

JUDGMENT OF THE COURT

22 October 2002 *

In Case C-241/01,

REFERENCE to the Court under Article 234 EC by the Conseil d'État (France) for a preliminary ruling in the proceedings pending before that court between

National Farmers' Union

and

Secrétariat général du gouvernement,

on the validity of Commission Decision 98/692/EC of 25 November 1998 amending Decision 98/256/EC as regards certain emergency measures to protect against bovine spongiform encephalopathy (OJ 1998 L 328, p. 28) and of Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Council Decision 98/256/EC (OJ 1999 L 195, p. 42) and on the interpretation of Community law, in particular Article 30 EC,

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet and R. Schintgen (Presidents of Chambers), C. Gulmann, D.A.O. Edward, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

- the National Farmers' Union, by C. Lewis, Barrister, instructed by P. Willis, Solicitor,
- the French Government, by R. Abraham and G. de Bergues, and by R. Loosli-Surrans, acting as Agents,
- the United Kingdom Government, by J.E. Collins, acting as Agent, and M. Hoskins, Barrister,
- the Commission of the European Communities, by D. Booss and G. Berscheid, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the National Farmers' Union, represented by S. Isaacs QC, of the French Government, represented by R. Loosli-Surrans and F. Alabrune, acting as Agent, of the United Kingdom Government, represented by J.E. Collins and M. Hoskins, and of the Commission, represented by G. Berscheid, at the hearing on 19 March 2002,

after hearing the Opinion of the Advocate General at the sitting on 2 July 2002,

gives the following

Judgment

- ¹ By decision of 28 May 2001, received at the Court on 22 June 2001, the Conseil d'État (French Council of State) referred to the Court for a preliminary ruling pursuant to Article 234 EC three questions concerning, first, whether a Member State may call in question the validity of Community decisions by invoking changes in the factual or legal circumstances occurring after the expiry of the time-limit for challenging those decisions, second, the interpretation of the precautionary principle and, third, the interpretation of Article 30 EC.
- ² Those questions were raised in proceedings between the National Farmers' Union and the Secrétariat général du gouvernement concerning implicit decisions refusing to revoke various national measures on the prohibition of imports into French territory of beef and veal and bovine products from the United Kingdom.

Legal framework

- 3 Following the discovery of a probable link between a variant of Creutzfeldt-Jakob disease, a disease affecting human beings, and bovine spongiform encephalopathy (hereinafter 'BSE'), which was widespread in the United Kingdom at the time, the Commission adopted Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 78, p. 47; 'the ban decision'), prohibiting the United Kingdom from exporting from its territory to the other Member States and third countries, in particular, live bovine animals, meat of bovine animals and products obtained from bovine animals.

- 4 That decision was based on the EC Treaty; Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29), as last amended by Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425 (OJ 1993 L 62, p. 49) ('Directive 90/425'), in particular Article 10(4) thereof; and Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13), as last amended by Directive 92/118 ('Directive 89/662'), in particular Article 9 thereof.

- 5 The ban decision provided, in Article 3, that the United Kingdom was to send to the Commission every two weeks a report on the application of the protective measures taken against BSE, in accordance with Community and national provisions.
- 6 The seventh recital in the preamble to the ban decision stated that the decision would have to be reviewed once all the elements mentioned in it had been examined.
- 7 On 16 March 1998, the Council adopted Decision 98/256/EC concerning emergency measures to protect against bovine spongiform encephalopathy, amending Decision 94/474/EC and repealing Decision 96/239/EC (OJ 1998 L 113, p. 32), by which it lifted the ban for certain meat and meat products derived from bovine animals slaughtered in Northern Ireland, subject to the strict conditions of the Export Certified Herds Scheme ('the ECHS').
- 8 Under Commission Decision 98/692/EC of 25 November 1998 amending Decision 98/256 (OJ 1998 L 328, p. 28), the principle of authorising the dispatch of bovine products under a Date-Based Export Scheme ('the DBES') was adopted by amendment of Article 6 of Decision 98/256.
- 9 The DBES is set out in Annex III to Decision 98/256, which was inserted in that decision by Decision 98/692.

