted by the Commission. The total amount of the pecuniary loss suffered by the applicants, without taking into account that 'collateral' damage, is EUR 19 438 372.69.

83 The Council observes that, for the Community to be held liable, the damage alleged must go beyond the usual limits of the economic risks inherent in the business in issue (*Ireks-Arkady* v *Council and Commission*, paragraph 11). The Council contends that the proposed method of calculation does not show that the applicants suffered any loss whatsoever, nor does it enable the loss for each trader to be assessed. It further contends that the Community and the Member States have taken considerable measures to offset farmers' lost income, with those advantages falling to be taken into account at the time the alleged damage is calculated (Case C-220/91 P *Commission* v *Stahlwerke Peine-Salzgitter* [1993] ECR I-2393, paragraph 57). The Commission, for its part, observes that, in the light of the complexity of the

calculation of the pecuniary loss alleged, the determination thereof should, as applicable, be done at a later stage in a new procedural phase. It observes, in any event, that much of the alleged 'collateral damage' is not eligible for compensation, because it was caused precisely by measures intended to eradicate the disease, the adoption of which was requested by the applicants.

84 In the second place, the applicants claim that the BSE crisis caused them non-pecuniary loss. First, the unlawful conduct of the institutions and the concern in society caused by the crisis led to a loss of consumer confidence in farmers and in other traders in the sector, which damaged the reputation of the profession. Second, that climate led to uncertainty about farmers' professional future. Moreover, the failure to act or the insufficient action on the part of the institutions also led to a loss of the applicants' confidence in the bodies which represent and defend their interests. Third, the applicants suffered disturbances connected with a feeling of powerlessness, anxiety, anguish and uncertainty. The applicants calculate the amount of non-pecuniary loss at 15% of the amount of the individual claim based on the drop in prices, giving a total figure of EUR 2 915 755.8.

85 The Council maintains that the applicants have in no way demonstrated the actual non-pecuniary loss allegedly suffered and that they have made an arbitrary and unsubstantiated quantification of that loss. The Commission observes that farming is an economic activity in which traders risk suffering losses and that the alleged harm to the professional reputation of the applicants and their psychological sufferings have not been at all proven.

3. The existence of a causal link

86 The applicants claim that the requirement of a causal link between the unlawful conduct complained of and the alleged loss is met in the present case. They state

that, if the Commission and the Council had taken the measures necessary to prevent a further outbreak of the disease, the losses suffered by the farmers would have been avoided. The poor management shown by those institutions prevented better control of the agents responsible for the spread of the disease outside the geographical area where it appeared and is therefore the direct cause of the crisis.

87 The applicants observe that it has been scientifically proven that meat-and-bone meal were the carriers for transmission of BSE. The Commission and the Council took adequate counter-measures only in December 2000, with the adoption of Decision 2000/766, introducing a total ban on the use of processed animal protein in farmed animal feed. Following the adoption of those measures, the crisis has not recurred.

88 The applicants also claim that the spread of the disease in Spain at the end of 2000 was caused directly by Decision 98/256, which lifted the embargo imposed in 1996 on cattle, meat and animal meal originating from the United Kingdom. That premature lifting of the embargo allowed BSE to spread to the countries of import. The applicants observe that, although the average incubation period for the disease is four to five years, scientific studies have shown that the minimum incubation period is approximately 22 months. The first cases appeared in Spain two years after the lifting of the embargo.

89 The applicants further claim that the facts of this case are different from those which gave rise to the judgment in *Coldiretti and Others* v *Council and Commission*, where the Court dismissed the action on the ground that the drop in the consumption of beef and veal in 1996 was due to the publication of information on the transmissibility of BSE to humans. In the present case, the consumption of beef and veal in Spain collapsed in 2000 without any publication of popularised scientific information having been the cause. The cause of the crisis was the massive appearance of new cases of BSE, including the first case in Spain, in November 2000. If Spanish consumers had known that the disease was confined to the territory of the

United Kingdom, they would not have stopped consuming beef and veal. The media cannot be held liable for the crisis in Spain merely for having reported on the matter. Moreover, in *Coldiretti and Others* v *Council and Commission*, the Court held that it had not been demonstrated that, even if the requested measures had been adopted, the farmers would not also have suffered losses due to the fall in the market. In the present case, the measures the non-adoption of which is complained of are precisely those which the Council adopted on 4 December 2000, only 15 days after the appearance of the first cases of BSE in Spain, that is, a total ban on meat-and-bone meal in farmed animal feed.

90 Lastly, the applicants observe that the Committee of Inquiry's report confirms that the Commission and the Council are responsible for the crisis caused by the spread of BSE in the Member States. Although that report was written in 1997, its findings may be extrapolated to the present situation, since the provisions adopted by the defendant institutions after 1997 did not follow, at least not until December 2000, the recommendations set out in that report.

91 The defendants contend that the applicants have not proven that there is, in this case, a direct causal link between the illegalities complained of and the loss alleged.

92 The Council acknowledges that scientific knowledge on BSE indicates that the transmission of the disease occurred principally through the ingestion of meat-and-bone meal containing the infectious agent. It states, however, that, since July 1994, the Member States have been required, under Decision 94/381, to prohibit the use of protein derived from mammalian tissues in ruminant feed.

