

OPINION OF ADVOCATE GENERAL  
LENZ

delivered on 29 June 1995 \*

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\* Original language: German.

## A — Introduction

1. The basic question in the present cases is the division of powers between the Commission and the Council in the context of the common organization of the market in beef and veal, which was introduced in 1968 by Council Regulation (EEC) No 805/68 of 27 June 1968.<sup>1</sup> The aim of that organization of the market is 'to stabilize markets and to ensure a fair standard of living for the agricultural community concerned'. For that purpose the regulation provides for certain intervention measures.<sup>2</sup>

2. Under Article 5(1), such measures are:

- aid for private storage, and
- buying-in by intervention agencies.

Article 5(2) lists the products for which intervention measures may be taken: adult bovine animals and fresh or chilled meat

of such animals, presented in the form of carcasses, half carcasses, compensated quarters, fore quarters or hind quarters, in accordance with the Community classification scale under Regulation No 1208/81. Under Article 5(3) that list can be amended by the Council acting in accordance with the voting procedure laid down in Article 43(2) of the EC Treaty on a proposal from the Commission.

3. The present cases concern buying-in by the intervention agencies. If the market price falls below a certain level, beef and veal is bought in by the intervention agencies. There is then less beef and veal on the open market, so that the price, governed by supply and demand, rises again.

4. Article 26 of Regulation No 805/68 provides for a Management Committee for Beef and Veal to be set up, consisting of representatives of the Member States and presided over by a representative of the Commission.

5. Article 27 regulates the so-called management committee procedure. In that procedure the Commission's representative proposes certain measures to the committee. The committee can deliver an opinion within a time-limit to be set by the chairman. The Commission can adopt measures which are immediately enforceable, without having to

1 — 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).

2 — Fourth recital in the preamble to Regulation No 805/68.

wait for that opinion. Only if those measures are not in accordance with the committee's opinion is the Council informed. The Council, acting in accordance with the voting procedure under Article 43(2) of the EC Treaty, can then take a different decision.

6. The most important provision of Regulation No 805/68 for the instant cases is Article 6, as amended by Council Regulation (EEC) No 2066/92 of 30 June 1992<sup>3</sup> (hereinafter 'Article 6 of Regulation No 805/68'). Regulation No 2066/92 was adopted in the context of the reform of the common agricultural policy.

7. As can be seen from the preamble, the Community beef and veal market was suffering from an imbalance between supply and demand, which necessitated measures to reduce the intervention price.<sup>4</sup> The detrimental consequences for producers were to be compensated for by certain premiums. In no case, however, was that to lead to an increase in overall production.<sup>5</sup>

8. The preamble further shows that the Council's aims include the promotion of extensive production.<sup>6</sup> With extensive as opposed to intensive production, the animals are kept on pasture and are not fed with special feedstuffs or treated with hormones.

9. Regulation No 2066/92 amends Article 6 by laying down annual maximum quantities for intervention buying-in, graduated as follows:

— 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.

<sup>3</sup> — Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal 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).

<sup>4</sup> — First and second recitals in the preamble to Regulation No 2066/92.

<sup>5</sup> — Ibid, third and fourth recitals.

<sup>6</sup> — Ibid, tenth recital.

10. Article 6 also lays down general rules and conditions for the adoption of intervention measures.

vent market prices spiralling downward, shall be adopted,

11. Article 6(7) refers to the abovementioned procedure under Article 27. It provides as follows:

— any transitional provisions necessary for the implementation of these arrangements shall be adopted.

'Under the procedure provided for in Article 27:

The Commission shall decide on:

— 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,

— opening intervention as referred to in paragraph 4 and suspending it where one or more conditions laid down in that paragraph no longer apply,

— the buying-in prices and the quantities accepted for intervention shall be fixed,

— suspending buying-in as referred to in the first indent of paragraph 3.'

— the amount of the increase referred to in paragraph 5 shall be determined,

— the procedures implementing this Article, and in particular those designed to pre-

12. Article 6a(2) provides for a derogation from the list of products determined by the Council for intervention measures. Which bovine animals the exception applies to depends on their weight.

13. On the basis of Article 6(7) the Commission adopted Regulation (EEC) No 859/89 of 29 March 1989.<sup>7</sup> That regulation refers in the fifth recital in its preamble and in Article 4(1) to a further Council regulation, Regulation (EEC) No 1208/81 of 28 April 1981.<sup>8</sup> The latter regulation determines the Community scale for classification of carcasses of adult bovine animals. As can be seen from Article 3(1) and (2), the classes are defined by the animals' age and sex and by conformation and fat cover.

14. Commission Regulation No 859/89, which contains the detailed rules for the application of intervention measures, regulates in Article 4(1) which products can be bought in by the intervention agencies. It defines *inter alia* the categories and qualities of the products eligible for intervention, as provided for in the first indent of Article 6(7) of Regulation No 805/68 on the common organization of the market.

15. By Regulation (EEC) No 685/93<sup>9</sup> the Commission added a further criterion to the provisions of Article 4. The new provision

states that products can be bought in only if 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'.

It is this provision which France and Ireland both challenge.

16. On 25 May 1993 France brought an action against the Commission before the Court of Justice, asking the Court to:

— annul Commission Regulation (EEC) No 685/93 of 24 March 1993 amending Regulation (EEC) No 859/89 laying down detailed rules for the application of

<sup>7</sup> — Commission Regulation (EEC) No 859/89 of 29 March 1989 laying down detailed rules for the application of intervention measures in the beef and veal sector (OJ 1989 L 91, p. 5). That regulation 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). Regulation No 2456/93 applies from the second invitation to tender of September 1993. I shall not discuss Regulation No 2456/93, since the parties have made no submissions regarding it.

<sup>8</sup> — Council Regulation (EEC) No 1208/81 of 28 April 1981 determining the Community scale for the classification of carcasses of adult bovine animals (OJ 1981 L 123, p. 3).

<sup>9</sup> — 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).

general and special intervention measures in the beef and veal sector;

18. The Commission contended in each case that the Court should:

— order the defendant to pay the costs.

— dismiss the action as unfounded;

17. On 4 June 1993 Ireland also brought an action against the Commission, asking the Court to:

— order the applicant to pay the costs.

— annul 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;

19. The United Kingdom intervened in the case in support of the Commission.

— make such further order or orders as may be necessary and appropriate for the purposes of the relief which Ireland seeks in these proceedings;

20. France and Ireland both applied for interim measures, but this was refused by order of 16 July 1993.

— order the Commission of the European Communities to pay the costs.