- 10 Point 3 of Annex III to Decision 98/256 as amended strictly defines the animals eligible under the DBES. They must have been clearly identifiable throughout their lives and their origin must be traceable.
- 11 Point 4 of Annex III to Decision 98/256 as amended provides that any animal which does not meet all of the requirements of the DBES must be automatically rejected.
- 12 Point 5 of Annex III to Decision 98/256 as amended requires the slaughter of eligible animals to be carried out in specialised slaughterhouses not handling ineligible animals. Article 6 of that decision and point 6 of Annex III thereto impose particular requirements relating to the cutting of the meat.
- 13 Point 7 of Annex III to Decision 98/256 as amended provides that the traceability of the meat and the products must be absolutely guaranteed.
- 14 Articles 14 to 17 of Decision 98/256 as amended state as follows:

'Article 14

The Commission shall carry out Community inspections on-the-spot in the United Kingdom to verify the application of the provisions of this decision, in particular in relation to the implementation of official controls.

Article 15

The United Kingdom shall send the Commission every month a report on the application of the protective measures taken against BSE, in accordance with national and Community provisions.

Article 16

This decision shall be reviewed regularly in the light of new scientific information. This decision shall be amended, where appropriate, after consultation of the appropriate Scientific Committee, in accordance with the procedure laid down in Article 18 of Directive 89/662/EEC.

Article 17

Member States shall adopt the necessary measures to comply with this decision. They shall immediately inform the Commission thereof.'

¹⁵ Article 6(5) of Decision 98/256 as amended states that the Commission, after having verified the application of all the provisions of that decision on the basis of

Community inspections and after having informed the Member States, is to set the date on which dispatch of the products referred to in Annex III to that decision may commence.

- 16 Pursuant to that provision, Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Decision 98/256 (OJ 1999 L 195, p. 42) set that date at 1 August 1999.
- 17 In French law, the prohibition on the importation of beef and veal coming from the United Kingdom is the result of the Order of 28 October 1998 establishing specific measures applicable to certain products of bovine origin dispatched from the United Kingdom (JORF of 2 December 1998, p. 18169).
- 18 Article 2 of that order prohibits the importation from the United Kingdom of meat-and-bone meal and products containing it. Article 4 of that order prohibits the importation of meat and meat products derived from bovine animals slaughtered in the United Kingdom, excluding Northern Ireland. Article 10 prohibits the importation of gelatin, di-calcium phosphate and collagen which are liable to enter the human food or animal feed chains and are derived from bovine animals slaughtered in the United Kingdom.
- 19 The Order of 28 October 1998 was amended by an Order of 11 October 1999 (JORF of 12 October 1999, p. 15220) in order to permit the transit of beef and veal coming from the United Kingdom.

The main proceedings and the questions referred for a preliminary ruling

20 By a summary application and a supplemental pleading registered on 5 June and 5 October 2000 at the Judicial Affairs Secretariat of the Conseil d'État, the National Farmers' Union claimed that the Conseil d'État should:

- annul the decision of the Prime Minister rejecting the application submitted to him on 4 October 1999 for the lifting of the ban on exports of British beef to France, the said decision being implicit by reason of his failure to respond to that application for over four months;
- annul the decision of the Prime Minister, of the Minister for Agriculture and Fisheries and of the Minister for Economic Affairs, Finance and Industry rejecting the application submitted to them on 3 February 2000 for revocation of the Order of 28 October 1998, the said decision being implicit by reason of their failure to respond to that application for over four months;
- order those authorities to revoke Articles 2, 4 and 10 of the Order of 28 October 1998 within three months from the date of its decision and, in the event of their failure to do so, to pay a periodic penalty of FRF 5 000 for each day of delay in so doing;
- order the [French] State to pay the applicant the sum of FRF 20 000 by way of compensation for the expenses incurred by it which are not included in the costs.

