

JUDGMENT OF THE COURT (Fifth Chamber)
29 February 1996 *

In Joined Cases C-296/93 and C-307/93,

French Republic, represented by Philippe Pouzoulet, subsequently by Catherine de Salins, both Assistant Directors in the Legal Directorate of the Ministry of Foreign Affairs, and Jean-Louis Falconi, Foreign Affairs Secretary in the same ministry, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince Henri,

applicant,

v

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Christopher Docksey, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by John D. Colahan, acting as Agent, and by Eleanor Sharpston, Barrister, with an

* Languages of the cases: C-296/93: French, C-307/93: English.

address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

and

Ireland, represented by Michael A. Buckley, Chief State Solicitor, acting as Agent, and by James O'Reilly SC and Richard Law Nesbitt, Barrister-at-Law, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon,

applicant,

v

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, Christopher Docksey and Hans Gerald Crossland, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by John D. Colahan and by Eleanor Sharpston, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

APPLICATIONS for the annulment of Commission Regulation (EEC) No 685/93 of 24 March 1993 amending Regulation (EEC) No 859/89 laying down detailed rules for the application of general and special intervention measures in the beef and veal sector (OJ 1993 L 73, p. 9),

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, J. C. Moitinho de Almeida (Rapporteur), C. Gulmann and L. Sevón, Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 4 May 1995, at which the French Government was represented by Jean-Louis Falconi, the Irish Government by Dermot Gleeson SC, Attorney General, James O'Reilly and Richard Law Nesbitt, the United Kingdom by Stephen Braviner, of the Treasury Solicitor's Department, and Eleanor Sharpston and the Commission by Gérard Rozet and Christopher Docksey,

after hearing the Opinion of the Advocate General at the sitting on 29 June 1995,

gives the following

Judgment

- 1 By applications lodged at the Court Registry on 25 May 1993 and 4 June 1993 respectively, the French Republic and Ireland brought actions under the first

paragraph of Article 173 of the EEC Treaty for annulment of Commission Regulation (EEC) No 685/93 of 24 March 1993 amending Regulation (EEC) No 859/89 laying down detailed rules for the application of general and special intervention measures in the beef and veal sector (OJ 1993 L 73, p. 9).

- 2 By two orders of 16 July 1993, the President of the Court dismissed applications for suspension of the operation of the contested regulation which the applicant Governments in the two main actions had lodged under Article 185 of the EEC Treaty.

- 3 By order of 22 March 1995, the two cases were joined for the purposes of the oral procedure and the judgment.

- 4 The common organization of the market in beef and veal was established by Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187).

- 5 Article 5 of that regulation, as amended most recently by Council Regulation No 2248/88 of 19 July 1988 (OJ 1988 L 198, p. 24), provides as follows:

'1. Intervention measures taken to prevent or mitigate a substantial fall in prices shall include:

- (a) aids for private storage,

(b) buying-in by intervention agencies.

2. The intervention measures specified in paragraph 1 may be taken for adult bovine animals and for fresh or chilled meat of such animals presented in the form of carcasses, half-carcasses, compensated quarters, forequarters or hindquarters, classified in accordance with the Community classification scale provided for in Regulation (EEC) No 1208/81.

3. The Council, acting in accordance with the voting procedure laid down in Article 43(2) of the Treaty on a proposal from the Commission, may amend the list of products in paragraph 2 which may be the subject of intervention measures.'

- 6 Article 6 of the same regulation, as amended by Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49), provides as follows:

'1. Where the conditions laid down in paragraph 2 are met, buying-in by intervention agencies in one or more Member States or in a region of a Member State of one or more categories, qualities or quality groups, to be determined, of fresh or chilled meat falling within CN codes 0201 10 and 0201 20 11 to 0201 20 59 and originating in the Community may be organized under tender procedures arranged with a view to ensuring reasonable support of the market, having regard to seasonal developments as regards slaughterings.