21. The two cases were joined by order of 22 March 1995.

## B — Opinion

### (1) *Competence of the Commission — Infringement of Article 6(7) (Regulation (EEC) No 805/68)*

22. In support of their actions for annulment under Article 173 of the EC Treaty, Ireland and France first allege breach of a rule of law, namely Article 6(7) of Regulation No 805/68, and lack of power for the Commission to enact the contested regulation. They submit that only the Council, not the Commission, could introduce a maximum weight for carcasses.

23. Of importance in this connection, to begin with, is Article 6(7) of Regulation No 805/68 and the extent of the powers therein conferred on the Commission. In particular, the mutual relationship of the provisions in the individual indents of paragraph 7 must be examined.

24. *France* considers that the provision in the fifth indent, despite its general wording, is not a provision which confers extensive powers on the Commission. Even if it stated there that the rules for implementing Article 6 are to be adopted by the Commission, that power cannot be more extensive than the specific powers conferred under the first to

fourth indents of paragraph 7. If, under the first indent of paragraph 7, the Commission can determine the 'categories, qualities or quality groups of products eligible for intervention', that defines the scope of the Commission's competence to determine the products eligible for intervention. Beyond that, the Commission cannot introduce any limitations.

25. *France* argues that the Council itself defined the individual categories by Regulation No 1208/81 determining the Community scale for the classification of carcasses of adult bovine animals.

26. It submits that Article 3(1) of that regulation determines the categories of carcasses of adult bovine animals. They depend on the animals' sex and age. Article 3(2) provides for carcasses to be graded according to conformation and fat cover.

27. It submits that since carcass weight thus plays no part in the classification scale, the Commission cannot introduce a weight limit for carcasses, not even as an implementation measure under the fifth indent of Article 6(7) of Regulation No 805/68.

28. The *United Kingdom* submits, on the other hand, that there is indeed a connection between the classification criteria and carcase weights, which means that the Commission remained within the scope of the criteria laid down by the Council.

29. The *Commission* argues solely on the basis of the fifth indent of paragraph 7. It does not dispute that the introduction of a weight limit is not possible as part of the determination of categories, qualities or quality groups of products eligible for intervention (first indent of Article 6(7)).

30. In its view, however, the provision in the fifth indent, that is, the power to implement Article 6, should be interpreted more broadly than the preceding provisions. The Commission refers in this respect to the Court's case-law acknowledging that the Commission has extensive powers above all in agricultural policy. According to the Court, the Commission alone 'is able continually to follow with attention trends on the agricultural markets and to act with urgency as the situation requires'. The limits of such an extensive power are to be judged by the basic general objectives of the organization of the market rather than by the literal meaning of the enabling provision.<sup>10</sup>

31. The objective to be attained here, the Commission goes on to say, is to attain the annual maximum amounts for intervention buying-in laid down by the Council in Article 6(1) of Regulation No 805/68. In that respect the Council provided for two measures:

— a reduction of the intervention price, that is, the price at which meat is bought in by the intervention agencies,<sup>11</sup>

— a reduction of the quantities accepted for intervention, by raising the coefficients.<sup>12</sup>

32. The Commission considers that those two measures are no longer adequate to attain the maximum annual quantities fixed by the Council without starting market prices spiralling downward, which is precisely what the Commission is to prevent.<sup>13</sup> The Commission therefore had to introduce a further measure, namely the limit on carcase weights. Since that measure was a means for attaining the objective defined in Article 6, the Commission acted within the scope of its implementing power.

<sup>10</sup> — Case 23/75 *Rey Soda v Cassa Conguaglio Zucchero* [1975] ECR 1279, paragraphs 11 and 14.

<sup>11</sup> — Second recital in the preamble to Regulation No 2066/92.

<sup>12</sup> — The intervention purchases are first offered for tender by the Commission. To reduce the quantities thereupon tendered, reduction coefficients are determined (Article 11(3) of Regulation No 859/89).

<sup>13</sup> — See the fifth indent of Article 6(7) of Regulation No 805/68.



33. To assess whether that is so, the whole system of intervention, in the context of the common organization of the market in beef and veal and the reform of the agricultural policy, must be considered.

34. Agricultural policy is decided by the Council. It enacts the corresponding legal acts in accordance with its objectives: Regulation No 805/68 on the common organization of the market in beef and veal, for instance, and Regulation No 2066/92 reforming the agricultural policy in the field of the common organization of the market in beef and veal. Implementation of the Council's legal acts is the task of the Commission (third indent of Article 145 of the EC Treaty).

35. In the present case too, the Council delegated implementation to the Commission (fifth indent of Article 6(7) of Regulation No 805/68). The only question is to what extent it transferred its powers.

(a) The case-law

36. In the field of agriculture, as the Commission too submits, that extent is given a wide interpretation by the Court. The Court said in *Rey Soda*<sup>14</sup> that it follows from

practical requirements that the concept of implementation must be given a wide interpretation. Since the Commission alone is able to follow the agricultural markets attentively and act sufficiently fast, the Council may be led to confer wide powers of discretion and action on it in the sphere of the common agricultural policy. The Council can, however, impose conditions for the exercise of that power by the Commission. In addition, the management committee procedure allows the Council to reserve the right to intervene. When the Council has conferred extensive power on the Commission, its limits depend on the basic general objectives of the organization of the market rather than on the letter of the enabling provision. That opinion of the Court is also stated in Joined Cases 279/84, 280/84, 285/84 and 286/84,<sup>15</sup> in Case 27/85<sup>16</sup> and in Case 265/85.<sup>17</sup>

37. Also of interest in this connection is the Opinion in Case C-240/90,<sup>18</sup> according to which there is a presumption that, except in the specific cases where the Council decides it is appropriate to exercise the implementing powers itself, any necessary implementation of the rules laid down by the Council is

14 — Case 23/75, loc. cit. (see note 10).

15 — Joined Cases 279/84, 280/84, 285/84 and 286/84 *Rau v Commission* ('Christmas butter') [1987] ECR 1069, paragraph 14.

16 — Case 27/85 *Vandemoortele v Commission* ('Christmas butter') [1987] ECR 1129, paragraph 14.

17 — Case 265/85 *Van den Bergh en Jurgens v Commission* [1987] ECR 1155, paragraph 14.

