

OPINION OF ADVOCATE GENERAL  
MISCHO

delivered on 5 May 1998 \*

1. A 'pure-bred breeding animal of the bovine species' is defined in Article 1(a) of Directive 77/504/EEC,<sup>1</sup> as amended by Directive 91/174/EEC,<sup>2</sup> as

'any bovine animal [including buffalo] the parents and grandparents of which are entered or registered in a herd-book of the same breed, and which is itself either entered or registered and eligible for entry in such a herd-book'.

2. The second indent of Article 2 of Directive 77/504, as amended by Directive 94/28/EC,<sup>3</sup> obliges Member States to ensure that intra-Community trade in the semen, ova and embryos of pure-bred breeding animals of the bovine species is not prohibited, restricted or impeded on zootechnical grounds.

\* Original language: French.

1 — Council Directive of 25 July 1977 on pure-bred breeding animals of the bovine species (OJ 1977 L 206, p. 8).

2 — Council Directive of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC (OJ 1991 L 85, p. 37).

3 — Council Directive of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ 1994 L 178, p. 66).

3. Directive 87/328/EEC,<sup>4</sup> which was taken in application of Article 3 of that Directive, and the interpretation of which and of Articles 30 and 36 of the Treaty is the subject of the present case, is intended in particular, according to its preamble, to prevent

'national provisions relating to the acceptance for breeding purposes of pure-bred breeding animals of the bovine species and their semen from constituting a prohibition, restriction or impediment to intra-Community trade either in the case of natural service or artificial insemination'.

4. Consequently, Article 2 provides that:

'1. A Member State may not prohibit, restrict or impede:

...

4 — Council Directive of 18 June 1987 on the acceptance for breeding purposes of pure-bred animals of the bovine species (OJ 1987 L 167, p. 54).

— the acceptance for artificial insemination within its territory of pure-bred bulls or the use of their semen when those bulls have been accepted for artificial insemination in a Member State on the basis of tests carried out in accordance with Decision 86/130/EEC. <sup>5</sup>

7. On that basis, Mr Hagelgren is accused of having sold bovine semen to Mr Nilsson without authorisation on 30 March 1996. Mr Nilsson is accused of having four of his cows inseminated without authorisation on the same day. Ms Arrborn is charged with carrying out that insemination.

...'

5. That Commission Decision of 11 March 1986 lays down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species. It was amended by Commission Decision 94/515/EC. <sup>6</sup>

8. Those three persons are also charged with contravening the Law on Protection of Animals (1988: 534). The Public Prosecutor accuses them of acting together on 30 March 1996 to inseminate four cows belonging to Mr Nilsson with the semen of four bulls 'having the genetic defect of muscular hypertrophy of the Belgian Blue breed' and of having thereby contravened the prohibition on 'breeding ... which may entail suffering for animals and affect the natural behaviour of animals'.

6. The Helsingborgs Tingsrätten's reference for a preliminary ruling states that the Public Prosecutor has commenced proceedings against Mr Hagelgren, Mr Nilsson and Ms Arrborn for contravention of the Swedish Law on Control of Domestic Animals (1985: 342 and 1993: 1481).

9. It is also clear from the documents that the defendants admit the facts but deny the existence of an offence. They consider that the national legislation is contrary to Community law both in requiring an authorisation for insemination and in prohibiting insemination with semen from Belgian Blue bulls.

<sup>5</sup> — OJ 1986 L 101, p. 37.

<sup>6</sup> — Commission Decision of 27 July 1994 (OJ 1994 L 207, p. 30).

10. The requirement of authorisation for insemination is based on Article 2 of the Regulations on the control of domestic animals (1985: 343) and on the Rules on insemination of cattle (1994: 98), which were in force at the material time. In addition to the actual insemination process the authorisation may cover one or more of the operations involved, such as the collection, handling and distribution of semen.

11. The authorisation application must include information regarding the breeds involved, the operation(s) envisaged, the persons who are to carry out the process and the veterinarian responsible, together with his written undertaking.