- 21 As was explained at the hearing before the Court, the implicit decisions rejecting the applications for the lifting of the ban are deemed to have been taken four months after the applications were lodged by the applicant in the main proceedings, namely on 4 February and 3 June 2000.
- 22 Before the national court, the Minister for Agriculture and Fisheries relied, first, on the opinion issued on 6 December 1999 by the French Agency for Food Safety to the effect that lifting the ban entailed plausible risks relating to the lack of certainty about the spread of infectiousness, over the course of time, through the organism of bovine animals and all the various ways in which the infectious agent may be transmitted and, second, on a report of the meetings of the Standing Veterinary Committee of the European Union held on 23 and 24 November 1999 and 6 December 1999 from which it is apparent that, as at those dates, various Member States did not wish to adopt a system for the specific marking of British meat received by them and intended for re-dispatch, after processing, to another Member State. That minister contended, in particular, that those factors, of which he became aware after the expiry of the time-limit for challenging Decisions 98/692 and 1999/514 but before adopting the contested decisions, show that those Community decisions were adopted in disregard of the precautionary principle laid down in Article 174 EC. He relied, finally, on the confirmation, brought to his notice on 30 June 2000, of the first case of BSE in the United Kingdom of a bovine animal born after 1 August 1996, the date of the prohibition on the sale and administration of meat-and-bone meal, prompting fears as to the effectiveness of the DBES.
- 23 In those circumstances, the Conseil d'État took the view that the legality of the decisions contested before it was necessarily conditional on Decisions 98/692 and 1999/514 being valid and decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Having regard to the legislative nature of Commission Decision 98/692/EC of 25 November 1998 and Commission Decision 1999/514/EC of 23 July 1999,

and notwithstanding the expiry of the time-limit for challenging them, may a Member State validly invoke significant changes in the factual or legal circumstances occurring after the expiry of that time-limit, where the changes in question are such as to cast doubt on the decisions' validity?

(2) At the date of the decisions taken by the French authorities, were the abovementioned Commission decisions valid, having regard to the precautionary principle laid down in Article 174 [EC]?

(3) May a Member State draw from the provisions of Article 30 [EC] the power to prohibit imports of agricultural products and live animals, inasmuch as Directives 89/662/EEC and 90/425/EEC cannot be regarded as harmonising the measures needed in order to attain the specific objective of protecting the health and life of humans provided for by that article?

24 In the grounds of the decision making the reference, the Conseil d'État states that the second question is referred in the event that the answer to the first question is in the affirmative.

The first question

25 By its first question, the Conseil d'État seeks to ascertain whether, having regard to the legislative nature of Decisions 98/692 and 1999/514, and notwithstanding

the expiry of the time-limit for challenging them, a Member State may validly invoke significant changes in the factual or legal circumstances occurring after the expiry of that time-limit, where those changes are such as to cast doubt on the validity of those decisions.

Observations submitted to the Court

- 26 The National Farmers' Union, the United Kingdom Government and the Commission suggest that this question should be answered in the negative. They point out that a decision adopted by a Community institution which has not been challenged by its addressee within the time-limit laid down in the fifth paragraph of Article 230 EC becomes definitive as against that person. Such a principle is applicable to the Member States, which are not entitled to rely on the unlawfulness of the decision at issue in the context of other proceedings, whether under Article 88 EC (Case 156/77 *Commission v Belgium* [1978] ECR 1881, paragraph 21), Article 226 EC (Case C-183/91 *Commission v Greece* [1993] ECR I-3131, paragraph 10) or in the context of a reference for a preliminary ruling (Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraphs 15, 18 and 25, and Case C-178/95 *Wiljo* [1997] ECR I-585, paragraph 19).
- 27 In particular, the National Farmers' Union gives as a reason for the application to a Member State of the rule set out in the preceding paragraph the fact that what is important is to determine whether the person who pleads the unlawfulness of a decision was the addressee thereof and whether that person was entitled to challenge it. The cases in which the Court has conceded that a party had the right to challenge the validity of a Community provision in respect of which the time-limit for bringing proceedings had expired were those in which it was not certain that the applicant had standing to challenge the Community measure on

the ground that it was a regulation of general application (Case C-241/95 *Accrington Beef and Others* [1996] ECR I-6699) or a directive addressed to the Member States (Case C-408/95 *Eurotunnel and Others* [1997] ECR I-6315). In the main proceedings, the French Republic was the addressee of Decisions 98/256 and 1999/514 and it was entitled to challenge their validity. It can therefore no longer plead their unlawfulness.

