JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

13 December 1995 *

In Joined Cases T-481/93 and T-484/93,

Vereniging van Exporteurs in Levende Varkens, an association established under Netherlands law, having its registered office in Roosendaal (Netherlands), along with the natural and legal persons who are members of that association and whose names are included on the list annexed to the present judgment,

and

Nederlandse Bond van Waaghouders van Levend Vee, an association established under Netherlands law, having its registered office in Roosendaal (Netherlands), along with the natural and legal persons who are members of that association and whose names are included on the list annexed to the present judgment,

represented by Inne Cath, of the Hague Bar, with an address for service in Luxembourg at the Chambers of Lambert Dupong, 14 Rue des Bains,

applicants,

* Language of the case: Dutch.

Commission of the European Communities, represented by Thomas van Rijn, of its Legal Service, acting as Agent, assisted by Tom Ottervanger, of the Rotterdam Bar, and Harold Nyssens, of the Brussels Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decisions 93/128/EEC and 93/177/EEC, of 26 February 1993 and 26 March 1993 respectively, concerning certain protection measures with regard to swine vesicular disease in the Netherlands and Italy (OJ 1993 L 50, p. 29, and OJ 1993 L 74, p. 88), and for the award of damages,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: C. P. Briët, acting as President, C. W. Bellamy and J. Azizi, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 11 July 1995,

gives the following

Judgment

Context

1 The present dispute has arisen in the context of the fight against the spread of swine vesicular disease in the Member States. Although this disease does not pose a danger to animals, it is combated intensively within the Community by reason of its clinical similarity to foot-and-mouth disease, a highly contagious disease which more often than not leads to the death of affected animals.

Legal framework

2 Council Directive 90/425/EEC of 26 June 1990 introduces a system of veterinary and zoological 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). The animals covered by Directive 90/425 include live pigs.

3 Directive 90/425 seeks to abolish veterinary checks carried out at the Community's internal frontiers, replacing them by inspections carried out in the Member State of dispatch and by non-discriminatory random checks carried out in the Member State of destination.

4 Articles 8 and 9 of Directive 90/425 deal with the measures which the Member States of destination and dispatch must take where, during a check carried out at the place of destination of a consignment or during transport, the competent authorities of a Member State establish the presence of agents responsible for a disease such as swine vesicular disease.

5 Article 10 of Directive 90/425 deals with the precautionary and interim protective measures which may be taken in such a case. The provisions in Article 10(3) and (4) are of particular importance for the present dispute. Article 10(3) is worded as follows:

'If the Commission has not been informed of the measures taken, or if it considers the measures taken to be inadequate, it may, in collaboration with the Member State concerned and pending the meeting of the Standing Veterinary Committee, take interim protective measures with regard to animals or products from the region affected by the epizootic disease or from a given holding, centre or organization. These measures shall be submitted to the Standing Veterinary Committee as soon as possible to be confirmed, amended or cancelled in accordance with the procedure laid down in Article 17.'

6 Article 10(4) of Directive 90/425 is worded as follows:

'The Commission shall in all cases review the situation in the Standing Veterinary Committee at the earliest opportunity. It shall adopt the necessary measures for the animals and products referred to in Article 1 and, if the situation so requires, for the products derived from those animals, in accordance with the procedure laid down in Article 17. The Commission shall monitor the situation and, by the same procedure, shall amend or repeal the decisions taken, depending on how the situation develops.'

7 Pursuant to Article 2 of Directive 90/425, a 'holding' is to be understood as meaning an agricultural establishment in which animals are held or regularly kept, while 'centre or organization' is to be understood as meaning any undertaking which produces, stores, processes or handles the animal products covered by the directive.

Background to the proceedings

8 On 19 February 1993, the Italian authorities sent a letter by fax to the Commission and the Netherlands Embassy in Rome stating that the Zooprophylactic Institute in Brescia (Italy) had isolated the virus of swine vesicular disease in ten samples of spleens and kidneys of live pigs sent to Italy on 22 January 1993 from Oirschot (Netherlands). In that letter, the Italian authorities stated that this information was being sent 'to facilitate an epidemiological inspection in the holding from which the consignment in question originated'.