93 The Commission observes that, as indicated in its report of 20 October 1997 (see paragraph 64 above), a number of Member States, including Spain, have committed irregularities in the application of the measures adopted concerning BSE and that, for that reason, it decided to bring, on 26 June 1997, infringement proceedings against 10 States. Furthermore, it is also necessary to bear in mind the possibility of British meal producers and the United Kingdom being held liable for the arrival of the disease on the Continent.

94 The defendants further contend that the applicants have not demonstrated that earlier action on their part or the adoption of different measures could have prevented the appearance of the first case of BSE in Spain. Given the lengthy incubation period of BSE and the infringements by the Member States, the defendants submit that even earlier, more drastic action by the Community institutions would not necessarily have prevented the spread of the disease. There is, moreover, nothing to indicate that if different measures had been taken, prices would not have fallen, given the data and information coming from other countries.

95 The defendants take the view moreover that what triggered the reaction of Spanish consumers was their perception of the risk. Thus the alarmist media campaign unleashed when the first case of BSE appeared in Spain led to some panic amongst Spanish consumers. Nor did the adoption of new prohibition measures in December 2000, the absence of cases of Creutzfeldt-Jakob disease in humans in Spain or the reduced impact of BSE in that country in relation to other Member States manage to ease the crisis in consumer confidence in Spain.

96 Lastly, the Council disputes the probative value in the present case of the Committee of Inquiry's report. First, that report was adopted over a year before the adoption of Decision 98/256. Second, that document does not take a position on potential legal liability and merely sets out a series of recommendations and political assessments.

Findings of the Court

97 It follows from a consistent line of decisions that the non-contractual liability of the Community for unlawful conduct on the part of its organs, within the meaning of the second paragraph of Article 288 EC, depends on the satisfaction of a number of requirements, namely: the unlawfulness of the conduct of which the institutions are accused, the reality of the damage and the existence of a causal connection between the conduct and the damage in question (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44; Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 30; and Case T-267/94 *Oleifici Italiani* v *Commission* [1997] ECR II-1239, paragraph 20).

98 As regards the first of these conditions, the case-law requires that there must be established a sufficiently serious breach of a rule of law intended to confer rights on individuals (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 42). As regards the requirement that the breach must be sufficiently serious, the decisive test for finding that it is satisfied is whether the Community institution concerned has manifestly and gravely disregarded the limits on its discretion. Where that institution has only a considerably reduced or even no discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach (Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 54; and Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2001] ECR II-1975, paragraph 134).

99 If any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions (*KYDEP* v *Council and Commission*, paragraphs 19 and 81, and Case T-170/00 *Förde-Reederei* v *Council and Commission* [2002] ECR II-515, paragraph 37).

100 In this case, it is necessary to examine, first, whether there is a causal link between the allegedly unlawful conduct of the defendant institutions and the loss pleaded by the applicants.

101 According to settled case-law, there is a causal link for the purposes of the second paragraph of Article 288 EC where there is a certain, 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 C-363/88 and C-364/88 *Finsider and Others* v *Commission* [1992] ECR I-359, paragraph 25, and *Coldiretti and Others* v *Council and Commission*, paragraph 101).

102 In the present case, the illegalities alleged by the applicants consist essentially in the adoption of insufficient, incorrect, inadequate or tardy rules and measures to deal with BSE. The applicants thus criticise the defendant institutions for having failed in their surveillance and monitoring obligations in the field of animal health and public health, particularly, first, by failing to implement Article 152(4)(b) and (c) EC; second, by failing to adopt the safeguard measures provided for by Directives 89/662 and 90/425; and, third, by failing to monitor compliance with the Community rules by the authorities of the Member States, particularly those of the United Kingdom. More specifically, the applicants criticise the Community institutions, first, for having introduced far too late the ban on the use of meat-and-bone meal in farmed animal feed, and for not having established in a timely manner adequate procedures for processing animal waste in order to ensure that BSE agents were inactivated; second, for having banned the use of SRMs far too late; and, third, for having lifted prematurely the embargo imposed in 1996 on bovine animals, beef and veal and meat-and-bone meal originating from the United Kingdom.

103 The applicants claim that this allegedly poor management of the BSE crisis by the Council and the Commission prevented BSE from being confined to the territory of the United Kingdom, where it had appeared, and allowed the disease to spread to a

number of continental European countries, including Spain. The appearance of BSE in Spain led to very considerable financial losses for the applicants, notably due to the fall in the consumption of beef and veal and the drop in beef and veal prices, and also caused them non-pecuniary loss. According to the applicants, the defendant institutions' allegedly wrongful actions and failures to act are therefore the direct cause of the losses pleaded in the present case.

104 The Council and the Commission contend, on the other hand, that the applicants have not proven that there is in the present case a direct causal link between that alleged unlawful conduct and the damage pleaded. They especially disagree that their actions and omissions may be regarded as having led to the appearance of BSE in Spain. They maintain that it has not been demonstrated that earlier action on their part or the adoption of different measures could have prevented the appearance of the first case of BSE in Spain. The defendant institutions further contend that, in any event, the crisis in consumer confidence, which caused the fall in prices and in the consumption of beef and veal on the Spanish market, was in fact brought about by the alarmist media coverage of the appearance of the first cases of BSE in Spain.