Such purchases may not exceed the following quantities, per year and for the whole Community:

- 750 000 tonnes for 1993,
- 650 000 tonnes for 1994,
- 550 000 tonnes for 1995,
- 400 000 tonnes for 1996,
- 350 000 tonnes as from 1997 onwards.

2. For each quality or quality group that may be bought in, the tender procedures may be opened as provided in paragraph 8 whenever, in a Member State or in a region of a Member State, the following two conditions are both met for a period of two consecutive weeks:

- the average Community grading market price recorded on the basis of the Community scale for the carcasses of adult bovine animals is less than 84% of the intervention price,
- the average market price recorded on the basis of the said scale in the Member State or States or regions of a Member State is less than 80% of the intervention price.

The intervention price shall be set before the start of each marketing year in accordance with the procedure laid down in Article 43(2) of the Treaty.

3. Tender arrangements for one or more qualities or quality groups shall be suspended in any one of the following two situations:

- where, for two consecutive weeks, the two conditions referred to in paragraph 2 are no longer both met,

- where buying-in is no longer appropriate in view of the criteria set out in paragraph 1.

4. Intervention shall also be opened if, for a period of two consecutive weeks, the average Community market price of young uncastrated male animals less than two years old or castrated male animals, recorded on the basis of the Community grading scale for carcasses of adult bovine animals, falls short of 78% of the intervention price, and if in a Member State or regions of a Member State, the average market price of young uncastrated male animals less than two years old or castrated male animals, recorded on the basis of the Community grading scale for carcasses of adult bovine animals, falls short of 60% of the intervention price; in this case, buying-in shall take place for the categories concerned in the Member States or regions of a Member State where the price level is below that limit.

For this buying-in, and without prejudice to paragraph 5, all offers shall be accepted.

The quantities bought in pursuant to this paragraph shall not be taken into account for the purposes of applying the buying-in ceilings referred to in paragraph 1.

5. Only offers equal to or less than the average market price recorded in a Member State or a region of a Member State and increased by an amount to be determined

on the basis of objective criteria may be accepted under the buying-in systems referred to in paragraphs 1 and 4.

6. For each quality or quality group eligible for intervention, the buying-in prices and the quantities accepted for intervention shall be determined under tender procedures and may, in special circumstances, be fixed by a Member State or a region of a Member State on the basis of recorded average market prices. The tender procedures must ensure equality of access for all persons concerned. They shall be opened on the basis of specifications to be determined taking commercial structures into account, where necessary.

7. Under the procedure provided for in Article 27:

- the categories, qualities or quality groups of products eligible for intervention shall be determined,
- the opening or reopening of tender procedures and their suspension in the case referred to in the last indent of paragraph 3 shall be decided,
- the buying-in prices and the quantities accepted for intervention shall be fixed,
- the amount of the increase referred to in paragraph 5 shall be determined,
- the procedures implementing this Article, and in particular those designed to prevent market prices spiralling downward, shall be adopted,
- any transitional provisions necessary for the implementation of these arrangements shall be adopted.

The Commission shall decide on:

- opening intervention as referred to in paragraph 4 and suspending it where one or more conditions laid down in that paragraph no longer apply,
- suspending buying-in as referred to in the first indent of paragraph 3.’

7 Commission Regulation (EEC) No 859/89 of 29 March 1989 (OJ 1989 L 91, p. 5), enacted pursuant to, in particular, Article 6(7) of Regulation No 805/68, lays down detailed rules for the application of intervention measures in the beef and veal sector.

8 Article 4 of Regulation No 859/89 determines the products eligible for intervention. That provision was amended by Commission Regulation No 685/93, whose annulment is sought, which introduced a gradual limitation on the weight of carcasses which may be bought in. Under Article 4(2)(g) of Regulation No 859/89, as amended, beef products may be bought in only if

‘(g) they come from carcasses whose weight does not exceed the following levels:

- 380 kg as from the first tendering procedure of July 1993,
- 360 kg as from the first tendering procedure of January 1994,
- 340 kg as from the first tendering procedure of July 1994’.