12. The Rules also lay down the health requirements and the tests to be carried out on bulls, which must be accepted and kept in an insemination centre, but do not impose any provision controlling the import of animal sperm. The distribution of animal sperm in Sweden is subject to an authorisation to practise insemination. The person receiving the semen is obliged to inform the distributor regarding *inter alia* the results of calving, the frequency of difficult calvings and the occurrence of hereditary disease and malformations. An owner may inseminate his own cattle provided he keeps a register.

13. Article 29 of the Regulations on Protection of Animals (1988: 539) prohibits breeding which may entail suffering for animals. Pursuant to that regulation the national Board of Agriculture adopted Rules on the keeping of animals for agricultural purposes (SJVFS 1993: 129), which prohibit 'the insemination of heifers and cows or the implant of embryos if there is a probability of difficulties on calving'.

14. The national Board of Agriculture's Rules on requirements for the protection of animals in breeding activity (SJVFS 1995: 113) prohibit the use of breeding animals which 'have fatal hereditary dispositions, defects or other characteristics entailing suffering for offspring or adverse effects on the natural behaviour of offspring'.

15. That prohibition also applies to characteristics other than those listed in an annex to the rules if they entail suffering for the offspring or cause them to behave unnaturally.

16. The second paragraph of Article 3 of those Rules (SJVFS 1995: 181) also provides that cows

'may not be used for breeding if the animal presents, to all appearances, a hereditary disposition to frequent sickness, difficult calving or risks of stillbirth.

to prohibit or subject to conditions the insemination and breeding of cattle

A breeding animal which because of its origins may be a carrier of genes or hereditary defects listed in paragraphs 1 and 2, the absence of which can be established by tests, may be used for breeding if it has been tested and the results are satisfactory'.

(a) liable, according to a national authority, to entail suffering for animals or affect their natural behaviour, or

17. By order of 28 April 1997 the Helsingborgs Tingsrätten, in which the proceedings were brought, referred the following questions to the Court for a preliminary ruling:

(b) using a certain breed which is regarded by a national authority as having genetic defects?

1. Do Article 30 of the Treaty of Rome and Directive 87/328 allow a national authority to require authorisation for insemination operations using bovine semen, that is to say, the collection, handling and distribution of and insemination with semen, in the way indicated above?

3. (a) Does interpretation of the preamble to Directive 87/328 allow national exceptions to acceptance for artificial insemination in its territory with respect to animals with an undesirable pedigree, even where those exceptions entail a prohibition in relation to animals which fulfil the requirements laid down in Article 2 of the directive?

2. Do Article 30 of the Treaty of Rome and Directive 87/328 allow a Member State

(b) If so, can the individual Member State be left to define "impairment of the pedigree" and "hereditary defects"?

## The first question

18. The Court is asked, in substance, if the requirement of authorisation for bovine insemination operations is consistent with Article 30 of the Treaty and Directive 87/328/EEC.

19. The Swedish Government specifies that the authorisation requirement may cover one or more stages in the use of semen. Under Article 1 of the Rules (1994: 98) on the insemination of cattle, those stages are the collection, handling and distribution of semen and insemination.

20. As authorisation is required both for distribution and insemination, it is clear that trade between Member States may be affected, as is stated both by the Commission and by the governments which have presented observations. As the Court held in *La Crespelle*<sup>7</sup> and again in *Gervais*,<sup>8</sup> the authorisation requirement may lead in practice to discrimination against imported semen, a circumstance which falls within the scope of Article 30 and in some circumstances of Article 36 of the Treaty.

21. However, the Court has consistently held<sup>9</sup> that where, in application of Article 100 of the EEC Treaty, Community directives provide for the harmonisation of the measures necessary *inter alia* to protect the health of persons and animals and establish Community procedures to check that they are observed, reliance on Article 36 ceases to be justified, and the appropriate checks must be carried out and protective measures taken thereafter within the framework of the harmonising directive.

22. It must therefore be determined more precisely to what extent Directive 87/328/EEC, cited above, affects a Member State's right to require an authorisation for the various stages of insemination described by the Swedish Government.

23. The fourth recital in the preamble to the directive reiterates the need to avoid any impairment of the pedigree. To this end the seventh recital states that:

'the provision that semen must come from officially approved centres responsible for artificial insemination is capable of providing the guarantees necessary for attaining the desired end'.