18 — Opinion of Advocate General Jacobs in Case C-240/90 *Germany v Commission* [1992] ECR I-5383, at p. I-5404.

delegated to the Commission. That presumption has particular force in the sphere of the common agricultural policy. In any case, however, the Council can retain a degree of control by selecting the management committee procedure.<sup>19</sup>

objectives of the organization of the market.<sup>22</sup>

(b) Extent of powers under the fifth indent of Article 6(7)

38. However, it follows merely that the Council *can* confer extensive powers on the Commission in the field of agriculture; that does not mean that it *must* do so in every case. If the Council has in fact not conferred any extensive powers, the Commission — according to the Court's case-law — can adopt only the implementing provisions which are not contrary to the basic regulation or the implementing rules of the Council.<sup>20</sup>

40. The question in the present case is thus whether the Council conferred extensive power on the Commission by means of the fifth indent of Article 6(7) and whether the Commission regulation at issue here was covered by that extensive power.

39. In other words, the Council *can* confer extensive powers on the Commission in the field of agriculture. It is also possible for it, however, to intervene itself in certain cases by means of the management committee procedure or, in accordance with Article 145 of the EC Treaty, to impose certain requirements for the exercise of the Commission's powers or reserve the right in specific cases to exercise implementing powers directly itself.<sup>21</sup> If the Council has conferred extensive powers on the Commission, those powers are limited only by the general

41. The first point to examine is whether the measure adopted by the Commission, namely the fixing of a maximum weight for carcasses, can be regarded as an implementing provision at all.

42. It is not disputed that by that provision the Commission intended at least *inter alia* to attain the limit on quantities for intervention determined by the Council in Article 6(1) of Regulation No 805/68. From that point of view, the provision at issue can be regarded as an implementing measure. Whether it was actually suitable for attaining that objective will have to be examined in the

19 — Ibid, point 36.

20 — Case C-357/88 *Hopermann* [1990] ECR I-1669, paragraph 7, and Case C-358/88 *Hopermann* [1990] ECR I-1687, paragraph 8.

21 — Article 145 of the EC Treaty, third indent.

22 — See *Rey Soda*, loc. cit., *Rau v Commission*, loc. cit., *Van demoortele v Commission*, loc. cit., and *Van den Bergh en Jurgens v Commission*, loc. cit. (see notes 10, 15, 16 and 17).

context of the review of the proportionality of the measure.

the ground that no aid had been provided for by the Council and the Commission was consequently unable to introduce or implement such an aid.

43. The Commission accordingly acted within its power to determine implementing measures, unless that power was not an extensive one, but was limited by the Council. In the cases where the Court assumed that the Commission had extensive power, authority had been conferred on the Commission by general wording. At any rate, the regulations contained no details of which measures the Commission was to adopt in implementing the article and what criteria it was to follow.

44. In this connection the Commission refers to my Opinion in *Rau v Commission*.<sup>23</sup> I would like to point out, however, that even then I expressed the view that the action taken by the Commission must in all cases be in line with what the Council has provided. The Commission cannot therefore cite my Opinion in support of its argument that the Council conferred very extensive powers on it.

45. The question in those cases was whether the Commission was empowered to grant an aid. I concluded that it was not, *inter alia* on

46. In the present case there is no extensive conferment of powers on the Commission by the Council. The Council does not delegate the implementing measures to the Commission by general wording only. On the contrary, it gives very precise instructions in Article 6 of Regulation No 805/68 for the implementation of the intervention scheme, determining for instance the annual maximum quantities for buying in by the intervention agencies. It also lays down the conditions under which intervention measures can be adopted. Above all, however, it defines very precisely in Article 6(7), by which it delegates implementation of Article 6 to the Commission, what the Commission is to regulate in the context of intervention and by what criteria. From that it is apparent that the Council does not intend entirely to transfer the implementation to the Commission. It wishes rather to play a part in the decision-making itself; which it in fact does, by making use of the possibility open to it under Article 145 of the EC Treaty and defining the conditions of implementation by the Commission.

47. In this context the conferment of authority in the fifth indent of Article 6(7) cannot bestow extensive powers. If the Council defines the conditions so precisely, why — as Ireland rightly argues — should it then give

<sup>23</sup> — Opinion in Joined Cases 279/84, 280/84, 285/84 and 286/84 *Rau v Commission* [1987] ECR 1069, at p. 1101, points 102 and 105.

the Commission powers so extensive that it could circumvent the rules laid down by the Council?

48. If, then, the Commission's powers are not extensive, their limits are defined by the rules laid down by the Council.

49. As France rightly submits, the Council transferred to the Commission only the determination of the categories, groups and qualities eligible for intervention. Since, however, carcase weight is not a criterion of the classification scale, the Commission therefore cannot introduce such a criterion.

50. The United Kingdom takes a different view and submits that there is no difference, as regards the effects, between the exclusion of certain qualities or groups and the exclusion of products above a certain weight.

51. That is beside the point, however, if the Council has limited the Commission's powers exclusively to the determination of quality groups.

52. In a similar case the Court held that the Commission was not empowered to set an upper limit on compensation based on certain criteria, since the Council had already

specified criteria in the basic regulation.<sup>24</sup> If, then, even the provisions in the Council's basic regulation limit the Commission's powers, all the more must the criteria it lays down for implementation by the Commission have limiting effect. Nor is that contradicted by the judgment in Case C-240/90.<sup>25</sup> The Court admittedly held that the Commission did have power even where the Council had laid down detailed rules with respect to implementation by the Commission; it did not, however, express an opinion on the question whether extensive powers had been conferred on the Commission. Instead the basis of its reasoning was that the Commission had not regulated any 'essential' questions of agricultural policy. Whether that is also the case here remains to be examined.

53. Such a restriction to quality groups is also perfectly understandable. The market functions within the classification scales determined by the Council. It is therefore to be regulated by implementing measures within the framework of those classification scales. New criteria are not to be introduced.

54. That also defeats the Commission's objection that it can exclude whole products

24 — Case 264/86 *France v Commission* [1988] ECR 973, paragraph 20 et seq.

25 — Case C-240/90 *Germany v Commission* [1992] ECR I-5383, paragraph 36 et seq.

from intervention simply by not adopting any intervention measures for those products — so why should it not be able to set a limit on weight? It cannot do that, because the entire market is to be regulated only within the scales determined by the Council.

case within Article 6a must be regulated by the Council while all other weight limits may be imposed by the Commission, is not possible, as can be seen from the above observations.

55. The Council imposed that limitation quite deliberately. It is not disputed that a maximum weight for carcasses was discussed by the Council but in the end rejected. As the United Kingdom too submits, that can certainly not be taken as an indication of the division of powers. But it does show the Council's intention not to introduce a weight limit. It thus did not forget to mention a weight limit in the first indent of Article 6(7), but deliberately excluded it from the competence of the Commission.