- 9 Regulation No 859/89 was repealed by Commission Regulation (EEC) No 2456/93 of 1 September 1993 laying down detailed rules for the application of Council Regulation (EEC) No 805/68 as regards the general and special intervention measures for beef (OJ 1993 L 225, p. 4). The contested measure now appears in Article 4(2)(h) of Regulation No 2456/93.
- 10 In support of their applications, the French and Irish Governments claim that the Commission was not competent to adopt the regulation in issue and that the principles of proportionality and the protection of legitimate expectation were not observed. The Irish Government further claims that the Commission infringed the right to property, misused its powers and failed to observe substantive procedural requirements.

Lack of competence of the Commission

- 11 The French and Irish Governments submit, first, that Article 6(7) of Regulation No 805/68, as amended by Regulation No 2066/92, does not empower the Commission to limit the weight of carcasses eligible for intervention and that the Commission has therefore infringed that provision.
- 12 In their view, the imposition of such a criterion is not within the power of the Commission under the first indent of Article 6(7) to determine the 'categories, qualities or quality groups' of products eligible for intervention. According to the Community grading scale for carcasses of adult bovine animals laid down by Council Regulation (EEC) No 1208/81 of 28 April 1981 (OJ 1981 L 123, p. 3), to which reference is made in Article 5(2) of Regulation No 805/68, as amended, which determines the general framework for intervention measures, the term 'category' refers to the sex and age of the animal, whereas the 'quality' of the meat is defined by reference to two criteria: the conformation of the carcass and its degree of fat

cover. Consequently, the weight criterion, which does not feature in that grading scale, cannot be validly based on the first indent of Article 6(7). Nor can the fifth indent thereof, which empowers the Commission to adopt 'procedures implementing' Article 6, be interpreted in such a way as to call into question the specific powers conferred by the other indents of that paragraph, none of which provides for a power to introduce a weight limit for carcasses eligible for intervention.

- 13 In that regard, the applicant Governments observe that the interpretation of Article 6(7) advocated by the Commission and the United Kingdom favours the delegation of powers to the Commission to such an extent that the Commission could circumvent all the provisions adopted by the Council in the framework of the intervention system. The fact that the Council itself introduced a weight limit in Article 6a of Regulation No 805/68, as inserted by Regulation No 2066/92, shows, moreover, that such measures are exceptional and not for the Commission to adopt.
- 14 The French and Irish Governments further argue that, in any event, the provisions implementing Article 6 adopted by the Commission must remain consistent with the list of products given in Article 5(2) of Regulation No 805/68 for which intervention buying is possible. Under Article 5(3), only the Council is empowered to amend that list. In the contested regulation, however, the Commission inserted an additional criterion limiting the weight of eligible carcasses, thus amending the list.
- 15 Finally, in the Irish Government's submission, the Commission also acted in breach of Article 155 of the EEC Treaty. By introducing the contested condition, the Commission exceeded its powers and thus failed to ensure, as required by the first indent of Article 155, that the relevant Council legislation was correctly applied. The Commission also failed to exercise the powers conferred on it by the Council for the implementation of the rules laid down by the Council, contrary to the obligation laid down in the fourth indent of Article 155 of the Treaty.

16 Those arguments cannot be accepted.

17 Under Article 6(7) of Regulation No 805/68, as amended, the Commission is responsible for adopting, under the 'Management Committee' procedure described in Article 27 thereof, the measures necessary for the implementation of the intervention mechanism with which Article 6 is concerned. Whereas the first four indents of Article 6(7) make provision for specific kinds of action, the two following indents delegate to the Commission, in general terms, such powers as are necessary to attain the objectives mentioned in the article, and in particular 'to prevent market prices spiralling downward'.

18 A measure limiting the weight of carcasses eligible for intervention cannot be regarded as a basic element of the matter to be dealt with and thus one which must be adopted by the Council in accordance with the procedure in Article 43 of the EEC Treaty (see, *inter alia*, Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v Köster* [1970] ECR 1161, paragraph 6). Albeit such a measure may lead to a reorientation of beef and veal production, its aim is to implement in the most appropriate way the intervention mechanism laid down by the Council in order to deal with the structural imbalance which, as is noted in the first recital in the preamble to Regulation No 2066/92, exists between supply and demand on the Community market for beef and veal.