105 The Court notes as a preliminary point that, in this case, the fall in consumption and prices in the beef and veal market in Spain occurred following the appearance of the first case of BSE in Spain on 22 November 2000, which was followed, between November 2000 and November 2001, by the discovery of over 70 cases of BSE in that country.

106 It is not disputed that, at the time, Spanish consumers had already been aware for a number of years of the existence of mad cow disease in the livestock of the United Kingdom and other European States — including France and Portugal, neighbouring countries — as well as of the risk of transmissibility of that disease to humans and the fact that it was fatal. Accordingly, unlike the situation in the case which gave rise to the judgment in *Coldiretti and Others* v *Council and Commission*, where the fall in the market was due to the publication of the SEAC statement of 20 March 1996,

which referred to the possible transmissibility of BSE to humans (see paragraph 113 of the judgment in *Coldiretti and Others* v *Council and Commission*), in the present case, the collapse in demand which caused the losses alleged was not triggered by the impact on public opinion of the dissemination of scientific information or public information on the risks of BSE for human health.

107 In the present case, the crisis in consumer confidence, which led to the drop in the consumption of beef and veal in Spain, was caused directly by the discovery in the country of cows infected with BSE. Contrary to what the defendant institutions seem to maintain, it is thus the very appearance of BSE in Spain which caused concern among Spanish consumers, and not the handling of the allegedly alarmist information by the Spanish media. It is not possible in this case, for the purpose of determining the causal link, to dissociate the appearance of the disease in Spain from the media coverage of that fact, however alarmist it may have been.

108 Accordingly, although the fall in the Spanish beef and veal market was triggered by the arrival of BSE in Spain, the Community can be held liable for the damage suffered by the applicants due to that fall only if the allegedly unlawful actions and omissions of the Council and the Commission directly caused the appearance of BSE in Spain and, accordingly, on condition that, if the measures that the applicants criticise those institutions for having failed to take had in fact been taken, BSE would probably not have reached Spain.

109 It is, accordingly, appropriate then to consider whether the applicants have supplied evidence or indications to show that the allegedly wrongful acts and omissions of the defendants may be regarded as a certain and direct cause of the appearance of BSE in Spain.

1. The alleged delay in the ban on the use of meat-and-bone meal and in the establishment of adequate procedures for processing animal waste

110 The applicants submit that the BSE crisis which affected Spain would not have occurred if the defendant institutions had adopted, in 1990, a total ban on the use of animal meal in farmed animal feed. That ban was introduced only with Decision 2000/766, which entered into force on 1 January 2001. The applicants also criticise the defendants for having established too late adequate procedures for processing mammalian animal waste. Appropriate procedures were introduced only with the adoption of Decision 96/449, which entered into force on 1 April 1997.

111 The Court notes as a preliminary point that, although the exact origin of BSE does not seem to be entirely clear, the scientific work carried out on the disease indicates that — apart from a limited number of cases (under 10%) caused by maternal transmission — BSE very probably results from the ingestion of meat-and-bone meal containing the infectious agent. As indicated by Decision 94/381, the origin of BSE in cattle is considered to be from ruminant protein which contained the scrapie agent, and, later on, the BSE agent, which had not been sufficiently processed to inactivate the infectious agents. It follows that, in order to combat the spread of the disease, it was in particular necessary to prevent tissues likely to contain the BSE agent from being introduced into the animal feed chain.

112 It is accordingly appropriate to examine the measures adopted by the defendant institutions on the matter, namely those concerning the use of meat-and-bone meal and the establishment of procedures for processing animal waste. In that regard, the actions of those institutions can be divided into two stages: a first stage, from the discovery of BSE in the United Kingdom in 1986 until the adoption by the Commission, on 27 June 1994, of Decision 94/381, prohibiting throughout the

Community the feeding of protein derived from mammalian tissues to ruminants; and a second stage, from the adoption of that decision until the introduction, on 4 December 2000, of a total ban on the use of processed animal protein in farmed animal feed, which came with Decision 2000/766.

— The defendant institutions' action before June 1994

113 The defendant institutions seem to have considered initially that BSE was an animal health problem confined essentially to the territory of the United Kingdom, where the disease had first been detected in 1986. Thus, beginning in 1989, they took an initial series of measures aimed at preventing the spread of BSE to other Member States, including in particular the introduction of certain restrictions on intra-Community trade in bovine animals originating from the United Kingdom (see, inter alia, Decisions 89/469, 90/59 and 90/261). Subsequently, Decision 90/200 introduced measures designed to restrict intra-Community trade between the United Kingdom and the other Member States in certain tissues and organs (brains, spinal cord, tonsils, thymus, spleen and intestines) from bovine animals aged more than six months at slaughter, whilst prohibiting also the dispatch of other tissues and organs not intended for consumption by humans. Decision 92/290 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 exported; in respect of the United Kingdom, that decision prohibited the export of embryos derived from animals born before July 1988.