7 — Case C-323/93 *Centre d'Insémination de la Crespelle v Coopérative de la Mayenne* [1994] ECR I-5077.

8 — Case C-17/94 *Gervais and Others* [1995] ECR I-4353, paragraph 38.

9 — For example, see the two above judgments.

24. Consequently, Article 4 of Directive 87/328/EEC specifies that:

'Member States shall ensure that, for intra-Community trade, the semen referred to in Article 2 is collected, treated and stored in an officially approved artificial insemination centre.'

25. It follows that the requirement of an authorisation for the collection and treatment of semen in the country of origin cannot be regarded as contrary to that directive.

26. However, according to the Court's judgment in *La Crespelle*,<sup>10</sup> cited above, the framework established by Directive 87/328/EEC and by Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species<sup>11</sup> does not include the storage or use of semen in the Member State of destination.

<sup>10</sup> — Paragraphs 34 and 35.

<sup>11</sup> — OJ 1988 L 194, p. 10.

27. It follows, therefore, in the Court's view, that:

'health conditions in intra-Community trade in bovine semen have not yet been fully harmonised at Community level in relation to the State for which the semen is destined.'

28. The Court specified in paragraph 32 of the *Gervais* judgment, cited above, that:

'It is clear from the content and the objective of Directives 77/504 and 87/328 that those directives seek to harmonise the conditions of the acceptance for breeding purposes of pure-bred breeding animals of the bovine species and of their semen with a view to eliminating zootechnical impediments to the free movement of bovine semen. Those directives do not govern the conditions regarding actual insemination or the training of inseminators; nor do they cover the issue of certificates or licences authorising the holders to carry out the regulated functions of inseminators.'

29. It must therefore be concluded that the harmonisation implemented by Directives 77/504/EEC, 87/328/EEC and 88/407/EEC in particular does not go so far as to prevent the Member State of destination from

requiring an authorisation for the distribution of semen or insemination.

30. That condition imposed by the national legislation must therefore be examined in the light of Articles 30 and 36 of the Treaty.

31. In this context the Swedish Government contends that the requirement of an authorisation for insemination does not fall within the scope of Article 30 as it neither aims to regulate nor has the effect of regulating trade in semen between Member States.

32. As I pointed out earlier, the requirement of authorisation for distribution by its very nature may affect trade between Member States, in that it applies to imported semen. That is equally true of the authorisation required for the insemination itself; the right to import semen would be of little use to an operator if he were refused an authorisation to inseminate cattle or to have them inseminated with that semen.

33. This is all the more so in the present case, as it is apparent from the documents that in Sweden the grant of an import licence presupposes that the applicant has obtained the authorisation for insemination.

34. Consequently, the measure in question falls within the prohibition of measures having equivalent effect to quantitative restrictions laid down in Article 30 of the Treaty. The question of the applicability of Article 36 of the Treaty thus arises.

35. In this context the Finnish Government argues that 'the protection of health and life of humans and animals' referred to in that provision justifies the requirement of an authorisation for the distribution of and insemination with the semen of pure-bred breeding animals of the bovine species.

36. In support of this argument it relies on the *La Crespelle* judgment, cited above, where the Court held that:

'Member States may therefore rely on health grounds in impeding the free movement of bovine semen, provided that the restrictions on intra-Community trade are in proportion to the aim in view.'

37. It appears from the documents that the authorisation requirement is not restricted to imported products and does not seem to affect them more than national products.

38. In accordance with the Court's reasoning in *La Crespelle*, it is, however, for the national court to decide whether the authorisation requirement for the distribution of and insemination with bovine semen has a restrictive affect on trade disproportionate to the aim in view, which is the protection of public health.

39. However, one point must be made clear. It is evident from the foregoing that if Member States are able to impose this authorisation, that is for public health reasons, as specified in Article 36 of the Treaty.

40. This being so, I share the Commission's opinion that the object of the authorisation conditions must therefore be to ensure the professional competence of the person carrying out the insemination. They must not be used as a pretext for forbidding insemination in some cases, for example, on the grounds that some characteristics of the semen are regarded as undesirable. In that case, as we will see, one would no longer be in the sphere of public health within the meaning of Article 36, but of protecting the pedigree, a context where Community harmonisation is complete and Articles 30 and 36 are therefore not applicable.