19 Moreover, to interpret the fifth indent of Article 6(7) of Regulation No 805/68, as amended, as authorizing the Commission to adopt a measure limiting the weight of carcasses eligible for intervention is compatible with the other provisions of that regulation. The fact that in Article 5 the Council laid down the list of products which may, in principle, be the subject of intervention measures does not preclude the Commission from choosing, as it did in the present case, from among that list those products which are actually to be eligible for intervention. Such a power to exclude certain products from the buying-in list is in fact specifically provided for in the first indent of Article 6(7) of Regulation No 805/68, as amended.

- 20 Secondly, as regards the argument based on Article 6a(2) of Regulation No 805/68, it must be observed that, by its very wording ('By way of derogation from Article 5(2) ...'), that provision, unlike the provision in issue in the present proceedings, derogates from the aforesaid list. Article 6a concerns special intervention measures for certain kinds of meat from male bovine animals of 150 to 200 kg carcase weight, whereas under Article 5(2) only 'adult bovine animals' are eligible for intervention. Article 6a does not, therefore, support the argument that only the Council is competent to adopt measures excluding carcasses from intervention on the basis of their weight.
- 21 Moreover, if the Commission were empowered under the fifth indent of Article 6(7) of Regulation No 805/68, as amended, only to adopt measures already authorized under other provisions, the power thus conferred would essentially be ineffective in pursuing the aim of preventing market prices from spiralling downward. That conclusion is all the more compelling since, as will be seen below when the plea of breach of the principle of proportionality is examined, the Commission was entitled, without any manifest error of assessment, to consider that there was no less restrictive measure available to it for avoiding such a downward spiralling of market prices.
- 22 Finally, since in the sphere of the common agricultural policy the Commission alone is able to monitor continually and closely trends on the agricultural markets and to act with urgency if the situation requires, the Council may find it necessary to confer on the Commission wide implementing powers (see, in particular, Case 23/75 *Rey Soda v Cassa Conguaglio Zucchero* [1975] ECR 1279, paragraph 11). Wide powers of implementation are all the more justified in the present case in that they must be exercised in accordance with the 'Management Committee' procedure, which allows the Council to reserve its right to intervene (*Rey Soda*, paragraph 13).
- 23 Since it could validly adopt the contested measure, the Commission did not act in breach of Article 155 of the Treaty.

- 24 The plea that the Commission lacked competence and acted in breach of Article 6(7) of Regulation No 805/68 must therefore be dismissed.

Breach of the principle of proportionality

- 25 The French Government submits, first, that the contested measure is based on several manifest errors of assessment.
- 26 In its view, a general limit placed on the weight of carcasses eligible for intervention is based on the assumption that it is heavy animals that are overburdening the intervention system, for which there is no proof whatever. Contrary to the Commission's contentions, producers of small-carcass animals may also produce beef and veal for intervention. Nor has the Commission demonstrated that increased carcass weights are likely to trigger a downward spiralling of prices and that the contested measure can counter that possibility.
- 27 The measure at issue is, moreover, unlikely to achieve the objectives of the reform of the common agricultural policy undertaken by Regulation No 2066/92. That reform essentially consists of reducing the intervention price, this being offset by the grant of a number of premiums, and, with a view to avoiding an increase in production, encouraging extensive production, which promotes the farming of beef breeds whose carcasses are heavier than those of dairy breeds.
- 28 Furthermore, in the view of both the French and the Irish Governments, the contested regulation disregards the principal of proportionality since there exist other, less restrictive, means of achieving the objective of limiting the maximum annual quantity of meat purchases. Those measures might comprise, *inter alia*, the

application of reduction coefficients (Article 11(3) of Regulation No 859/89), the reduction of buying-in prices, fixed by the Commission (third indent of Article 6(7) of Regulation No 805/68, as amended) or the exclusion from intervention of certain qualities or categories of carcasses (first indent of Article 6(7) of Regulation No 805/68, as amended).