114 Accordingly the Court finds that, although the United Kingdom authorities did ban on their territory, as from July 1988, the feeding of ruminants with meat-and-bone meal containing ruminant protein, the defendant institutions did not initially adopt similar measures at Community level. As has been pleaded, it was only in June 1994 that they prohibited throughout the Community the feeding of mammalian-derived

protein to ruminants, with the adoption of Decision 94/381. Likewise, exports of meat-and-bone meal from the United Kingdom to other Member States was expressly prohibited only in 1996, by Decision 96/239.

115 Admittedly, at that time the characteristics of the disease and, more specifically, the causes of its transmission, were not fully known. Likewise, before 1994, the incidence of BSE in countries other than the United Kingdom — and, to a much lesser extent, Ireland — was very limited. Between 1988 and 1994, in continental Europe, BSE had been detected only in Germany (four cases), in Denmark (one case), in France (10 cases), in Italy (2 cases) and in Portugal (18 cases). A number of those cases could, moreover, be traced to cows imported into those countries.

116 The fact remains that as early as 1989 the Commission had considered BSE to be a 'new serious contagious or infectious animal disease whose presence [could] constitute a danger to cattle in other Member States' (see the second recital in the preamble to Decision 89/469). It is also noteworthy that the Community measures adopted between 1989 and 1992 imposing restrictions on trade in products originating from the United Kingdom covered inter alia animals born in that country before July 1988, that is, those born before the ban was introduced in the United Kingdom on feeding ruminants with meat-and-bone meal containing ruminant protein (see, in particular, Article 1 of Decision 89/469, Article 2(2) of Decision 90/200 and Article 2(1) and (2) of Decision 92/290). Thus Decision 90/59 states that 'cattle born outside the United Kingdom but moved into the United Kingdom after 18 July 1988 have not been exposed to the agent of the disease through infected feedingstuffs'.

117 Accordingly, it would appear that, in 1990, the defendant institutions were already aware, at least to a certain extent, of both the risk BSE represented for Member States' livestock and of a possible causal nexus between the transmission of that disease and the consumption of infected ruminant meat-and-bone meal. The Court

accordingly finds that it would have been prudent on the part of those institutions to adopt, before June 1994, specific measures concerning the use of those types of meal, on the basis of inter alia Article 9(3) and (4) of Directive 89/662 and Article 10(3) and (4) of Directive 90/425.

118 It is, in any event, not possible to conclude that the adoption of such measures, even at that initial stage, would necessarily have made it possible to prevent the spread of BSE to the Continent and, more specifically, the appearance of the disease in Spain in 2000. The Court notes that between 1989 and 1990 seven Member States adopted measures prohibiting the feeding of mammalian-derived protein to ruminants. In a number of those States, however, those provisions did not prevent the spread of BSE to their territory. Thus, for example, the French Republic, which prohibited the use of mammalian-derived protein in the feed of bovine animals in July 1990, recorded 328 cases of BSE between 1991 and May 2001, all but one of which were in animals born in that country. Likewise, Ireland, which banned the feeding of ruminants with ruminant protein in August 1989, recorded 651 cases between 1989 and May 2001, most of which before 1996 and all of which after that date were also not from imported animals. Lastly, the Kingdom of the Netherlands also banned the use of ruminant protein in ruminant feed in August 1989, but 16 cases of BSE occurred in that country between 1997 and May 2001, all affecting non-imported bovine animals.

119 In addition, the Court finds that, in the absence of Community rules on the matter, the Kingdom of Spain could have adopted national measures banning in its territory the feeding of ruminants with meat-and-bone meal containing ruminant protein, as did a number of Member States, as mentioned above. Admittedly, since the disease appeared in that country only in 2000, the Spanish authorities may have considered, before then, that such measures were not necessarily required. However, BSE did arrive fairly early in countries neighbouring Spain (1990 in Portugal and 1991 in France) and thus the Spanish authorities could have considered it prudent, before 1994, to adopt specific measures on the use of meat-and-bone meal in their territory.

— The defendant institutions' action between June 1994 and December 2000

120 Beginning in 1994, the defendants progressively put in place a strategy aimed specifically at preventing, throughout the Community, tissues likely to contain the BSE agent from being introduced into the animal feed chain. That strategy provided, first, for rules intended to minimise the risk of contagion in the treatment of animal waste and, second, for a feed ban aimed at ensuring, in the event of failure of those waste treatment systems, that cattle would not be exposed to the BSE infectious agent through feed.

121 Amongst those measures, emphasis should be placed on Decision 94/381, which introduced a Community-wide ban on the feeding of mammalian-derived protein to ruminants. As evidenced by that decision (fourth recital in the preamble), the Commission, after having examined in detail the situation with the SVC, concluded that protein derived from ruminant tissues was the only significant potential source of spongiform encephalopathy agents available to susceptible species and that, consequently, their exclusion from feed for those species would minimise the possibility of infection. In any event, since there were difficulties in differentiating processed protein derived from ruminants and that from other mammalian species, the Commission prohibited the feeding of protein derived from all mammalian species to ruminants — with, however, the possibility of enforcing, on a case-by-case basis, systems allowing for distinguishing between protein from ruminants and that of non-ruminant species.