9 After that letter had been sent, the Commission requested the Italian and Netherlands veterinary authorities to attend a meeting scheduled to be held in Brussels on 26 February 1993. Since the Italian authorities did not reply to that request, the Netherlands authorities alone were informed on that occasion of the Commission's intention to adopt, that very day, a decision banning exports of live pigs from the Netherlands and Italy. The Netherlands authorities expressed their disagreement with the decision envisaged.

10 On the evening of 26 February 1993, the Commission adopted Decision 93/128/EEC concerning certain protection measures, with regard to swine vesicular disease, in the Netherlands and Italy (OJ 1990 L 50, p. 29).

11 The second citation in its preamble states that Decision 93/128 is based on Article 10(3) of Directive 90/425. The recitals in the preamble state *inter alia* that during 1992 outbreaks of swine vesicular disease had occurred in the Netherlands and Italy, that the swine vesicular disease virus had been isolated and antibodies to that virus detected in pigs sent from the Netherlands to Italy, that swine vesicular disease had, since 1991, been endemic in Italy, that the Commission had sent missions to the Netherlands and Italy to examine the situation, and that pigs originating from the Netherlands and Italy were liable to endanger herds of other Member States in view of the trade in live pigs.

12 Article 1 of Decision 93/128 provides that the Netherlands and Italy 'shall not send live pigs from [their] territory to other Member States'. Article 2 provides that 'Member States shall amend the measures which they apply to trade so as to bring them into compliance with this decision'. Under Article 3, 'this decision shall apply until 1 April 1993'. Finally, Article 4 provides that 'this decision is addressed to the Member States'.

13 On 3 March 1993, the lawyer representing the Vereniging van Exporteurs in Levende Varkens (Association of Live Pig Exporters, hereinafter 'VELV') sent a letter to the Commission in which he contested the legality of Decision 93/128 and stated that the Commission would be held liable for any resulting damage.

14 The Standing Veterinary Committee met on 4 March 1993. According to the Commission, the representatives of eight Member States expressed their agreement, during that meeting, with the measure taken by the Commission.

15 On 9 March 1993, the lawyer representing the VELV sent a second letter to the Commission stating, *inter alia*, that Decision 93/128 was a disproportionate measure because, in his view, the same result could be achieved by way of less restrictive measures, such as export inspections.

6 The Standing Veterinary Committee reconvened on 10 and 11 March 1993, on 16 and 17 March 1993, and on 22 March 1993 to discuss draft measures proposed by the Commission with a view to replacing the export bans. During its meeting on 22 March 1993, the Committee delivered a favourable opinion on three draft decisions.

7 The Commission adopted the three decisions on 26 March 1993. These were Decision 93/177/EEC concerning certain protection measures with regard to swine vesicular disease in the Netherlands and Italy (OJ 1993 L 74, p. 88), Decision 93/178/EEC concerning certain protection measures with regard to swine vesicular disease (OJ 1993 L 74, p. 91) and Decision 93/179/EEC repealing Decision 93/128 (OJ 1993 L 74, p. 93).

8 Decision 93/177, which is addressed to the Member States, sets out a number of conditions which must be complied with during the transport of live pigs from Italy and the Netherlands to other Member States, as well as the criteria to be met in respect of assembly points. The second citation in the preamble to the decision states, in its Dutch language version, that the decision is based on Article 10(3) of Directive 90/425, whereas the other language versions of that citation state that the decision is based on Article 10(4) of the directive.

9 By Decision 93/243/EEC of 30 April 1993 amending Decision 93/177 (OJ 1993 L 110, p. 41), the Commission decided that certain measures in Decision 93/177 were no longer applicable with immediate effect, while other measures in Decision 93/177 would no longer apply from 6 May 1993.

Procedure

20 By application lodged at the Registry of the Court of Justice on 10 May 1993, the applicants, that is to say, the VELV and the Nederlandse Bond van Waaghouders van Levend Vee (Netherlands Federation of Commercial Livestock Traders, hereinafter 'the NBWLV'), along with the natural and legal persons who are members of those associations and whose names are included on the list annexed to the present judgment, brought an action under Article 173 of the Treaty for the annulment of Decision 93/128 and for compensation under Article 178 and the second paragraph of Article 215 of the Treaty in respect of the damage which they claim to have suffered as a result of that decision.