29 Finally, the Irish Government states that the application of a 340-kg limit on carcasses eligible for intervention only 12 months after those measures were adopted will exclude 61% of Irish steers from buying-in, a further manifest breach of the principle of proportionality.

30 The Court has stated (see, in particular, Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others v Fattoria Autonoma Tabacchi and Donatab* [1994] ECR I-4863, paragraph 41) that the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.

31 The Court has also held (see, *inter alia*, Case 29/77 *Roquette Frères v Administration des Douanes* [1977] ECR 1835, paragraphs 19 and 20) that where the evaluation of a complex economic situation is involved, the Commission and the Management Committee enjoy a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it discloses manifest error or constitutes misuse of power or a clear disregard of the limits of its discretion on the part of that institution.

- 32 The first question to be determined, therefore, is whether there was any manifest error in the Commission's assessment of the relevant market situation.
- 33 It is clear from the second recital in the preamble to Regulation No 685/93 that the Commission considers that overproduction on the market for beef and veal results mainly from an increase in the weight of beef and veal carcasses made possible in particular by genetic progress. Frequently there is no market demand for these heavier carcasses and producers faced with a fall in prices on the open market are encouraged to produce meat directly for the intervention agencies.
- 34 As the Advocate General has shown in points 87 to 91 of his Opinion, the Commission could, without any manifest error of assessment, consider that market demand for heavier carcasses is less than for lighter carcasses and that a proportion of the heavier carcasses is directly intended for intervention. The same applies to the Commission's assertion that slaughtering is often deliberately delayed by producers in order to wait until the market price is higher or to sell the meat to the intervention agencies. Finally, the Commission was not manifestly in error in considering that, even in an extensive rearing system such as that practised in Ireland, in which growth is slower than in intensive rearing, producers could either slaughter animals earlier in order to limit weight or rear breeds which reach maturity earlier, in order to sell their meat on the open market.
- 35 The next question to be determined is whether the Commission chose a measure which is manifestly unsuited to attain the objectives pursued.
- 36 It is clear from the preamble to the contested regulation that its aims are to reduce overproduction of beef and veal in order to limit buying-in under Article 6(1) of Regulation No 805/68, as amended. The Commission is thereby also seeking, as it has pointed out in the present proceedings, to signal to producers of heavier

carcasses that they should slaughter steers earlier and, in the long term, orient their farming toward lighter breeds.

- 37 The weight limit on carcasses eligible for intervention introduced by Regulation No 685/93 cannot be held to be manifestly unsuited to those aims.
- 38 As the Advocate General has shown in points 93 to 96 of his Opinion, that measure is such as to reduce the overall quantity of meat sold to intervention without thereby giving rise, as the Irish Government claims, to a fall in beef and veal prices due to carcasses no longer eligible for intervention coming on to the market.
- 39 The disputed measure is also such as to attain the aim of reorienting production towards lighter carcasses, for which market demand is greater, and of encouraging producers to farm heavier breeds only when there is a market demand for them.
- 40 Nor, finally, was the Commission manifestly in error in considering that the measure in dispute is necessary in order to attain the abovementioned aims.
- 41 First, as regards the possibility of reducing the quantities awarded by applying a reduction coefficient, provided for in Article 11(3) of Regulation No 859/89 and subsequently in Article 13(3) of Regulation No 2456/93, it is common ground that the effect of this step is that producers increase the quantities offered for intervention in advance — with the result that in 1992 those coefficients reached levels of 90 to 95%. It is true that the Commission may increase the amount of the security

which producers are required to lodge under Article 10 of Regulation No 859/89 — which has become Article 12 of Regulation No 2456/93 — when they submit their tender. However, as the United Kingdom has rightly pointed out, requiring increasingly higher securities with a view to preventing a speculative increase in the quantities offered particularly affects smaller producers without thereby providing adequate means of achieving the limitation of buying-in laid down by Article 6(1) of Regulation No 805/68, as amended, and at the same time preventing a downward spiralling of market prices.