122 The applicants claim that those provisions were insufficient, particularly because Decision 94/381 prohibited protein derived from mammalian species only in feed for ruminants, and thus not in feed for other farmed animals — pigs and poultry, in particular. In their view, that partial ban subsequently turned out to be the cause of cross-contamination and, therefore, the spread of BSE.

123 The Court notes, as indicated in an opinion of the Scientific Steering Committee of 27 and 28 November 2000 (third recital in the preamble to Decision 2000/766), and also in Special Report No 14/2001 of the Court of Auditors (paragraphs 29, 30, 32 and 33), that the use of mammalian-derived meat-and-bone meal in the feed of farmed animals other than ruminants in fact turned out subsequently to carry a risk of contaminating ruminant feed. That risk of cross-contamination was present both in feed mills and on farms.

124 Moreover, as pointed out by the applicants, the absolute ban on the use of animal protein in the feed of all farmed animals came into effect throughout the Community only with Decision 2000/766, which entered into force on 1 January 2001. The Court notes, in any event, that the adoption of Decision 2000/766 was made necessary by the systematic failures in the implementation of the Community rules concerning meat-and-bone meal in a number of Member States (fourth to sixth recitals in the preamble to Decision 2000/766).

125 As evidenced by Special Report No 14/2001 of the Court of Auditors (paragraph 31), most of the Member States (including the Kingdom of Spain) tolerated a certain level of contamination, even though the Community rules did not allow for a margin of tolerance. Likewise, inspections carried out between 1998 and 2000 by the Commission's Food and Veterinary Office (FVO) found weaknesses in the control of trade in those types of meal in most Member States.

126 In addition to the failure of Member States to implement the abovementioned feed ban, there is evidence from the FVO inspections that the agro-feed industry — including renderers and feed mills — did not do enough to avoid contamination of cattle feed by meat-and-bone meal, and that the feed in question was not always

correctly labelled (in Spain, for example). These failures contributed to farmers inadvertently using potentially infectious feed for their cattle (Special Report No 14/2001 of the Court of Auditors, paragraph 33).

127 The Court further notes that, since 1994, the Commission has progressively defined the rendering methods which were to be used to reduce the infectiousness of the BSE agents present in infected animal waste, processed into meat-and-bone meal intended for use in feed for farmed animals other than ruminants. The Commission has also put in place measures ensuring inspection and authorisation of rendering plants and animal feed producers.

128 Thus, Decision 94/382 banned certain procedures for the processing of ruminant waste which, following a scientific study, had proven to be ineffective for inactivating the BSE infectious agents (seventh recital in the preamble to the decision). The minimum rules established by that decision were, however, expressly stated to be transitional and their subsequent amendment was already foreseen in the light of future scientific data, in order to ensure satisfactory inactivation of the agents by all procedures. Following further studies, the Commission concluded that only one of the systems tested was capable of fully inactivating the scrapie agent in meat-and-bone meal — namely, the application of heat in a batch-rendering system which achieved minimum 133 °C at 3 bar for a minimum period of 20 minutes, applied as the sole process or as a pre- or post-process sterilisation phase (fifth and seventh recitals in the preamble to Decision 96/449). Decision 96/449 thereby established, with effect from 1 April 1997, minimum parameters for the processing of animal waste in the light of the inactivation of the BSE agents, by requiring Member States not to authorise procedures which did not comply with those parameters. However, although the applicants criticise the defendant institutions for having failed to adopt earlier the procedure for the treatment of animal waste established by Decision 96/449, noting that its application had been requested by the Parliament in 1993,

they have not adduced any evidence to demonstrate, in the light of the scientific knowledge at the time, that the subsequent provisions, in particular those of Decision 94/382, were to be considered at the date of their enactment to be clearly insufficient or incorrect.

129 The Court also notes that Decision 94/474 prohibited exports from the United Kingdom of all the materials and products covered by Decision 94/382 produced before 1 January 1995. Subsequently, Decision 96/239 placed a total ban on the dispatch from United Kingdom territory of mammalian-derived meat-and-bone meal, and also of products obtained from bovine animals slaughtered in the United Kingdom which were liable to enter the animal feed chain. Lastly, the Commission, by Decision 97/735, placed a Community-wide ban on the dispatch to other Member States or third countries of processed mammalian animal waste which had not been processed in accordance with the parameters laid down in Decision 96/449. It also required Member States to ensure that that waste could not enter the animal feed chain.

130 Lastly, the Court notes that, as indicated in Special Report No 14/2001 of the Court of Auditors (paragraph 28), the inspections carried out by the FVO identified in most Member States — including Spain — problems with tardy transposition of the Community rules relating to rendering methods and animal feed, as well as difficulties with the procedures for authorising rendering plants and ensuring that the relevant treatment standards had been applied.

— Conclusion

131 In the light of all the foregoing, the Court finds that the defendant institutions' management of the problems associated with the use of meat-and-bone meal in feed

for farmed animals, including, in particular, ruminants, and with the processing of animal waste cannot be regarded as a certain and direct cause of the appearance of BSE in Spain. It has not been demonstrated that, if those institutions had adopted earlier the measures which they subsequently adopted, BSE would not in any event have appeared in Spain. The Court also finds that the alleged ineffectiveness of a number of the measures adopted by the defendant institutions was largely due to the incorrect and deficient application of those measures by the Member States' authorities and by private operators.