58. Also unacceptable is the United Kingdom's view based on a connection between categories and carcass weights. There is certainly a connection between the categories, which are defined by the age of the animals, and the weight. However, that connection is not precise enough for a particular weight to be allocated to a particular category. For that reason a rule which relates to categories can never also determine weight.

56. The Council provided for a weight limit in one case only, namely in Article 6a(2) of Regulation No 805/68 as amended by Regulation No 2066/92.<sup>26</sup> From the fact that it adopted that provision itself, it may be concluded that a weight limit can only be imposed exceptionally, and not by the Commission.

(c) *Article 5 (Regulation (EEC) No 805/68)*

57. The converse conclusion drawn by the United Kingdom, namely that the particular

59. The applicants rely on Article 5 of Regulation No 805/68 as a further argument for the Commission not having power. Under Article 5(3), only the Council is competent to amend the list of products eligible for intervention measures. They argue that by introducing a weight limit for carcasses the Commission effected an amendment of the list, which it had no power to do, according to Article 5(3).

<sup>26</sup> — Under that provision, intervention agencies can buy in meat from male bovine animals of 150 to 200 kg carcass weight (calves), by way of derogation from Article 5(2).

60. The United Kingdom denies, I think correctly, that the Commission's measure is an amendment of the list of products. The list only determines the products for which intervention measures may in principle be taken. Restrictions are possible within those products. The Council itself envisages that, when it provides in the first indent of Article 6(7) for certain categories, groups and qualities for intervention to be determined by the Commission. But that is not a measure taken under Article 5(3). The list of products eligible in principle remains unchanged.

61. Something else can be deduced from Article 5, however. Basic decisions are to remain reserved to the Council. Determination of the products for which intervention measures can in principle be taken is such a basic decision: after all, it decides for which products the market is to be regulated and for which ones it is not to be.

62. The Court also held in *Köster* that the basic decisions are to be taken by the Council; 'basic' means the basic direction of Community policy.<sup>27</sup>

63. The division of powers between the Council and the Commission, as defined by

the Court, could be a further indication that in the present case the Commission was not entitled to act. It is possible that it adopted not just a purely implementing measure, but one with more extensive consequences. As the Commission itself states, its intention was to send a message by means of that measure and encourage producers to slaughter their animals earlier and in the long term to convert to raising lighter breeds. In other words, the Commission intended by means of the regulation to bring about a change of orientation of agricultural policy. Indeed, it says in another place that in its opinion the provision is a logical extension and development of the reform of the agricultural policy.

That, however, is clearly a task for the Council, which decides the direction of agricultural policy. That means that the Commission lacked power to adopt the contested regulation.

64. Article 2 of Regulation No 805/68, which has been cited in this context, is not relevant here, since it governs the facilitation of action by the trade organizations concerned.

65. The Commission's argument that it could not have attained the objective laid down by the Council without adopting the contested regulation does not affect the Commission's lack of power. Even if, as it

<sup>27</sup> — Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v Köster* [1970] ECR 1161, paragraph 6.

argues, it would have infringed Article 6(7) of Regulation No 805/68 if it had failed to act, it can nevertheless not do anything outside its powers even in such a case.

66. That argument would also be effective only if the weight limit the Commission introduced had been the only measure available. That will have to be examined later. But even if there had been no other possibility, only the Council would have been empowered to decide on such a measure. The Commission would have been able to submit a corresponding proposal to the Council, but would not itself have been entitled to introduce such a measure.

67. As proof that it did have power, the Commission submits, finally, that it had already set a weight limit for carcasses in the context of private storage aid. The applicants argue, on the other hand, that the private storage aid system is quite different from the intervention system. With private storage aid there are no such narrow restrictions as with intervention. The United Kingdom does not accept, however, that the Commission's powers are wider in the sphere of private storage aid than in the sphere of intervention.

68. That need not be considered further here, since it cannot in any case be deduced from the fact that the Commission has already on one occasion introduced a weight limit that the corresponding power had in fact been conferred on it.

69. The Commission also refers to another criterion of weight introduced in the context of the implementation measures. That, however, concerned purely technical provisions, namely the determination of the market price according to weight. That is completely different from the exclusion of certain products from the intervention scheme solely because of their weight.

*(d) Article 155 of the EC Treaty*

70. To conclude the section on the powers of the Commission, I would like to address Ireland's submission that there is also an infringement of the first and fourth indents of Article 155 of the EC Treaty.

71. As the United Kingdom rightly argues, the first indent relates only to the supervision of the application of Community law by others. The Commission does indeed examine its own conduct too, but in advance, not afterwards under Article 155.

72. There is an infringement of the fourth indent in this case, since if the Commission exceeds its powers, it is not exercising the powers conferred on it by the Council for implementation.

73. The conclusion is thus that the Commission exceeded its powers. The fifth indent of Article 6(7) confers power on it only within the context of the preceding conferments of powers. That provision, which is a general implementing power, does not thereby become devoid of content. To demonstrate that, I should like to refer to Commission Regulation No 859/89 of 29 March 1989.<sup>28</sup> That regulation was adopted in particular on the basis of Article 6(7) of Regulation No 805/68 as amended by Regulation No 571/89 of 2 March 1989.<sup>29</sup> That version differs only insubstantially from the version introduced by Regulation No 2066/92. If the above-mentioned Commission regulation is examined, it can be seen that in addition to provisions under the first to fourth indents of Article 6(7), further extensive implementing measures are adopted, *inter alia* on the selection of intervention centres, the facilities at those centres and the marking, handling and packaging of the meat. There are accordingly still plenty of rules which can be adopted on the basis of the fifth indent of Article 6(7) of Regulation No 805/68.

## (2) Interim conclusion

74. The above observations already suffice to uphold the application and annul the

contested regulation. In case the Court prefers not to follow that suggestion, the remaining pleas in law must also be examined.

## (3) Proportionality

75. The applicants put forward breach of the principle of proportionality as a further plea in the context of Article 173.

76. The Court reviews proportionality by ascertaining whether the means chosen are suitable for achieving the desired objective and do not go beyond what is necessary to achieve it.<sup>30</sup>

### (a) The Commission's objectives

77. As a first step in examining proportionality, it therefore makes sense to consider what objectives the Commission is pursuing by means of the regulation at issue here.

<sup>28</sup> — OJ 1989 L 91, p. 5.