- 42 Secondly, as regards the possibility of progressively reducing buying-in prices with a view to discouraging quantities from being sold into intervention, the Commission could, without manifest error of assessment, reasonably consider that such a measure necessarily entailed, in the event of huge quantities being sold into intervention, a considerable drop in market prices for beef and veal.
- 43 Thirdly, as regards the possibility, provided for in the first indent of Article 6(7) of Regulation No 805/68, as amended, of excluding certain categories and qualities of beef and veal from intervention, it suffices to point out that it has not been established that the effects of such a measure would be manifestly less restrictive than those of applying the contested measure.
- 44 Furthermore, the contested weight limit on carcasses applies neither to the 'safety-net' intervention measures set up by Article 6(4) of Regulation No 805/68, as amended, nor to private storage aid, for which general rules were laid down by Regulation (EEC) No 989/68 of the Council of 15 July 1968 (OJ, English Special Edition 1968 (I), p. 264), so that any harmful effects which might ensue for the producers concerned from the application of the contested regulation could, where necessary, be alleviated by those measures.

45 The plea of breach of the principle of proportionality must therefore be dismissed.

Breach of the prohibition of discrimination

46 The French Government asserts that 68% of all beef and veal carcasses produced in France would be excluded by a 340-kg limit on the weight of carcasses eligible for intervention, whereas other States would be much less severely affected. Such a general weight limit on carcasses thus discriminates against States such as France, where numerous heavy suckler breed animals are produced and a very substantial proportion of production is thus effectively eliminated by comparison with States whose herds consist essentially of lighter dairy breeds. Such discrimination is expressly prohibited by the second sentence of Article 6(6) of Regulation No 805/68, as amended by Regulation No 2066/92, according to which 'tender procedures must ensure equality of access for all persons concerned'.

47 The Irish Government estimates that application of the contested limit would exclude 61% of Irish beef and veal production from intervention.

48 In its view, the fact that the Commission in an amendment to Regulation No 859/89 took account of difficulties encountered by other States, in particular the Kingdom of Denmark, shows even more clearly the discriminatory nature of the treatment of Ireland. Article 1 of Commission Regulation (EEC) No 3891/92 of 29 December 1992 (OJ 1992 L 391, p. 57), which amended Article 4 of Regulation No 859/89 to exclude meat of young bulls from intervention, contains transitional measures directed at States such as Denmark where the previously accepted category of young bulls accounted for over 60% of all male bovine slaughterings

during the year prior to the introduction of the amendment in question. In the present case, however, the Commission did not provide for any transitional measures enabling Ireland to cope with a weight limit excluding approximately 148 000 tonnes of beef and veal from intervention, although in Denmark's case the exclusion concerned only 25 000 tonnes of meat.

49 The Court has consistently held that the prohibition of discrimination laid down in Article 40(3) of the EEC Treaty is only a specific expression of the general principle of equality in Community law, which requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see, *inter alia*, Case C-56/94 *SCAC v ASIPO* [1995] ECR I-1769, paragraph 27).

50 As noted above, the weight limit on carcasses eligible for buying-in seeks to ensure stability on the market for beef and veal, thereby pursuing one of the objectives of the common agricultural policy, set out in Article 39(1)(c) of the EEC Treaty. In the pursuit of that objective all Community producers, regardless of the Member State in which they are based, must, together and in equal measure, bear the consequences of the decisions which the Community institutions are led to adopt in exercise of their powers in order to respond to the risk of an imbalance which may arise in the market between production and market outlets (see, *inter alia*, Case 203/86 *Spain v Council* [1988] ECR 4563, paragraph 29, and *Crispoltoni and Others*, cited above, paragraph 52).