41. The Finnish Government adds, quite rightly, that this case concerns the right to provide artificial insemination services. Consequently it should be examined, a priori, in the light of the Treaty's rules regarding the freedom to provide services.

42. However, the Finnish Government also argues, rightly, that this case concerns a Swedish service provider wishing to provide a service in Sweden. It is clear, therefore, that all aspects of the provision of services are within this Member State's territory. The Treaty's rules regarding the freedom to provide services are therefore inapplicable and the national court is right to refer solely, as far as the Treaty is concerned, to the rules on the free movement of goods.

43. I therefore propose the following reply to the first question referred by the Helsingborgs Tingsrätten:

Article 30 of the Treaty of Rome and Directive 87/328/EEC do not preclude legislation of a Member State requiring an authorisation for the handling and distribution of and insemination with bovine semen from another Member State, where the object of that authorisation is to ensure that the person authorised has the necessary qualifications for the operation envisaged.

The second question

44. This question is worded as follows:

Do Article 30 of the Treaty of Rome and Directive 87/328 allow a Member State to prohibit or subject to conditions the insemination and breeding of cattle

- (a) liable, according to a national authority, to entail suffering for animals or affect their natural behaviour, or
  
- (b) using a certain breed which is regarded by a national authority as having genetic defects?

45. The Swedish, Finnish and Norwegian Governments argue that the harmonisation effected by the directives is incomplete. They consider that these directives regulate matters such as the origin and the quality of semen from pure-bred breeding animals of the bovine species, or preventing the propagation of epizootic disease.

46. On the other hand, the Community harmonisation does not cover all aspects of the protection of animals' life and health. In particular, those Governments consider that the applicable Community rules do not ensure the protection of animals in the context of breeding, with which they are not concerned. The directives regulate breeding by focusing exclusively on considerations of the production of animals rather than their health. Breeding stock could therefore have passed the tests laid down by the Community rules while presenting hereditary characteristics which are undesirable from the point of view of animal protection. No specific Community rule fixing the conditions for acceptance of bovine animals for breeding is intended to prevent the appearance of health problems which prevent animals from being born, growing or living normally without considerable veterinary assistance.

47. Those Governments therefore infer that national authorities may still take the measures they deem necessary to protect animal life and health, since the Community harmonisation does not cover all aspects of animal health.

48. In the opinion of those Governments, measures such as these would be justified under Article 36 of the Treaty if they were to

be regarded as being within the scope of Article 30.

49. They submit that in the present case measures are necessary because of the animal health problems with the Belgian Blue breed at issue in the main proceedings. Animals of that breed suffer from structural problems involving movement and behaviour. Their internal organs, in particular the heart and lungs, are too small in relation to their weight, which is a source of stress and infection. Calving is difficult, furthermore, often giving rise to Caesarean sections involving the extensive use of antibiotics.

50. The Swedish Government states, however, that the national measures in question are designed to combat the muscular hypertrophy gene, regardless of the animal carrying the defect. The prohibition does not single out imported semen or any specific breed, either in law or in fact. There is therefore no question of discrimination within the meaning of Article 36 of the Treaty.

51. The Norwegian Government adds that even if the national rules for the protection of animal health are within the scope of Directive 87/328 they do not contravene it. In this respect it argues that 'national provisions that prohibit or lay down conditions for breeding on the basis of animal welfare considerations can be an important instrument in preventing

negative trends in breeding activities in Europe.' In its view, 'it would be unfortunate if the legal position were such that as soon as breeding from a particular breed was permitted in one Member State, this was automatically permitted in all other Member States on the grounds of ensuring freedom of competition'.

52. The Belgian Government, on the other hand, considers that the Community directives have achieved harmonisation such that it is no longer possible for the authorities of a Member State unilaterally to qualify a trait specific to one breed as a hereditary defect and to use it as a pretext to prohibit or attach conditions to the insemination or breeding of animals of that breed.

53. Furthermore, the experience in Belgian breeding herds where Belgian Blue cattle are numerous shows that the animal health protection problems described by the above Governments do not arise in reality.