<sup>29</sup> — Council Regulation (EEC) No 571/89 of 2 March 1989 amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal, repealing Regulation (EEC) No 1302/73 and extending Regulation (EEC) No 4132/88 (OJ 1989 L 61, p. 43).

<sup>30</sup> — Case C-256/90 *Mignini* [1992] ECR I-2651, paragraph 16.



78. To begin with, its aim is to reduce beef and veal production and to reduce intervention buying-in. That corresponds to the objectives stated by the Council in Regulation No 2066/92.

79. As further objectives, the Commission states that it wishes to send a message to producers of heavy carcasses. That message has a short-term aspect, and is intended to lead to animals being slaughtered earlier. In the long term, however, the measure is intended to bring about a reorientation with respect to the breeds reared. Lighter breeds are to be reared. In addition, fewer hormones are to be used. The Commission wishes to bring it about that producers in this field are once again orientated exclusively to the market and no longer regard the intervention scheme as a 'second market'.

#### (b) Its findings of fact

80. In the context of the review of suitability, the next question is whether the objectives defined above can be attained by means of the contested regulation. That also includes the question whether the Commission assessed the starting point or situation correctly and hence also correctly incorporated it into its examination.

81. The Court's case-law allows the Commission and the management committee a

wide discretion in the assessment of factual situations in the field of trade in agricultural products. In other words, the Court will examine only whether there is a manifest error or misuse of powers or whether the Commission clearly exceeded the bounds of its discretion.<sup>31</sup>

82. It can be seen from the preamble to the contested regulation and the Commission's pleadings that it assesses the position as follows:

In the beef and veal market there is overproduction, which can be attributed to the increase in carcase weights. The increase in weight in turn has various reasons. One is that in an uncertain market situation and faced with the consequent low market prices, many producers defer slaughtering their animals, in order to wait until the market price is higher or else to sell the meat to the intervention agencies. Other reasons are that in recent years more high-energy feed has been used, its cost has fallen, more and more hormones are used, and genetic progress makes it possible to rear very heavy breeds.

<sup>31</sup> — Case 29/77 *Roquette Frères v France* [1977] ECR 1835, paragraphs 19, 20 et seq.; Case 136/77 *Racke v Hauptzollamt Mainz* [1978] ECR 1245, paragraph 4.

83. A further finding by the Commission is that intervention measures have become a second market for many producers, that is, producers are no longer orientated to the market and its law of supply and demand, but instead produce for sale to the intervention agencies.

84. It finds that heavy carcasses are increasingly sold to the intervention agencies, since they cannot be disposed of on the free market so easily as light carcasses.

85. In view of the wide discretion enjoyed by the Commission, referred to above, it need only be examined here whether a manifest error on the part of the Commission can be found.

86. The applicants submit that there is such an error. In this examination I shall restrict myself to those of the applicants' arguments which are capable at all of calling the Commission's assessment into question.

87. France submits that it has not been shown that it is precisely the heavy animals which are sold to intervention agencies;

producers of light carcasses too can orientate their production to the intervention system. France does not thereby dispute that such a 'second market' exists, however. France merely points out that production which 'ignores the free market' exists in all parts of the beef and veal market, thus including heavy carcasses. Ireland's arguments too indicate that a 'second market', namely intervention, does indeed exist. Ireland submits that if the proportion of Irish production excluded from intervention (c. 60%) could no longer be sold into intervention, but was offered on the free market, that would lead to a fall in the market price. Ireland has thereby indirectly indicated, however, that 60% of its production is destined for intervention.

88. As to the Commission's assertion that there is greater demand for lighter carcasses than for heavier ones, both applicants argue that a market for heavy carcasses does indeed exist. The Commission does not dispute that. It merely says that demand is not so great, and would therefore like to encourage producers to watch the market carefully.

89. The Commission's assertion that slaughtering is partly deliberately deferred is not expressly contradicted by the applicants either. Ireland merely argues that in the case

of the breeds reared in Ireland, earlier slaughter is not possible. Since the animals are reared extensively, on pasture, their growth is slower than with intensive rearing. The date of slaughter depends on the ratio of muscle to fat cover. Ireland argues that the optimum slaughter date, that is, the optimum relationship between those criteria, is reached later in the case of extensive rearing.

90. The Commission contends that even with extensive rearing animals could be slaughtered earlier, or extensive rearing could also be practised with lighter breeds.

91. Since the Commission must be allowed a wide discretion in this respect and its view is moreover supported by the United Kingdom, which considers that with certain modifications earlier slaughter is feasible, it cannot be shown that the Commission committed a manifest error in assessing the situation.

#### (c) Suitability

92. It must next be examined, in the context of the situation found to exist by the Commission, whether the contested regulation is capable of attaining the objectives stated by

the Commission. Here too the Commission must be allowed a wide discretion, so that it need only be examined whether the measure is patently unsuitable for achieving the objectives pursued.<sup>32</sup>

93. One of the Commission's objectives was to reduce the quantity of meat sold into intervention. Such a reduction can be achieved by introducing a weight limit for carcasses. In the Commission's opinion, breeders can produce lighter carcasses by earlier slaughtering. That means that all the animals which have hitherto been sold to the intervention agencies would still be bought in, but at lighter weights. The total quantity of meat sold into intervention will be reduced thereby — but only on the assumption that no more animals are sold than previously. That can be excluded. Since the intervention price is equal to or below the market price, producers will continue to sell into intervention only those animals which they cannot dispose of on the free market. Since, in the Commission's opinion, the number of animals bought in will not alter, conditions on the free market will not change, in other words, the number of animals which can be sold on the free market will stay the same, and hence the number of animals sold into intervention will also stay the same. That admittedly depends on animal herds generally not increasing. That would not be possible in the short term, and is also unlikely in future, since producers would then lose the premium paid by the Commission for reducing herds. No manifest error can be discerned in the Commission's thinking. If the Commission's reasoning is followed, it is possible thereby to bring about a

<sup>32</sup> — Case C-256/90 *Mignini*, cited above (note 30).

reduction in the total quantity of meat sold into intervention.

94. Ireland argues, on the other hand, that earlier slaughtering of the animals is not possible, so that those carcasses would be altogether excluded from the intervention measures. They would therefore have to be offered on the free market, which would lead to a fall in prices. That would not only have the consequence that many more animals than before would in fact be sold into intervention, but would also — because the collapse in prices would be drastic — bring the so-called safety net into operation. The safety net is governed by Article 6(4) of Regulation 805/68. It consists of intervention measures for special crisis situations. No maximum annual quantities under Article 6(1) are determined for the safety net. In Ireland's opinion, the effect of the Commission's measure would thus be the precise opposite of that actually intended: the possibility of unlimited buying-in by the intervention agencies.