51 Nor can the argument that the Kingdom of Denmark received favourable treatment in a situation comparable to that in issue in this case be accepted. Unlike Regulation No 3891/92, which seeks to exclude from the intervention machinery a certain quality of products on the list in Article 5 of Regulation No 805/68, Regulation No 685/93 does not exclude any category of products from buying-in

but merely requires producers to adapt the weight of some of them. In any event, the contested legislation, like Regulation No 3891/92, provides for transitional measures intended, as pointed out in the second recital in the preamble, to enable producers to adapt their output gradually.

- 52 Finally, Article 6(6) of Regulation No 805/68, as amended, which ensures equality of access for all persons concerned whenever a tender procedure is opened, does not concern the determination in advance of the carcasses which are eligible for intervention.
- 53 The plea of breach of the prohibition of discrimination must therefore also be dismissed.

Breach of the principle of the protection of legitimate expectation

- 54 In the Irish Government's view, the contested measure also fails to observe the principle of the protection of legitimate expectation. Irish beef and veal producers could legitimately expect the buying-in regime to continue to apply to heavier carcasses, inasmuch as Regulation No 2066/92, which made radical changes to the system of premiums in the beef and veal sector, brought in special provisions intended specifically to encourage the rearing of heavier breeds.
- 55 In any event, it adds, a sudden reform such as that effected by the contested regulation, which is likely to be interpreted by producers as calling for the production of animals of a different type, is not acceptable unless their rights are respected, which is not the case here.

- 56 The Irish Government explains that the composition of the national herd has changed, with a move from traditional breeds to continental breeds, in order to provide a product more acceptable to continental taste and marketing requirements. The decrease in the number of dairy cows, resulting in particular from the introduction of new Community milk levies and the placing of a ceiling on Community milk production, has been accompanied by an increase in the number of suckler cows, most of which are bred to continental bulls and a quarter of which are themselves continental crosses. The changeover from early maturing to continental type cattle and the concomitant improvement in productivity and quality have inevitably been accompanied by an increase in average carcase weights.
- 57 The Irish Government's arguments cannot be accepted.
- 58 First, as the Advocate General rightly points out in points 133 and 138 of his Opinion, in none of the provisions of the Community legislation in either the beef and veal sector or the milk production sector can the Commission be seen to be encouraging beef and veal producers to produce more than the open market demands, the main aim of the legislation in issue being specifically to bring to an end the major imbalance between supply and demand on the relevant markets.
- 59 Furthermore, whilst the protection of legitimate expectation is one of the fundamental principles of the Community, 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 powers will be maintained; this is particularly true in an area such as common organization of markets which involves constant adjustments to meet changes in the economic situation (see, in particular, *Crispoltoni and Others*, cited above, paragraph 57). Traders cannot therefore claim to have a vested right to maintain an advantage which establish-

ment of a common market organization has given them and which they have at a given time enjoyed (paragraph 58 of the same judgment).

50 In the present case, therefore, beef and veal producers cannot justifiably claim to have entertained a legitimate expectation that the buying-in mechanism would remain unchanged.

51 That is all the more so in view of the provision made in the contested regulation for gradually limiting the weight of meat eligible for intervention in order, in particular, as is stressed in the second recital in the preamble, to enable producers to adapt their output gradually.

62 The plea that no account was taken of the principle of legitimate expectation must therefore be dismissed.

Infringement of the right to property

63 The Irish Government argues that the contested regulation infringes the right to property in that the beef and veal producers concerned by the weight limit in issue are deprived of the fruits of their labour.

64 The short answer to that argument is that the contested measure does not entail any restriction on the exercise of the right to property guaranteed in the Community legal order. Its only effect is that the producers concerned may no longer count on intervention as an outlet for meat from carcasses of the kind with which

Regulation No 685/93 is concerned and which they have not been able to sell on the open market. It does not in any way prevent such producers from disposing freely of their products.

- 65 The plea of infringement of the right to property must therefore be dismissed.