54. The defendants in the main proceedings also consider that the directives cited above exclude the application of the national regulations in question, since Community harmonisation is complete.

55. The French Government draws attention to the Court's previous rulings that the zootechnical and genealogical conditions applicable to trade in pure-bred bovine animals have been fully harmonised. This being so, it believes that the presence of a gene in bovine semen which has been marketed in accordance with Community standards cannot justify a Member State's prohibiting its import. A Member State cannot qualify a gene as a genetic defect solely on the basis of its own evaluation and without reference to the procedure laid down in Decision 86/130.

56. Finally, a Member State cannot rely on the provisions of Article 36 of the Treaty either, as Community harmonisation is complete.

57. The Commission takes the view that Community harmonisation prevents the importing country's national authority from deciding itself whether a pure-bred bovine animal presents a genetic trait or defect. Such a decision would require the application of the procedures specified in the relevant directives and decisions.

58. The Commission adds, however, that two spheres are outside the harmonisation. It may be necessary to take animal protection into account when the genetic evaluation is made. Moreover, the question of animal protection

also arises in certain exceptional cases, depending on the result of the insemination.

59. In the Commission's opinion, since Community law does not regulate these situations, Member States are entitled to apply national rules to them. Articles 30 and 36 are then applicable. Finally, the Commission believes that it is for the national court to decide whether the national measures in question fulfil the conditions of application of Article 36. In particular, the national administration must show that those measures are necessary and are proportionate to their objective.

#### *Assessment*

60. The national court's question refers firstly to the protection and health of animals and secondly to genetic defects. I would like to start by examining this second aspect. It is clear that this falls within the scope of Directive 87/328/EEC.

61. Action against genetic defects falls within the scope of the genetic improvement of bovine stock. In this respect, in the case-law

cited earlier<sup>12</sup> the Court has held that it follows from the provisions of Directive 87/328/EEC and Directive 91/174/EEC that the zootechnical and genealogical conditions for marketing the semen of pure-bred bovine breeding animals have been fully harmonised at Community level.

62. As the Commission points out, the object of Directives 87/328/EEC and 77/504/EEC is to harmonise all trade in pure-bred cattle and their semen. It follows from their provisions<sup>13</sup> that Member States may not prohibit, restrict or impede either intra-Community trade in semen and embryos from pure-bred breeding bulls or the acceptance of their semen for artificial insemination.

63. That prohibition of restrictive national measures is applicable where a number of conditions are satisfied,<sup>14</sup> their object being to ensure that the intra-Community liberalisation of trade in pure-bred bovine breeding stock applies only to animals of adequate genetic value and without genetic defects.

64. That condition is regarded as being fulfilled where the semen comes from an officially approved artificial insemination centre in another Member State and where the bulls in question have been accepted for artificial insemination on the basis of tests carried out in accordance with Decision 86/130.

65. Furthermore, if an animal is registered in a herd-book, another Member State cannot prevent this breed being entered in the herd-books of officially recognised breeders' associations or organisations within its own territory (Article 4 of Directive 77/504/EEC).

66. However, special rules are applicable where an individual animal has a genetic defect. The annex to Decision 94/515, cited above, reads as follows:

'Genetic peculiarities and genetic defects of an animal defined by the bodies officially appointed for the determination of these characters, in agreement with the breeders' organisations or associations, recognised in conformity with Commission Decision 84/247/EEC of 27 April 1984 laying down the criteria for the recognition of breeders' organisations and associations which maintain or establish herd-books for pure-bred breeding animals of the bovine species *have to be published*' (Annex to the Decision, point III: Genetic evaluation, 1. Principles, in fine).

12 — For example, see paragraph 33 of the judgment in *La Crepelle*, cited above.

13 — Article 2 of Directive 77/504/EEC and Article 2 of Directive 87/328/EEC.

14 — See Directives 77/504/EEC and 87/328/EEC and Decision 86/130, all cited earlier, the latter amended by Decision 94/515.

67. The effect of this should normally be that no cattle breeder, either in the bull's country of origin or in another Member State, would want to use its semen for artificial insemination.