95. As already stated, it cannot be shown that the Commission committed a manifest error in proceeding from the assumption that earlier slaughter of the animals is possible. For that reason, Ireland's argument must fail.

96. Ireland's argument would also have to be rejected if the weight limit for carcasses

introduced by the Commission also applied to the safety net. That is in my opinion not the case, since the Commission itself introduces the provision in the context of Article 4(2) of Regulation No 859/89, which implements the selection of categories, qualities and quality groups under Article 6(1) of Regulation No 805/68. Article 6(1), however, precisely regulates not the safety net but the normal intervention scheme with defined annual maximum quantities. The weight limit for carcasses is thus to apply only within that context. Nevertheless, Ireland's argument would not be able to disprove the suitability of the Commission's measure, especially as the statement that 60% of total production would have to be sold on the free market instead of being sold into intervention is an indication that a secondary market does indeed exist. It is not disputed that no Irish products are currently being sold to the intervention agencies. The Commission chose precisely this favourable moment for introducing the limit, so that its effects could be kept as slight as possible, and producers have enough time to adapt where necessary to the changed circumstances. The consequences cannot therefore be as dramatic as Ireland says. In this respect too, therefore, it cannot be shown that the Commission committed a manifest error. The measure is therefore suitable in principle for attaining a reduction of the quantity of meat sold into intervention.

97. The Commission also wished to bring it about that heavy bovine animals were no longer produced if there was no free market, that is, no demand for them any more.

98. By excluding heavy carcasses from intervention measures, the measure makes it clear that the Commission would like a reorientation towards lighter breeds. It can thereby encourage producers to observe the market closely and produce heavy animals only if there is a corresponding demand. If there is no such demand, the producer should change his production over and possibly also dispense with the use of hormones. The Commission's measure is thus suitable for attaining its objective, at least in so far as it merely intended to send a message. In that it succeeded.

99. The measure may also ensure that it does not happen that, in times of crisis when the market price is low, producers do not orientate the time of slaughter to the market but wait for the market price to rise again, otherwise selling to the intervention agency. The latter possibility is now excluded from the outset. The market is admittedly regulated with respect to all products, including those which are not directly bought in by the intervention agencies. But intervention is no longer a sure customer. That may perhaps induce producers to watch the market more closely, in order to slaughter earlier if need be and thus possibly enjoy the benefits of intervention.

100. The measure is thus suitable for attaining the Commission's objectives.

101. France submits that such a measure contradicts the objective of promoting extensive rearing. It argues that placing heavy breeds at a disadvantage may lead to increased production of lighter breeds for which the use of hormones is more profitable. On that point it must be said that, according to the Commission's assessment, extensive rearing is also possible with other, lighter breeds and its measure does not contradict the aim of encouraging extensive rearing. That reasoning by the Commission is not manifestly irrational. Since the Commission must be allowed a wide discretion, it may be taken that the measure does not contradict the objective of promoting extensive rearing.

#### (d) Necessity

102. The final point to be considered in this connection is the question of necessity.

103. The Court assesses this by considering whether the measures go beyond what is appropriate and necessary to attain the objective pursued. The measure must correspond to the importance of the aim and be necessary to achieve it.<sup>33</sup>

<sup>33</sup> — Case C-319/90 *Pressler v Germany* [1992] ECR I-203, paragraph 12; Case C-199/90 *Italtrade* [1991] ECR I-5545, paragraph 12; Case C-174/90 *Hoche* [1990] ECR I-2681, paragraph 19.

104. According to the Commission, the contested regulation is an essential instrument for ensuring the functioning of the market and attaining compliance with the annual maximum quantities determined by the Council.

have to be set. Since producers know that their offers will be reduced, they are set that much higher to begin with, so that the Commission is compelled to set the reduction coefficients correspondingly high. As a result, the coefficients have reached a level of 90% to 95%. A further increase is no longer possible, since a reduction by 100% would mean no more meat being bought in.

105. On the basis of the current situation it could be doubtful whether the measure was necessary for attaining the annual maximum quantity determined by the Council, since, as mentioned above, no heavy carcasses are being sold to the intervention agencies at present. Once those agencies are again obliged to be active to such an extent as previously, however, the Commission's measure will be necessary to attain the objectives referred to — reducing the quantity of meat bought in, reorientating the market, reducing production. Here too, the Commission cannot be shown to have committed any manifest error.

108. As to the exclusion of categories or qualities, it is not evident why that should be a less strict means. Here too there may be a greater effect on certain Member States. A further reduction of the intervention price would not help either, in the Commission's opinion, since if intervention prices were too low the products would be offered on the free market, which would lead to a fall in the market price.

106. France submits, however, that less severe means were also open to the Commission, for example a further increase in the reduction coefficients or the exclusion of specified categories or qualities from intervention.

109. As to Ireland's reference to a less severe rule adopted for the benefit of Denmark in another connection, although still in the context of intervention measures, it must be stated that it is within the Commission's discretion which measure to take when.

107. The Commission counterargues that a further increase in the reduction coefficients is no longer possible. The greater the quantities of meat offered to the intervention agencies, the higher the reduction coefficients

110. Moreover, the measure in question here is in my opinion a lenient measure, since it was introduced at a time when intervention

measures were not needed. In addition, Member States are allowed a period of time in which to convert their production. In response to the applicants' submission that the time is not sufficient, it must again be pointed out that the intervention measures are not a second market, but merely special measures in the event of a particular weakness of the market. Besides intervention buying-in, there also still remains the possibility of private storage aid, for which — as the Commission submitted at the hearing without being contradicted — there is no corresponding weight limit for carcasses.

Ireland and France submit that as a result of the setting of an upper limit on carcase weights, it is above all the products of France and Ireland which are excluded from intervention. They argue that while there is admittedly no express provision in the regulation that products of France and Ireland can no longer be sold to the intervention agencies, the weight limit is determined in such a way that it is precisely the products of France and Ireland which are excluded from intervention. The applicants submit that up to 60% of their production is excluded.

111. The Commission's measure may therefore be taken to be appropriate and necessary and hence not disproportionate.

#### (a) Different treatment

#### (4) The prohibition of discrimination

112. The applicants' third plea in the context of Article 173 of the EC Treaty alleges breach of the prohibition of discrimination under the second subparagraph of Article 40(3) of the EC Treaty and Article 7 of the EEC Treaty (now Article 6 of the EC Treaty).