28 In that regard, the Commission expresses some doubt as to the relevance of the national court's attribution of a 'legislative nature' to Decisions 98/692 and 1999/514. In its submission, the issue is not to ascertain whether some of the measures adopted may be general and addressed to operators, but to establish that the French Republic was an addressee of those decisions.

29 In the alternative, the Commission contends that the facts and circumstances invoked by the French authorities before the national court occurred after the adoption of Decisions 98/692 and 1999/514, whereas it is settled case-law that the validity of a measure must be assessed on the basis of the factual and legal situation which existed at the time when it was adopted (Joined Cases C-248/95 and C-249/95 *SAM Schiffahrt and Stapf* [1997] ECR I-4475, paragraph 46). Therefore, the validity of a Community act cannot depend on retrospective assessment of its efficacy (Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 43, and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 84). The Commission claims that the concept of significant change relied on by the French Government risks leading to the result that the legality of a Community measure would be dependent on its appropriateness in the light of the latest scientific developments, which would run counter to the principle of legal certainty applicable to Community measures.

30 The National Farmers' Union, the United Kingdom Government and the Commission recall that, in the event of a change of circumstances justifying,

according to a Member State, an amendment to decisions which are already definitive, that Member State cannot invoke the unlawfulness of the original decision, but must use the appropriate legal procedure, namely the procedure for failure to act under Article 232 EC (order in Case C-514/99 *France v Commission* [2000] ECR I-4705, paragraph 48).

- 31 The French Government submits, by contrast, that the answer to the first question should be that a Member State is entitled to invoke new factors in the factual or legal circumstances, of which it became aware after the expiry of the time-limit for challenging reviewable decisions, on condition that those factors are significant.
- 32 The Government contends that, as the Conseil d'État stated in its first question, Decisions 98/692 and 1999/514 contain a number of legislative elements which make them more like regulations than decisions, since they apply to objectively determined situations and entail legal effects for categories of persons regarded in a general and abstract manner. The use of those decisions by the Commission, in the context of Case C-1/00 *Commission v France* [2001] ECR I-9989, in order to demonstrate the full harmonisation of precautionary measures against BSE, also suggests such a reclassification. In the light of that, the Member State can invoke Article 241 EC in order to plead the unlawfulness of the abovementioned decisions, because the rule in *TWD Textilwerke Deggendorf* is not applicable to measures of a legislative nature.
- 33 As regards the possibility of invoking new factors, the French Government points out that, in paragraph 47 of *SAM Schiffahrt and Stapf*, the Court did not exclude the possibility that 'the validity of a measure might, in certain cases, be assessed by reference to new factors which arose subsequently to its adoption'. That interpretation is confirmed by paragraph 47 of Case C-6/99 *Greenpeace France*

and Others [2000] ECR I-1651, in which the Court acknowledged that ‘if in the meantime the Member State concerned has new information which leads it to consider that the product for which notification has been received may constitute a risk to human health and the environment, it will not be obliged to give its consent’.

Findings of the Court

- 34 According to settled case-law, a decision adopted by the Community institutions which has not been challenged by its addressee within the time-limit laid down by the fifth paragraph of Article 230 EC becomes definitive as against that person (see, *inter alia*, *Commission v Belgium*, cited above, paragraphs 20 to 24; *Commission v Greece*, cited above, paragraphs 9 and 10; *TWD Textilwerke Deggendorf*, paragraph 13, and Case C-239/99 *Nachi Europe* [2001] ECR I-1197, paragraph 29). Such a rule is based in particular on the consideration that the periods within which legal proceedings must be brought are intended to ensure legal certainty by preventing Community measures which produce legal effects from being called in question indefinitely (*Wiljo*, paragraph 19).
- 35 The Court has also held that it follows from the same requirements of legal certainty that it is not possible for a recipient of State aid, forming the subject-matter of a Commission decision addressed directly solely to the Member State from which that beneficiary came, who could undoubtedly have challenged that decision and who allowed the mandatory time-limit laid down in this regard by the fifth paragraph of Article 230 EC to pass, to call in question the lawfulness of that decision before the national courts in an action brought against the measures taken by the national authorities in implementation of that decision (*TWD Textilwerke Deggendorf*, paragraphs 17 and 20, and *Wiljo*, paragraphs 20 and 21). The Court has taken the view that to find otherwise would enable the recipient of the aid to overcome the definitive nature which a decision necessarily assumes, by virtue of the principle of legal certainty, once the time-limit laid down for bringing proceedings has passed (*TWD Textilwerke Deggendorf*, paragraph 18, and *Wiljo*, paragraph 21).