68. This system, based on the publication of genetic defects, necessarily implies that the national authority in a country importing a bull or its semen cannot substitute its own evaluation for that of the exporting country's officially appointed bodies by deciding itself that an individual bull, much less a whole breed, presents a genetic defect.

69. Finally, it must be pointed out that if a Member State criticises the entry of a certain breed in the herd-books of another Member State, it may call on the Commission to apply Article 6 of Directive 77/504/EEC, which includes the power to determine:

— the performance monitoring methods and *methods for assessing cattle's genetic value* and

— the criteria governing entry in herd-books,

in accordance with the Zootechnics Committee procedure referred to in Article 8 of that Directive.

70. Article 2(2) of Directive 87/328/EEC specifies that when there are disputes regarding the acceptance of bulls for artificial insemination, operators have the right to seek the opinion of an expert. In the light of the expert's opinion, measures may be adopted *at the request of a Member State*, in accordance with the procedure laid down in Article 8 of Directive 77/504/EEC.

71. It follows that if a national authority objects to the pedigree of animals registered in accordance with the above directives, that authority should resort to the procedures provided for the purpose in Community directives and decisions. It may not decide on its own authority that the animals in question present genetic defects if these have not been confirmed and published in accordance with the specified procedures.

72. I therefore consider that the answer to Question 2(b) must be that the directives do not allow a Member State to prohibit or subject to conditions the insemination and breeding of cattle of a particular breed which the national authority of that Member State regards as having genetic defects, when this assessment is not supported by the national authority in the country of origin.

73. By *Question 2(a)* the national court asks if Article 30 of the Treaty and Directive 87/328/EEC authorise a Member State to prohibit or subject to conditions the insemination and breeding of cattle which a national authority believes might entail suffering for the animals or affect their natural behaviour.

74. Unlike *Question 2(b)*, *Question 2(a)* refers to 'animals' rather than 'a certain breed'. Effectively, therefore, it asks if the breeding of animals of any breed may be prohibited or impeded in another Member State because it is liable to entail suffering for the animals or affect their natural behaviour.

75. This question is doubtless explained by the fact that, apart from the Belgian Blue breed, Spain, France and Italy also have officially recognised 'pure breeds' carrying the muscular hypertrophy gene. This fact was not contested in the procedure before the Court.

76. *Question 2(a)* and *Question 2(b)* are therefore substantially the same, as the suffering of the animals and the effects on their natural behaviour referred to in both questions are both presumed to arise from their genetic characteristics.

77. I suggest, therefore, that *Question 2(a)* and *Question 2(b)* do not call for separate replies.

78. I add the following observations as subsidiary points only.

79. When the Council adopted Directives 77/504/EEC and 87/328/EEC it implicitly considered that breeding from pure-bred cattle as they were defined did not involve problems from the point of view of animal health and well-being as a result of their genetic characteristics.

80. Since then, the Council has adopted Decision 92/583/EEC of 14 December 1992 on the conclusion of the Protocol of amendment to the European Convention for the Protection of Animals kept for Farming Purposes.<sup>15</sup>

81. The single recital in the Protocol states that it is 'desirable to extend explicitly the scope of the Convention to apply also to certain aspects of developments in animal

<sup>15</sup> — OJ 1992 L 395, p. 21.

husbandry techniques, in particular in respect of biotechnology’.

82. Article 1 of the Protocol provides that animals within the meaning of the Convention include ‘animals produced as a result of genetic modifications or novel genetic combinations’.

83. The object of Article 2 is to insert a new Article 3 into the Convention, worded as follows:

‘Natural or artificial breeding or breeding procedures which cause or are likely to cause suffering or injury to any of the animals involved shall not be practised; no animal shall be kept for farming purposes unless it can be reasonably expected, on the basis of its phenotype or genotype, that it can be kept without detrimental effects on its health or welfare.’

84. However, it must be stressed that this Protocol of Amendment is not yet in force. We cannot therefore infer either a legal obligation for the Community or the option for a Member State to rely on these provisions to evade its obligations under Community law. The Community has not yet enacted provi-

sions implementing the protocol, as it is not yet bound by it. The Commission presented a proposal for a directive concerning the protection of animals kept for farming purposes<sup>16</sup> to the Council on 18 May 1992, but this has not yet been adopted.