114. In examining whether there is discrimination, the first question is whether there is a difference in treatment in the first place. It is a fact that the applicants' products are treated differently from those of other Member States with respect to intervention buying-in. The Commission admittedly argues that other Member States are affected too. But even if that is the case, they are not affected — as is not disputed — to such an extent as the applicants.

113. That principle means that comparable situations must not be treated differently and different situations must not be treated in the same way without objective justification.

115. Nevertheless, one cannot simply assume that there is different treatment here, without considering the special features of intervention.

116. I have already pointed out above that the intervention agencies are not a 'second market'. The intervention system is rather to be understood as a combination of various measures, all serving the purpose of stabilizing the beef and veal market. The intervention agencies buy in certain quantities of beef and veal, in order thereby to reduce supply, i. e. the amount of meat on the market. The result is that the market is strengthened generally, i. e. for all beef and veal products, and prices rise. The Commission is responsible for determining the quantities and categories of the bought-in meat in such a way that the effect is as great as possible. If, then, the intervention agencies buy in meat from specified producers, they do not do so in order to benefit those producers specifically. Instead their intention is to benefit all suppliers on the market. From that it follows, however, that regardless of which producers' meat is sold to the intervention agencies, there is a positive effect for all suppliers on the market. The exclusion of certain products from intervention measures thus cannot be regarded as a disadvantage for those products, unless the producers produced only for intervention. The applicants' products benefit from the stabilization of the market to the same extent as all other products. There would be discrimination or different treatment only if the products of France and Ireland were excluded from the intervention measures' beneficial effects.

117. That producers of heavy carcasses are forced, more than other producers, to orientate their production to the market could also possibly be regarded as different treatment. But even if an intervention system

exists to support the market, all producers must in principle orientate their production to the market. The intervention measures intervene only in exceptional cases where the market has been weakened.

118. For that reason there is no different treatment here.

#### (b) Justification

119. Even if it were concluded that in this case there was different treatment of France and Ireland as opposed to other Member States, that would be justified.

120. According to the Court's case-law, there is justification if the different treatment takes place by reference to objective criteria which ensure a proportionate division of the advantages and disadvantages for those concerned without distinction between the territories of the Member States.<sup>34</sup>

<sup>34</sup> — Case 153/73 *Holtz & Willemsen v Council and Commission* [1974] ECR 675, paragraph 13; Case 8/78 *Milac v Hauptzollamt Freiburg* [1978] ECR 1721, paragraph 18; Case 106/83 *Sermide v Cassa Conguaglio Zuccheri* [1984] ECR 4209, paragraph 28.



121. The Commission submits that it fulfilled the requirements for justification of different treatment, since in setting a weight limit it applied an objective criterion.

suffices for it to be assumed that the Commission's action was justified.

122. That is not sufficient for justification, however, since the objective criterion must ensure a proportionate division of the advantages and disadvantages for those concerned. That is doubtful in the present case, since, assuming that there is different treatment, there are only two Member States which suffer its disadvantages.

123. In my Opinion in *Sitpa*<sup>35</sup> I already interpreted the Court's case-law<sup>36</sup> as meaning that further examination of justification must be restricted to considering whether objectively clear reasons for the method chosen simply cannot be identified and the action was thus arbitrary.

124. If the Commission states that it excludes heavy carcasses from intervention in order to counteract a general increase, not orientated to the market, in the weight of bovine animals and hence in the quantity of meat bought into intervention, that in itself

125. Ireland submits in this connection that in a comparable case the Commission allowed Denmark special treatment in order to alleviate especially serious consequences. The Commission points out that the provision in question was introduced after Denmark had drawn attention to the problem in the negotiations on reform of the agricultural policy. It states that Ireland did not avail itself of that opportunity; it made observations only in the management committee, and those observations were taken into account. Moreover, it argues, the case was not comparable: Danish products were to be excluded completely from intervention, whereas that is not the case with Irish bovine animals, since if the animals were slaughtered earlier they could still be sold to the intervention agencies. Since no manifest error on the part of the Commission can be identified, and since it must be allowed a wide discretion, those observations suffice for it to be concluded that there is no different treatment.

126. As the United Kingdom correctly submits, there is also no breach of the prohibition of discrimination in Article 6(6) of Regulation No 805/68, as the applicants argue, since that provision concerns equal treatment in relation to invitations to tender, not equal treatment in relation to the general determination of the products which can be sold to intervention agencies.

35 — Opinion in Case C-27/90 *Sitpa* [1991] ECR I-133, at p. I-147, point 32.

36 — Joined Cases C-267/88 to C-285/88 *Wuidart* [1990] ECR I-435, paragraph 14.

127. Finally, I would also note that the Commission rightly observes that in the context of the agricultural policy reform it was inevitable that there would be disadvantages for some Member States, but that had to be seen in the overall context, however, and the individual provisions of the reform balanced the advantages and disadvantages.

128. It follows that there is no breach of the prohibition of discrimination.

129. Finally, I must address certain pleas in law put forward by Ireland only in Case C-307/93.

#### (5) Protection of legitimate expectations

(a) Expectation deserving protection on the basis of encouragement by the Commission to adopt a certain course of conduct

130. The first point here is breach of the principle of protection of legitimate expectations. Ireland submits in this connection that since joining the European Community it has adapted its herds to demand on the continent. There has increasingly been a

changeover to continental-type breeds, which are heavier.

131. Furthermore, Ireland argues, new measures in the milk sector have entailed increases in animal weights. The intended decrease in the number of dairy cows has resulted in an increase in the number of suckler cows. Of those cows, a quarter belong to continental, i. e. heavy breeds, and they are also largely cross-bred with such breeds. The exclusion of heavy breeds from intervention measures, now decided by the Commission, infringes Ireland's legitimate expectation that the Commission would continue to support the rearing of heavy breeds. Ireland refers in this connection to the Court's judgments in *Mulder*<sup>37</sup> and *Von Deetzen*.<sup>38</sup> The Court's acceptance of a legitimate expectation in those cases was dependent on the fact that the traders had been encouraged by a Community act to adopt a particular course of conduct.<sup>39</sup>

132. There was no such encouragement in this case, however. With respect to the adaptation of production to demand in the EC, Ireland has not cited any Commission measure which expressly encouraged it to adopt that conduct. Nor is any such measure evident.

37 — Case 120/86 *Mulder v Minister van Landbouw en Visserij* [1988] ECR 2321.