- 36 The same considerations of legal certainty explain why a Member State, which is a party to a dispute before a national court, is not permitted, before that court, to plead the unlawfulness of a Community decision addressed to it in respect of which it did not bring an action for annulment within the time-limit laid down for that purpose by the fifth paragraph of Article 230 EC.
- 37 As regards the possibility of invoking new factors which have arisen after the adoption of a Community measure in order to challenge the legality of that measure, it should be recalled that, in any event, the legality of a measure must be assessed on the basis of the factual and legal situation which existed at the time when it was adopted (Joined Cases 15/76 and 16/76 *France v Commission* [1979] ECR 321, paragraph 7, and *SAM Schiffahrt and Stapf*, paragraph 46). In particular, legality cannot depend on retrospective assessment of the efficacy of that measure (*Jippes and Others*, paragraph 84).
- 38 Moreover, irrespective of the fact that Article 16 of Decision 98/256 as amended provides for its regular review in the light of new scientific information, if a Member State takes the view that new factors give rise to an obligation for the Commission to adopt a fresh decision, it is for that State to follow the procedures prescribed by the Treaty and Community measures and, where appropriate, to have recourse to the procedure for failure to act provided for that purpose (order in *France v Commission*, cited above, paragraph 48).
- 39 Accordingly, the answer to the first question must be that a Member State which is an addressee of Decisions 98/692 and 1999/514 and which has not challenged the legality of those decisions within the time-limit laid down by the fifth paragraph of Article 230 EC does not have standing subsequently before a national court to invoke their unlawfulness in order to dispute the merits of an action brought against it.

The second question

- 40 By its second question, which is referred in the case of the first question being answered in the affirmative, the national court seeks to ascertain whether, at the date of the implicit decisions of rejection taken by the French authorities, Decisions 98/692 and 1999/514 were valid, having regard to the precautionary principle laid down in Article 174 EC.
- 41 In the light of the answer given to the first question, the second question has become devoid of purpose and does not call for an answer.

The third question

- 42 By its third question, the national court seeks to ascertain whether a Member State is justified in invoking Article 30 EC in order to prohibit imports of agricultural products and live animals, inasmuch as Directives 89/662 and 90/425 cannot be regarded as harmonising the measures needed in order to attain the specific objective of protecting the health and life of humans provided for by that article.

Observations submitted to the Court

- 43 Both the National Farmers' Union, on the one hand, and the United Kingdom Government and the Commission, on the other, refer to the Court's case-law prohibiting recourse to Article 30 EC where harmonising measures exist.

- 44 As regards the provisions to be taken into account, all three submit that, in addition to Directives 89/662 and 90/425, referred to by the national court in the third question, reference should also be made to Decisions 98/256, 98/692 and 1999/514, which were taken to implement those directives and which organise the DBES. The Commission submits further that in addition to those rules the other provisions applicable in the field, such as those relating to fresh meat, meat preparations or meat products, are also relevant.
- 45 The National Farmers' Union, the United Kingdom Government and the Commission submit that there was harmonisation prohibiting recourse by the French Government to Article 30 EC. Although the National Farmers' Union notes that, in paragraph 126 of *Commission v France*, cited above, the Court did not adopt a position on products subject to the DBES which have been cut, processed or rewrapped in another Member State and subsequently exported to France without the affixing of a distinct mark, the National Farmers' Union admits to having reservations in that respect. The United Kingdom Government and the Commission, on the other hand, consider that this problem of 'triangular imports' relates to the implementation by the Member States of the decisions organising the DBES, but it does not cast doubt on the existence of harmonisation. In any event, the French Government did not prohibit the importation of such products and they are not at issue in the main proceedings.
- 46 The Commission submits further that, if the French Government did not agree with the measures adopted, if it wished to have them amended because of new factors or deemed it necessary to adopt interim protective measures, it was incumbent upon it, in any event, to remain within the procedural framework laid down by Directive 89/662, on the basis of which Decision 98/692 was adopted, or to use the judicial procedures provided for by the Treaty.
- 47 The French Government submits that, at the date of the implicit decisions to maintain the ban at issue in the main proceedings, it was entitled to have recourse to Article 30 EC since there was no full harmonisation. That was not brought