2. The alleged delay in prohibiting the use of SRMs

132 The applicants criticise the Community institutions for having reacted too late to the recommendations of the WHO group of experts of April 1996 and to the SVC's conclusions of October 1996 on the need to eliminate SRMs from all feed and food chains. They observe inter alia that the entry into force of the ban on the use of all types of SRMs — which, according to Decision 97/534, was to be on 1 January 1998 — was delayed successively by almost three years by the Commission and the Council, until 1 October 2000.

133 The Court finds, as submitted by the applicants, that there were delays in adopting and implementing the Commission's proposals aimed precisely at excluding SRMs from the human food and animal feed chains.

134 It should be borne in mind in any event that, before the adoption of Decision 97/534, the defendant institutions had adopted measures in the field. Thus, in particular, Decision 90/200 prohibited the dispatch from the United Kingdom of material such as brains, spinal cord, thymus, tonsils, spleen and intestines from

bovine animals aged more than six months at slaughter. Likewise, the provisions adopted by the defendant institutions concerning the use of meat-and-bone meal in ruminant feed, and also those referred to above relating to the treatment of animal waste, must be taken into account.

135 The Court further notes that, before the entry into force of Decision 2000/418, which finally regulated the use of SRMs throughout the Community, a number of Member States had already enacted national rules excluding SRMs from feed and food chains. They were the Kingdom of Belgium, the French Republic, Ireland, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland. The Kingdom of Spain and the Italian Republic, for their part, excluded SRMs from animals originating from countries affected by BSE.

136 In particular, it should be borne in mind that, on 4 July 1996, the Kingdom of Spain banned the entry into its territory of certain at-risk organs and materials from bovine animals originating from France, Ireland, Portugal and Switzerland and ordered their destruction in the case of bovine animals slaughtered in Spain originating from those countries. The products covered by that ban included brains, spinal cord, eyes, thymus, tonsils, spleen and intestines. On 9 October 1996, that measure was extended to include certain organs of ovine and caprine animals originating from the abovementioned countries and from the United Kingdom, as the latter was not included in the initial list because of the measures provided for by Decision 96/239.

137 In those circumstances, the Court concludes that the delay for which the applicants criticise the defendant institutions in banning SRMs throughout the Community cannot be regarded as a decisive cause of the appearance of BSE in Spain in 2000. It has not been demonstrated that, if those institutions had adopted earlier the measures which they subsequently adopted, BSE would not in any event have appeared in Spain.

3. The allegedly premature lifting of the embargo imposed on bovine animals, beef and veal and meat-and-bone meal originating from the United Kingdom

138 The applicants claim that the embargo imposed by Decision 96/239 on British bovine animals, bovine products and meal was necessary and appropriate in order to prevent the spread of BSE and maintain that the defendant institutions incorrectly and prematurely relaxed that embargo immediately. Thus, first, Decision 96/362 lifted the ban on dispatching products such as semen, gelatin and tallow. Second, Decision 98/256 lifted, as from 1 June 1998, the ban on exports of cattle, meat and animal-derived meal from the United Kingdom. Third and lastly, the adoption of Decision 98/692 marked the final stage of that process of gradual lifting of the embargo imposed on the United Kingdom. According to the applicants, the spread of the disease in Spain at the end of 2000 was caused directly by that premature lifting of the embargo, particularly by the adoption of Decision 98/256.

139 It should be borne in mind that, on 27 March 1996, the Commission adopted Decision 96/239, placing a temporary ban on the transport of all bovine animals and all beef and veal or derived products, their semen and embryos, and also mammalian-derived meat-and-bone meal, from the territory of the United Kingdom to the other Member States and third countries. The principal ground given for that embargo was the uncertainty surrounding the risk of transmission of BSE to humans, which had led to serious concern amongst consumers, and followed the decision by a number of Member States and third countries to ban the entry into their territory of live bovine animals and beef and veal originating from the United Kingdom.

140 Subsequently, as stated by the applicants, Decision 96/362 lifted the ban on exports from the United Kingdom of bovine semen and other products such as gelatin, di-calcium phosphate, amino acids and peptides, tallow and tallow products provided inter alia that they were produced in accordance with the methods described in the annex to the decision, in establishments under official veterinary control. As

indicated by the preamble to that decision, the Commission had consulted the competent scientific committees beforehand in order to ensure that those products were considered to be safe for animal health. The applicants have not provided any support for their assertions or adduced any evidence liable to explain why the dispatch of those products from the United Kingdom was in any way associated with the appearance of BSE in Spain.