21 By application lodged at the Registry of the Court of Justice on 1 June 1993, the applicants brought an action under Article 173 of the Treaty for the annulment of Decision 93/177 and for compensation under Article 178 and the second paragraph of Article 215 of the Treaty in respect of the damage which they claim to have suffered as a result of that decision.

22 By order of 27 September 1993, the Court of Justice referred the cases to the Court of First Instance pursuant to Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21). The Registry of the Court of First Instance registered them as Cases T-481/93 and T-484/93 respectively.

23 By order of 29 May 1995, the Court of First Instance (Third Chamber) decided, under Article 50 of the Rules of Procedure, to join the two cases for the purposes of the oral procedure and the judgment.

24 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. The hearing, at which the parties presented oral argument and replied to oral questions from the Court, was held on 11 July 1995.

Forms of order sought by the parties

25 In Case T-481/93, the applicants claim that the Court should:

— declare the action admissible;

— in so far as the action is admissible, declare Decision 93/128 void in whole or in part;

— order the Commission to pay to the applicants full compensation for all of the damage which they have suffered and will in the future suffer as a result of the measures laid down in Decision 93/128, which damage they will subsequently determine or specify, or, at the very least, such compensation as the Court may consider to be appropriate, plus statutory interest applicable in the Netherlands to be calculated:

— in the case of the VELV and its members: from 3 March 1993, that is to say, the date of the letter putting the Commission on notice, until the date of full and final payment;

— in the case of the NBWLV and its members: from the date on which the application was lodged until the date of full and final payment;

— order all such additional measures as the Court may consider to be appropriate;

— order the Commission to pay the costs.

26 The Commission contends that the Court should:

— declare the action for annulment to be inadmissible or dismiss it as unfounded;

— dismiss the action for compensation as unfounded;

— order the applicants to pay the costs of the proceedings.

27 In Case T-484/93, the applicants claim that the Court should:

— declare the action admissible;

— in so far as the action is admissible, annul, in whole or in part, Decision 93/177, or declare that decision void;

— order the Commission to pay to the applicants full compensation for all of the damage which they have suffered and will in the future suffer as a result of the measures laid down in Decision 93/177, which damage they will subsequently determine or specify, or, at the very least, such compensation as the Court may

consider to be appropriate, plus statutory interest applicable in the Netherlands from the date on which the application was lodged until the date of full and final payment;

— order all such additional measures as the Court may consider to be appropriate;

— order the Commission to pay the costs.

28 The Commission contends that the Court should:

— declare the action for annulment to be inadmissible or dismiss it as unfounded;

— dismiss the action for compensation as unfounded;

— order the applicants to pay the costs of the proceedings.

Admissibility

A — *Admissibility of the claims for annulment*

Arguments of the parties

29 While the applicants acknowledge that the contested decisions are not addressed to them, they argue that they are directly and individually concerned by those

decisions, within the meaning of the second paragraph of Article 173 of the EEC Treaty, in force at that time, and that their claims for annulment are for that reason admissible.

30 They take the view that the decisions are of direct concern to them because the export ban imposed by Decision 93/128 and the measures set out in Decision 93/177 had immediate effect within the meaning of the judgment in Joined Cases 106/63 and 107/63 (*Toepfer* v *Commission* [1965] ECR 405, at pp. 411 and 412).

31 The applicants take the view that the contested decisions are of individual concern to them for three reasons.

32 First, they point out that their number and identity were already established before the decisions were adopted, a factor which led the Court of Justice, in its judgment in *Toepfer*, to take the view that the applicant in that case was individually concerned.

33 Second, they refer to their participation in the procedure which led to the adoption of the contested decisions. They set out what their role was, or what, in their view, it ought to have been, in the procedure for adoption.

34 With regard to Decision 93/128, the applicants rely on the judgment in Case C-269/90 (*Hauptzollamt München-Mitte* v *Technische Universität München* [1991] ECR I-5469, paragraph 14) in arguing that the Commission was wrong to refuse them the opportunity to make their views known before the decision was adopted. They accordingly consider that it must be open to them, by way of a direct action, to have the validity of that decision examined by the Court of First Instance.

35 With regard to Decision 93/177, the applicants rely on the judgment in Case 169/84 (*Cofaz and Others* v *Commission* [1986] ECR 391, paragraph 24) and point out that, immediately after the Commission had adopted Decision 93/128, they raised objections against that decision and on several occasions requested the Commission to consider specific alternative measures. They therefore take the view that they played an active role in the procedure that led to the adoption of Decision 93/177.