85. Moreover, it is very difficult to infer precise implications for the breeding of cattle subject to muscular hypertrophy from this protocol or from the Commission’s proposal for a directive, which uses the same wording.

86. By way of example I need only mention the problem of Caesarean section operations, which was stressed by the Swedish Government. A standing committee of representatives of the signatories to the Council of Europe’s Convention agreed in an explanatory report that the above provision should be interpreted as aiming to plan breeding programmes so as to prevent animals from suffering or sustaining foreseeable injury, such as difficult calving and permanent deformations; the committee recognised that that provision is no obstacle to breeding practices which entail minor or temporary suffering or injury (for example, a natural calving or an embryo transplant) or which involve a caesarean operation which is not likely to cause permanent damage.

16 — OJ 1992 C 156, p. 11.

87. It has by no means been established, therefore, that the current rules for trade in pure-bred breeding stock are deficient because of the failure to take into consideration legitimate concerns for animal health or welfare, which would lead us to conclude that harmonisation was incomplete.

### The third question

91. The Court is asked in the first place if an interpretation of the preamble to Directive 87/328/EEC allows national exceptions to acceptance for artificial insemination on national territory for animals with an undesirable pedigree, even if these exceptions entail a prohibition affecting bulls which meet the criteria in Article 2 of the Directive.

88. As the harmonisation process is complete, it follows that there is no place for national measures under the exceptions laid down in Article 36 of the Treaty.

92. As the Commission rightly points out, the preamble is not a rule of law. It cannot therefore be invoked to derogate from the rules laid down in the directive. The recitals in the preamble state the reasons for the contents of the rule and can sometimes help with its interpretation, but they cannot form the basis of a derogation from one of the directive's express provisions.

89. It goes without saying, however, that the fact that a system of rules is complete does not mean that it is immutable. There is nothing to prevent a Member State which seeks to change the existing law from submitting its arguments to the relevant institutions.

93. Moreover, I see no contradiction between the preamble and Article 2 of the directive.

90. The second question must therefore be answered in the negative.

94. It should be borne in mind that the fourth recital in the preamble to that directive provides that 'any impairment of the pedigree

must be avoided, particularly with regard to male breeders, which must possess all guarantees of their genetic value and of their freedom from hereditary defects'.

95. The desired end can be attained, as the seventh recital states, by the provision that the semen must come from officially approved centres responsible for artificial insemination.

96. On that basis, therefore, it is logical that Article 2 of the Directive forbids any Member State from prohibiting, restricting or impeding the acceptance for artificial insemination within its territory of pure-bred bulls or the use of their semen when those bulls have been accepted for artificial insemination in (another) Member State on the basis of tests carried out in accordance with Decision 86/130/EEC.

97. The question must therefore be answered in the negative.

98. There is no need, therefore, to answer the national court's Question 3(b), which was dependent on an affirmative reply to Question 3(a).

99. I would simply add that the system established by the directives at issue in this case is demonstrably based on the principle of mutual trust between Member States. In accordance with that principle, the responsibility for safeguarding the genetic value of male breeders and for the absence of hereditary defects is entrusted solely to the competent bodies of the Member State where they are raised and where their sperm is collected.

## Conclusion

100. I propose that the Court should reply to the questions referred by the Helsingborgs Tingsrätten as follows:

### *The first question*

Article 30 of the Treaty and Council Directive 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species do not preclude legislation of a Member State requiring an authorisation for the handling and distribution of and insemination with bovine semen from another

Member State, where the object of that authorisation is to ensure that the person authorised has the necessary qualifications for the operation envisaged.

*The second question*

Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species and Council Directive 87/328/EEC do not allow a Member State to rely on considerations of the protection of the life and health of animals to prohibit or subject to conditions the insemination and breeding of cattle

- (a) liable, according to a national authority, to entail suffering for the animals or affect their natural behaviour, or
- (b) of a breed which is regarded by a national authority as having genetic defects.

*The third question*

Question 3(a)

As the preamble of a directive is not a rule of law, it cannot justify a derogation from the directive's provisions.

Question 3(b)

Given the reply to Question 3(a), there is no need to reply to this question.