141 As to the adoption of Decision 98/256, repealing Decision 96/239, the Court finds as a preliminary point that, contrary to the applicants' assertions, neither did it lead to the lifting of the restrictions on dispatches of cattle, meat meal and meat from the United Kingdom, nor did it introduce changes in the respective spheres of competence of the United Kingdom authorities and the defendant institutions as regards monitoring. That decision merely relaxed the ban on exports from Northern Ireland of fresh deboned meat, minced meat and meat preparations and meat products, from animals born and reared in Northern Ireland, originating from herds certified as free from BSE and slaughtered in Northern Ireland in slaughterhouses used exclusively for that purpose. Apart from that very limited derogation, Decision 98/256 maintained the ban on exports from the United Kingdom of live bovine animals and bovine embryos, meat meal, bone meal, and meat-and-bone meal of mammalian origin, and also meat and products likely to enter the animal feed or human food chain obtained from bovine animals slaughtered in the United Kingdom. Likewise, meat-and-bone meal produced in Northern Ireland were not included in that partial derogation from the ban on exports of products from the United Kingdom (see Article 6(1)(c) of Decision 98/256, in conjunction with Article 2(1)(a)(ii) of Council Directive 77/99/EEC of 21 December 1976 on health problems affecting intra-Community trade in meat products (OJ 1976 L 26, p. 85)).

142 It follows that the measures introduced by Decision 98/256 could not have caused the appearance of cases of BSE in Spain, given that they did not permit the dispatch from the United Kingdom of either meat-and-bone meal or live bovine animals. In particular, the possibility opened up by Decision 98/256 to market fresh deboned meat, minced meat or meat-based products originating from Northern Ireland cannot have caused the appearance of BSE in Spanish livestock, because those

products are intended in particular for human consumption and are not ingested by ruminants.

143 Lastly, Decision 98/692 relaxed the ban on exports from the United Kingdom of fresh deboned meat, minced meat and meat preparations and meat products, and food destined for domestic carnivores, derived from bovine animals born and reared in the United Kingdom and slaughtered there in slaughterhouses which were not used for the slaughter of any ineligible bovine animal. First of all, given the type of products for which dispatch was authorised, the relaxing of the embargo introduced by that decision was also not such as to provoke the spread of BSE outside the United Kingdom. Second, the average incubation period of BSE is four to five years. The applicants do not dispute this point, but claim that the minimum incubation period for the disease is 22 months. Even if that minimum period of 22 months is accepted, it is clear, in any event, that since the date for the start of the dispatches permitted under Decision 98/692 was set at 1 August 1999, the partial lifting of the embargo could not have caused the appearance of the disease in Spanish livestock in November 2000.

144 In the light of the foregoing, the Court concludes that the illegalities for which the applicants criticise the defendant institutions concerning the gradual lifting of the embargo imposed in 1996 on products originating from the United Kingdom cannot be regarded as a decisive cause of the appearance of BSE in Spain.

4. The alleged failure by the defendant institutions in their surveillance and monitoring obligations in the field of animal health and public health

145 In addition to the alleged illegalities considered in the preceding sections, the applicants direct general criticism at the defendant institutions' action throughout

the period from 1990 to 2000, claiming inter alia that they failed in their surveillance and monitoring obligations. The applicants criticise the defendant institutions inter alia for having failed to implement the provisions of Article 152(4)(b) and (c) EC — which provide for the possibility of adopting measures in the veterinary and phytosanitary fields and incentive measures in order to ensure a high level of protection of human health — for having failed to take the safeguard measures provided for by Directives 89/662 and 90/425 and for having failed to monitor compliance with Community rules by the Member States' authorities, especially the United Kingdom authorities.

146 The Court finds that the applicants have not identified specifically which actions and omissions, other than those considered above, constituted unlawful conduct on the part of the defendant institutions. A fortiori the applicants have not in any way supported their assertions on the issue of the actual relationship of cause and effect between those alleged irregularities and the appearance of BSE in Spain in 2000.

147 Thus the applicants merely refer to the Report of the Committee of Inquiry which, in their view, confirms that the Council and the Commission are responsible for the crisis caused by the spread of BSE in the Member States. That report found mismanagement of the BSE crisis by the defendant institutions between 1990 and 1994 and attributed responsibility to them. The Council, in particular, is criticised for its failure to act during that period. The Committee of Inquiry criticises the Commission in particular for having prioritised market management to the detriment of public health, for having suspended veterinary inspections in the United Kingdom between June 1990 and May 1994, for having attempted to minimise the problem, going so far as to practise a policy of disinformation, and for having introduced tardy and ineffective rules to remedy the problem of meat-and-bone meal. The Report also refers to deficiencies in the workings and the coordination of the services of the Commission. Lastly, the Report criticises the workings of the SVC and of the standing veterinary committee.

148 The Court notes, in any event, that the Committee of Inquiry report finds that the greatest responsibility for the BSE crisis lay with the United Kingdom Government, which authorised the changes to the manufacturing system for meat-and-bone meal which caused the contamination of English livestock and did not guarantee, after 1988, the effectiveness of the ban on feeding ruminants with such types of meal or, subsequently, the correct application of the Community veterinary rules on BSE. The Report also directs strong criticism at the actions of the meal producers and processors of animal waste in the United Kingdom, who produced a defective product and were unaware of the existing risks of contamination.