Misuse of power

- 66 The Irish Government further argues that the Commission has misused the powers conferred on it by Article 6(7) of Regulation No 805/68, as amended.
- 67 The Court has held (see, *inter alia*, Case C-156/93 *Parliament v Commission* [1995] ECR I-2019, paragraph 31) that adoption by a Community institution of a measure with the exclusive purpose, or at any rate the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case constitutes misuse of power.
- 68 As regards the requirement for the aim stated and the aim pursued to be the same, the Irish Government has not put forward any evidence proving that the Commission has pursued an aim other than those stated.
- 69 As regards the requirement not to evade specifically prescribed procedures, it is clear from paragraphs 17 to 22 of this judgment that the Commission could

properly adopt the contested regulation by the 'Management Committee' procedure provided for in Article 27 of Regulation No 805/68, to which Article 6(7) of the contested regulation refers.

70 The plea of misuse of power must therefore be dismissed.

Breach of essential procedural requirements

71 In the Irish Government's submission, the contested regulation is inadequately reasoned. First, contrary to what is stated in the first recital in the preamble, the contested measure was not necessary in order to enable the Commission to keep sales into intervention beneath the ceilings laid down by the Council. Secondly, it is incorrect to state, as the second recital does, that overproduction of beef and veal results mainly from an increase in carcase weights due to genetic progress, that official intervention encourages production of heavier carcasses, that there is no market demand for heavier carcasses and that such production is intended for official intervention. Likewise, the contested limitation is too abrupt, it fails to protect legitimate expectations and it does not enable producers to adapt their output gradually.

72 The Court has consistently held (*see, inter alia*, Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others v Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-3799, paragraph 16) that the statement of reasons required by Article 190 of the EEC Treaty must be appropriate to the nature of the measure in question. The reasoning of the institution which adopted the measure must be stated clearly and unequivocally, so as to inform persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review.

- 73 In this case, the reasons which led the Commission to adopt the contested measure are clearly stated in the preamble to Regulation No 685/93.
- 74 The first recital starts with the observation that the beef and veal sector continues to be characterized by a major imbalance between supply and demand entailing massive official intervention expenditure. As a result, the progressive reduction in buying-in referred to in Article 6(1) of Regulation No 805/68, as amended, could be achieved by means of the tender procedure only by using higher and higher reduction coefficients on tenders or by the gradual reduction of buying-in prices. In the Commission's view, such a trend risks leading to a downward spiral in market prices, to the detriment of beef and veal producers.
- 75 In the second recital, the Commission explains that the experience of the past few years has shown that overproduction results mainly from an increase in the weight of beef and veal carcasses made possible in particular by genetic progress. Frequently, there is no market demand for these heavier carcasses and this development ultimately encourages production intended for official intervention. The Commission therefore considers it appropriate to limit the weight of carcasses which may be bought in and to do so gradually in order to maintain the legitimate confidence of producers and enable them to adapt their output gradually.
- 76 As regards the arguments concerning alleged errors of assessment in those recitals, the Court has held that such questions relate not to the issue of infringement of essential procedural requirements but to the substance of the case (see, in that regard, Case 49/69 *BASF v Commission* [1972] ECR 713, paragraph 14). The arguments have been examined in relation to the pleas of breach of the principle of proportionality and breach of the principle of protecting legitimate expectation.

- 77 The plea of breach of essential procedural requirements must therefore be dismissed as well.
- 78 Since none of the pleas put forward by the French and Irish Governments can be upheld, both applications must be dismissed in their entirety.

Costs

- 79 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for by the successful party. Since the Commission has asked for costs and the French Republic and Ireland have been unsuccessful, they must be ordered to pay the costs, including those relating to the interim proceedings. In accordance with the first subparagraph of Article 69(4) of the Rules of Procedure, the United Kingdom, which has intervened in the proceedings, must bear its own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

- 1. Dismisses the applications;**

2. Orders the French Republic and Ireland to pay the costs, including those of the interim proceedings;
3. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

Edward

Puissochet

Moitinho de Almeida

Gulmann

Sevón

Delivered in open court in Luxembourg on 29 February 1996.

R. Grass

D. A. O. Edward

Registrar

President of the Fifth Chamber