38 — Case 170/86 *Von Deetzen v Hauptzollamt Hamburg-Jonas* [1988] ECR 2355.

39 — *Mulder* (see note 37), paragraph 24, and *Von Deetzen* (see note 38), paragraph 13.

133. Nor can measures taken by the Commission in the field of milk production be regarded as encouragement to carry out particular changes in the beef and veal market. The purpose of the Commission's measures was to reduce milk production. It is not possible to deduce therefrom an encouragement to increase production in another sector, namely the beef and veal sector, especially if demand there does not exceed supply. Producers must in all cases orientate their production to the situation on the beef and veal market.

134. As another Community measure which could have aroused a legitimate expectation on the part of Irish producers, Ireland mentions the promotion of extensive rearing, supported by premiums.

135. The Commission submits, on the other hand, that there would have been such encouragement only if the rearing of heavy breeds had been expressly promoted by a premium; extensive rearing does not automatically require heavy breeds.

136. Ireland admittedly disputes that, but, as already stated above, the Commission must be allowed a wide discretion in this field. It must therefore be assumed that extensive rearing does not automatically lead to heavier breeds. The promotion of extensive

rearing can thus not be regarded either as encouragement by the Community to produce heavy animals.

137. It must also be mentioned in this connection that Ireland repeatedly states that extensive rearing has been practised in Ireland for centuries. That type of rearing thus cannot in any event have been occasioned by an EC measure.

138. The fact that the Council promotes extensive rearing by premiums could at the very most arouse an expectation that producers would not be occasioned to change their production over in the next few years. The trigger for a changeover of production must, however, first of all be the market situation. The Council intends to promote extensive rearing only as long as that does not clash with the main objective of the agricultural policy reform, which is to reduce meat production. That is apparent *inter alia* from the fact that the Council expressly states in the fourth recital in the preamble to Regulation No 2066/92 that the reorientation of the premiums must not be reflected in an increase in overall production. Producers cannot therefore regard the promotion of extensive rearing as an encouragement to produce in a way which is no longer orientated to the market.

139. From all the above considerations, it follows that the promotion of extensive rearing did not encourage the production of heavy breeds.

140. The only expectation which might still come into consideration is thus an expectation that producers will continue to be able to sell their products to the intervention agencies. Ireland's submission in this respect that Irish meat producers rely on sales to the intervention agencies indicates — as the Commission rightly argues — that Irish producers regard intervention as a second market. Ireland admittedly disputes that elsewhere. The fact that since the end of 1993 — as is common ground — no meat has been sold into intervention any more also supports the view that Irish producers are orientated to the market situation. But even if it were correct that intervention was regarded as a 'second market', there could be no legitimate expectation, since as stated above the producers are called on first to adapt their production to the market situation. Only in exceptional situations can recourse be had to intervention.

141. The only expectation could therefore be that in times of crisis Irish producers would still be able to sell their products to the intervention agencies. As I have already shown, however, the purpose of intervention is to regulate the market, not to buy in specified products. That means that Irish producers

could not expect precisely their products to be bought in as part of the intervention measures.

142. A counter-argument could be that the Council provides for a graduated scale for fixing the annual limits for intervention quantities and even pays premiums as compensation for the reduction of the intervention price. That, however, is in the context of a basic reduction of intervention measures. The market is no longer regulated to such an extent as before. The price can thus no longer be supported as before, and so there are losses for producers. Those are what the Council wishes to compensate.

143. The present case, however, is not concerned with a reduction of intervention measures, but only with the question of which products are bought in in order to regulate the market. In that respect the Irish producers do not suffer any losses; the intervention measures regulate the market to the same extent as before. Irish producers too benefit from that regulation.

144. There is thus no legitimate expectation on the part of the Irish producers which could have been infringed by the Commission's measure.

145. Nevertheless, the Commission provides in the contested Regulation No 685/93 for a *gradual* limitation of maximum carcase weights, in order to maintain the 'legitimate confidence of producers'.<sup>40</sup>

submits that no breach of a fundamental right is evident.

(a) Property

(b) Sufficient regard

146. Ireland's view is that even that gradation is not sufficient to respect the legitimate interests of Irish producers. Here too, however, the Commission must be acknowledged to have a wide discretion. It introduced the measure after examining it with the representatives of the Member States and after extensive market analysis. The provision must therefore be regarded as sufficient to enable producers to adapt their production where necessary. There is thus no breach of the principle of protection of legitimate expectations.

148. A breach of the right to property can be excluded simply because the opportunity to sell meat to the intervention agencies is not an item of property, especially in view of the fact that intervention is only a system for regulating the market.

(b) Freedom to exercise a trade

(6) Breach of fundamental rights

147. With respect to Ireland's assertion that the contested regulation of the Commission infringes the fundamental rights of Irish beef and veal producers by depriving them of the fruits of their work, the Commission rightly

149. The freedom to exercise a trade is not restricted either. Even if the Irish producers did not orientate themselves to the market and relied on sales into intervention, the Commission's regulation would not prevent them from continuing to exercise their trade and continuing to produce heavy carcasses. If they are subsequently unable to dispose of their products, that is attributable to the law of supply and demand, in this case the lack of demand.

<sup>40</sup> — Second recital in the preamble to Regulation No 685/93.

(7) Misuse of powers

150. Ireland's assertion that the Commission misused its powers need not be gone into further either. Ireland submits in this connection only what it has already submitted with reference to the Commission's lack of power. Misuse of powers, however, means precisely that an institution has used its discretion for a purpose other than that stated. There is no indication here that the regulation was adopted for a purpose other than that stated.

regulation at issue here does not have an adequate statement of reasons, since the reasons given are wrong. The duty to state reasons is governed by Article 190 of the EC Treaty, which provides that regulations must state the reasons on which they are based. The Commission did that in this case. Whether the Commission's reasoning is correct is to be examined in another context, namely the question of proportionality, and is not relevant here.

152. Accordingly, of all the pleas in law raised, only the Commission's lack of power and breach of Article 6(7) of Regulation No 805/68 are founded.

(8) Breach of essential procedural requirements

Costs

151. The final ground for annulment put forward by Ireland, breach of essential procedural requirements, is also not made out here. In Ireland's opinion, the Commission

In accordance with Article 69(2) of the Court's Rules of Procedure, the unsuccessful party should be ordered to pay the costs.

C — Conclusion

153. In the light of the above considerations, I propose that the Court:

1. Annul Commission Regulation (EEC) No 685/93;
2. Order the Commission to pay the costs.