149 Lastly, the Court notes that the Report of the Committee of Inquiry was written in 1996 and adopted in February 1997, almost four years before the appearance of BSE in Spain. Contrary to the applicants' assertions, the findings of that report cannot easily be extrapolated and applied to the situation in the present case. Thus although the applicants claim that, until 2000, the defendant institutions did not follow the recommendations in the Report, the Court notes that, in a Report of 14 November 1997, the Temporary Committee of the Parliament responsible for following up the recommendations on BSE found that 'the Commission [had] implemented completely or in part most of the recommendations of the Committee of Inquiry into BSE or [had] agreed to clear deadlines for implementation'.

150 Consequently, the Court finds that reliance on the conclusions of that report is not sufficient to demonstrate, for the purposes of the present case, that there is a direct causal link between the actions and omissions for which the defendant institutions stand criticised and the appearance of BSE in Spain in 2000.

151 Moreover, as to the applicants' argument that the defendant institutions failed to monitor sufficiently compliance with Community veterinary rules, the Court finds that, even if that were established, it could not be regarded as a decisive cause of the

appearance of BSE in Spain. Responsibility for actual monitoring of the application of Community veterinary legislation falls primarily on the Member States. In particular, under Directives 89/662 and 90/425, the veterinary checks applicable to intra-Community trade are primarily within the sphere of competence of the authorities of the Member State from which the goods are dispatched and, to a lesser extent, the authorities of the State of destination. It is thus for the authorities of the Member State of dispatch to take the measures necessary to ensure that traders comply with veterinary requirements at all stages of the production, storage, marketing and transport of the products (Article 4 of Directive 89/662; Article 4 of Directive 90/425). Likewise, in the event of outbreak in their territory of any zoonoses or diseases likely to constitute a serious hazard to animals or to human health, Member States must immediately implement the control or precautionary measures provided for in Community rules and adopt any other appropriate measure (first and second subparagraphs of Article 9(1) of Directive 89/662; first and second subparagraphs of Article 10(1) of Directive 90/425). In addition, the Member State of destination may, on serious public or animal-health grounds, take interim protective measures, pending the adoption of measures by the Community (third and fourth subparagraphs of Article 9(1) of Directive 89/662; third and fourth subparagraphs of Article 10(1) of Directive 90/425).

152 Moreover, the Court finds that it has not been demonstrated that if those institutions had adopted — or had adopted earlier — more stringent measures, including the measures the applicants criticise them for having failed to adopt, BSE would not in any event have affected Spanish livestock. In particular, the case-file indicates that the Community rules were often unknown to both national authorities and traders. Their actions and omissions preclude de facto a finding of the direct causal link which must be present between the alleged illegalities on the part of the Community institutions and the losses alleged in the present case.

153 As indicated in Special Report No 14/2001 of the Court of Auditors, the inspections carried out since 1996 by the FVO show that most Member States (including the

Kingdom of Spain) have not been sufficiently rigorous in ensuring that the measures relating to BSE have been duly implemented in their territory. According to the Court of Auditors, the outbreak in 2000 of the second BSE crisis must be viewed in the light of that deficient implementation of the Community rules by the Member States, inter alia the application of inadequate surveillance measures and the failure to comply with the ban on using animal-derived meal in ruminant feed, as well as insufficient checks on the commercial trade in those types of meal and animal feed. That deficient implementation of the existing Community rules by the Member States clearly played a part in impeding the eradication of BSE and helping to spread it.

154 Lastly, the responsibility of certain private traders in the spread of the disease must also be taken into consideration. Thus Special Report No 14/2001 of the Court of Auditors found that the agro-feed industry had not been rigorous enough in implementing the Community legislation on BSE, in particular, with respect to the ban on the use of meal and the obligation to label.

155 It follows that it has not been demonstrated that the alleged failures by the Commission and the Council in their surveillance and monitoring obligations in the field of public health were decisive in the appearance of BSE in Spain.

5. Conclusion

156 In the light of all the foregoing, the Court does not find that it has been established that the allegedly unlawful actions and omissions on the part of the Council and the Commission may be regarded as a certain and direct cause of the appearance of BSE

in Spain in 2000 and the subsequent fall in the consumption and prices of beef and veal in Spain, which was behind the losses pleaded by the applicants in the present case. Nor has it been demonstrated that, even if the defendant institutions had adopted — or had adopted earlier — the measures the applicants criticise them for having failed to adopt, BSE would not in any event have affected Spanish livestock.

157 Consequently, the Court finds that no causal link has been established between the damage pleaded and the allegedly wrongful conduct of the Community institutions.

158 Accordingly, the action must be dismissed as unfounded, without there being any need to rule on whether the other conditions giving rise to non-contractual liability on the part of the Community, namely, the unlawful nature of the alleged conduct of the defendant institutions and actual damage, were fulfilled in the present case.

Costs

159 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 and the Council and the Commission have applied for costs, the applicants must be ordered to bear their own costs and to pay those of the Council and the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE

hereby:

1. **Dismisses the action as inadmissible in so far as it concerns the Unió de Pagesos and la Confederación de Organizaciones de Agricultores y Ganaderos;**

2. **Dismisses the remainder of the action as unfounded;**

3. **Orders the applicants to bear their own costs and to pay those incurred by the Council and the Commission.**

García-Valdecasas Cooke Labucka

Delivered in open court in Luxembourg on 13 December 2006.

E. Coulon J. D. Cooke

Registrar President

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