about until the adoption of Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ 2001 L 147, p. 1), applicable with effect from 1 July 2001. In order to claim that the national measures are justified, the Government also pleads the lack of reliability of the system for identifying bovine animals in the United Kingdom, the lack of systematic application in the United Kingdom of the DBES requirements and the failure by the Member States to comply with the requirements of traceability and labelling of British meat.

Findings of the Court

- 48 According to settled case-law, where Community directives provide for the harmonisation of the measures necessary to ensure the protection of animal and human health and establish Community procedures to check that they are observed, recourse to Article 30 EC is no longer justified and the appropriate checks must be carried out and the measures of protection adopted within the framework outlined by the harmonising directive (Case 5/77 *Tedeschi* [1977] ECR 1555, paragraph 35; Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 18; Case C-112/97 *Commission v Italy* [1999] ECR I-1821, paragraph 54, and Case C-350/97 *Monsees* [1999] ECR I-2921, paragraph 24).
- 49 The Court has also held that even where a directive does not lay down any Community procedure for monitoring compliance or any penalties in the event of breach of its provisions, a Member State may not unilaterally adopt, on its own authority, corrective or protective measures designed to obviate any breach by another Member State of rules of Community law (*Hedley Lomas*, paragraphs 19 and 20).

- 50 It should indeed be made clear that in the European Community, which is a community based on law, a Member State is bound to comply with the provisions of the Treaty and, in particular, to act within the framework of the procedures provided for by the Treaty and by the applicable legislation.
- 51 It is in the light of those various factors that it is necessary to determine whether the French Government was able, at the date of the implicit decisions at issue in the main proceedings, to invoke Article 30 EC in order to maintain the prohibition on imports of beef and veal from the United Kingdom.
- 52 Although Regulation No 999/2001 no doubt achieved full harmonisation of the rules relating to the prevention, control and eradication of certain transmissible spongiform encephalopathies, it should be noted, as has the Advocate General in points 91 to 94 of his Opinion, that Decisions 98/256 and 98/692, defining the DBES, laid down the rules necessary for the protection of public health upon the resumption of exports of beef and veal from the United Kingdom to the other Member States.
- 53 Those decisions, which are additional to the general legislation already in existence, specify the requirements of eligibility and traceability of animals liable to be used under the DBES, the requirements to be satisfied by slaughterhouses and the conditions specific to the cutting of meat, which are imposed as a supplement to the provisions in force relating to the withdrawal of specific offal.
- 54 Moreover, Article 14 of Decision 98/256 as amended provides that Community inspections must be carried out by the Commission in the United Kingdom to

verify the application of the provisions of that decision, while Article 15 thereof provides for the United Kingdom to send to the Commission every month a report on the application of the protective measures taken against BSE.

- 55 As regards the obligations of the Member States other than the United Kingdom, Article 17 of Decision 98/256 as amended provides that they are to adopt the necessary measures to comply with that decision and are immediately to inform the Commission thereof.
- 56 Furthermore, as was stated in paragraph 38 of this judgment, Article 16 of Decision 98/256 as amended specifies that that decision must be reviewed regularly in the light of new scientific information and that any amendments are to be made in accordance with the procedure laid down in Article 18 of Directive 89/662.
- 57 Examination of these various provisions shows that, in addition to the harmonisation of the measures necessary to ensure the protection of human health, Decision 98/256 as amended lays down procedures for monitoring compliance with it and specifies, by reference to Directive 89/662, the appropriate procedure for making the amendments which might be made essential by the development of scientific knowledge.
- 58 As regards the emergency measures liable to be taken by a Member State in the event of a serious hazard to human health, it is important to note that Decision 98/256 was adopted on the basis of Directives 89/662 and 90/425, and Decision 98/692 on the basis of Directive 89/662 alone.

