

Case C-180/96 R

United Kingdom of Great Britain and Northern Ireland

v

Commission of the European Communities

(Application for interim relief — Agriculture — Animal health —
Emergency measures against bovine spongiform encephalopathy)

Order of the Court, 12 July 1996 I - 3906

Summary of the Order

1. *Applications for interim measures — Suspension of operation — Interim measures — Conditions for granting — Prima facie case — Serious and irreparable harm — Balancing all the interests involved — Discretion of the Court hearing the application for interim measures (EC Treaty, Arts 185 and 186; Rules of Procedure of the Court of Justice, Art. 83(2))*
2. *Applications for interim measures — Suspension of operation — Interim measures — Conditions for granting — Serious and irreparable harm — Harm which may be invoked by a Member State (EC Treaty, Arts 185 and 186; Rules of Procedure of the Court of Justice, Art. 83(2))*
3. *Applications for interim measures — Suspension of operation — Conditions for granting — Balancing all the interests involved — Definition (EC Treaty, Art. 185)*

4. *Applications for interim measures — Suspension of operation — Interim measures — Conditions for granting — Decision 96/239 on emergency measures to protect against bovine spongiform encephalopathy — Balancing all the interests involved — Absolute precedence to be accorded to the protection of public health over damage to economic and social interests, even if not easily reparable*
(EC Treaty, Arts 185 and 186)

1. It is open to the Court hearing an application for interim relief to order the suspension of the operation of an act, or other interim measures, if it is established that such an order is justified, *prima facie*, in fact and in law and that it is urgent in so far as it must, in order to avoid serious and irreparable damage to the applicant's interests, be made and produce its effects before a decision is reached in the main action. The Court is also to balance the interests at stake. Suspension and other measures granted under Article 186 of the Treaty must, moreover, be provisional inasmuch as they must not prejudice the points of law or fact in issue or neutralize in advance the effects of the decision subsequently to be given in the main action.
2. The urgency of an interim measure must be considered by reference to whether it is necessary to make a provisional ruling in order to avoid the occurrence of serious and irreparable harm as a result of immediate application of the measure contested in the main action. As regards the nature of the harm which may be invoked, it must be noted that the Member States are responsible for those interests, in particular of an economic and social nature, which are regarded as general interests at national level and are thereby entitled to defend such interests before the courts. They may therefore invoke damage affecting a whole sector of their economy, in particular when the contested Community measure may entail unfavourable repercussions on the level of employment and the cost of living.

In the context of that overall examination, the Court hearing the application enjoys a broad discretion and is free to determine, having regard to the particular circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of Community law imposing a preestablished scheme of analysis by reference to which the need to order interim measures must be assessed.

3. Where an applicant seeking suspension of operation of a measure invokes the risk of its suffering serious and irreparable harm, the Court hearing the application must determine, when balancing the interests at stake, whether the possible annulment of the contested decision by the Court seized of the main action would allow the situation brought about by its immediate implementation to be reversed and, conversely, whether suspension of the

operation of that decision would be such as to prevent its being fully effective in the event of the main application being dismissed.

4. An application by the United Kingdom for suspension of the operation of Commission Decision 96/239 on emergency measures to protect against bovine spongiform encephalopathy or even of part of it, or for interim measures qualifying its application, cannot be granted. Whilst some of the pleas in law put forward by the Member State contesting the

lawfulness of that decision cannot be wholly ruled out at the stage of examination of the interim application, the Commission has none the less presented serious arguments as to the lawfulness of its decision as a whole. Furthermore, the balancing of the interests at stake inevitably leads to recognition that the protection of public health against a fatal risk, which can in no way be ruled out in the present state of scientific knowledge, must take precedence over the economic and social damage which the Member State may invoke as being likely to result from the application of the said decision, even if that damage is not easily reparable.