- 59 Directive 89/662 describes, in Articles 7, 8 and 9, the measures which may be adopted by a Member State of destination, in particular where its competent authorities establish that the goods imported do not meet the conditions laid down by Community legislation. Article 7 authorises the destruction or return of those goods and Article 9 authorises in particular the adoption, by that Member State, of interim protective measures on serious public-health or animal-health grounds.
- 60 It is in accordance with those provisions, which require the measures adopted to be notified without delay to the other Member States and to the Commission and close collaboration between the Member States and the Commission, that a Member State must act when faced with a situation endangering the health of its population (on the obligations of immediate notification and genuine cooperation when protective measures are adopted, see by analogy, in respect of Directive 90/425, Case C-428/99 *Van den Bor* [2002] ECR I-127, paragraphs 45 to 48).
- 61 It is moreover the application of the interim protective measures referred to in Article 9 of Directive 89/662 which is envisaged by the 13th recital in the preamble to Decision 98/692 in the event that it is discovered, after the dispatch of products which were believed to fulfil the conditions of the DBES, that those products came from an animal subsequently found to be ineligible under that scheme.
- 62 Examination of all these provisions shows that the existing legislation and, in particular, Directive 89/662 and Decisions 98/256 and 98/692 provide for the harmonisation necessary to ensure the protection of public health upon the resumption of exports of beef and veal from the United Kingdom to the other Member States and lay down Community procedures to monitor compliance with them.

- 63 It is true that, in paragraph 134 of *Commission v France*, cited above, the Court noted that there were difficulties in interpreting Decision 98/256 as amended in respect of the Member States' obligations relating to the traceability of products. Suffice it to state, however, that, as paragraph 135 of that judgment shows, those difficulties of interpretation had disappeared by the date of the implicit decisions refusing to lift the ban at issue in the main proceedings.
- 64 As regards products subject to the DBES which have been cut, processed or rewrapped in another Member State and subsequently exported to France without the affixing of a distinct mark, suffice it to state that the main proceedings do not concern such products and that, in any event, the French Government has never prevented their importation.
- 65 It follows from all the foregoing that, since Directive 89/662 and Decision 98/256 as amended lay down the rules necessary for the protection of public health upon the resumption of exports of beef and veal from the United Kingdom to the other Member States, lay down a Community procedure to monitor compliance with that decision and a procedure for amending it in the light of new scientific information and provide the appropriate legal framework for the adoption of interim protective measures by a Member State of destination for the purpose of protecting public health, a Member State is not entitled to invoke Article 30 EC in order to prevent the resumption of imports to its territory of beef and veal from the United Kingdom which were carried out in accordance with Decisions 98/256 as amended and 1999/514.

Costs

- 66 The costs incurred by French and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recover-

able. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Conseil d'État by decision of 28 May 2001, hereby rules:

1. A Member State which is an addressee of Commission Decision 98/692/EC of 25 November 1998 amending Decision 98/256/EC as regards certain emergency measures to protect against bovine spongiform encephalopathy and of Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Council Decision 98/256/EC and which has not challenged the legality of those decisions within the time-limit laid down by the fifth paragraph of Article 230 EC does not have standing subsequently before a national court to invoke their unlawfulness in order to dispute the merits of an action brought against it.
2. Since Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market and Decision 98/256, as amended by Decision 98/692,

lay down the rules necessary for the protection of public health upon the resumption of exports of beef and veal from the United Kingdom to the other Member States, lay down a Community procedure to monitor compliance with that decision and a procedure for amending it in the light of new scientific information and provide the appropriate legal framework for the adoption of interim protective measures by a Member State of destination for the purpose of protecting public health, a Member State is not entitled to invoke Article 30 EC in order to prevent the resumption of imports to its territory of beef and veal from the United Kingdom which were carried out in accordance with Decisions 98/256, as amended by Decision 98/692, and 1999/514.

Rodríguez Iglesias

Puissochet

Wathelet

Schintgen

Gulmann

Edward

Jann

Skouris

Macken

Colneric

von Bahr

Cunha Rodrigues

Rosas

Delivered in open court in Luxembourg on 22 October 2002.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President