36 Third, and last, the applicants submit in their reply that, as in the judgment in Case 11/82 (*Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 19 and 31), the contested decisions made it impossible, in whole or in part, to perform the supply and delivery contracts which they had concluded before the decisions were adopted. They offer to provide information regarding those contracts.

37 The applicants state that the two associations within their number are directly and individually concerned by the contested decisions in their capacity as negotiators acting in the interests of their members, as was the case with the Landbouwschap in the judgment in Joined Cases 67/85, 68/85 and 70/85 (*Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 17 to 25, particularly paragraph 21). They also argue that it follows from the judgment in *Technische Universität München*, cited above, that the mere fact that the Commission did not wish to be apprised of the views of those associations cannot preclude the application, in the present cases, of the principle laid down by the Court of Justice in *Van der Kooy*.

38 The Commission points out that the contested decisions are generally applicable, with the result that they concern the applicants by virtue of their objective capacity as exporters and traders in the same manner as any other trader who is, or might be in the future, in the same situation (judgment in Case 231/82 *Spijker* v *Commission* [1983] ECR 2559, paragraph 9, and order in Case C-257/93 *Van Parijs and*

Others v *Council and Commission* [1993] ECR I-3335, paragraph 12). The Commission accordingly considers that the decisions are not of individual concern to the applicants and that the claims for annulment are for that reason inadmissible.

39 The Commission stresses that the fact that the contested measures are decisions, and not regulations, does not detract from their general nature in view of the fact that the Court of Justice held in its judgment in Case 6/68 (*Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at p. 414) that the form which a measure takes has no bearing on its nature. Furthermore, the Commission points out that the general nature of the contested decisions also follows from the fact that they are addressed to all the Member States and not only to the Netherlands and Italy.

40 The Commission further submits that it follows from the judgment in Joined Cases 103/78 to 109/78 (*Société des Usines de Beauport and Others* v *Council* [1979] ECR 17, paragraphs 15 and 16) that territorial limits imposed on the scope of a Community measure do not detract from its legislative character. It also submits that, in accordance with the above judgment in *Zuckerfabrik Watenstedt*, at p. 415, the general nature of a measure is also not called in question by any restriction on its duration.

41 So far as concerns the applicants' argument that their number and identity were already established before the decisions were adopted, the Commission contends that it follows from the judgment in Joined Cases 97/86, 193/86, 99/86 and 215/86 (*Asteris and Others and Greece* v *Commission* [1988] ECR 2181, paragraph 13) that the general scope and consequently the regulatory nature of a measure cannot be called in question on the ground that it is possible to determine the number or even the identity of the persons to whom it applies at any given time, as long as it is established that it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose.

42 The Commission submits that the applicants are wrong to rely on the judgment in *Cofaz*, cited above, in so far as that case was concerned with State aid, a field in which certain rights are expressly guaranteed to individuals, which is not the situation in the present cases.

43 With regard to the judgment in *Piraiki-Patraiki*, cited above, the Commission submits that the supply contracts allegedly concluded by the applicants prior to the adoption of the contested decisions cannot have any bearing on the classification of the decisions in view of the fact that the interest in the protection of the health of pigs calls for measures applicable forthwith.

44 The Commission submits that, in any event, the associations included among the applicants are not directly and individually concerned. In its view, those associations are in a situation different from that of the Landbouwschap in *Van der Kooy*, cited above, with the result that the case-law of the Court of Justice holding actions brought by associations in circumstances such as those of the present cases to be inadmissible must apply (order in Case 60/79 *Fédération Nationale des Producteurs de Vins de Table et Vins de Pays* v *Commission* [1979] ECR 2429, at p. 2432).

45 Finally, the Commission submits that the claims for annulment are inadmissible on the simple ground that the applicants no longer have any interest in having the contested decisions annulled. In its view, Decision 93/128 had been repealed by Decision 93/179 before the application was made in Case T-481/93 and, prior to the making of the application in Case T-484/93, Decision 93/177 had been largely repealed by Decision 93/243, particularly in the areas contested by the applicants.

Findings of the Court

Interest in bringing proceedings

46 The Court points out first of all that the Commission's repeal of the contested decisions cannot be equated with annulment by the Court in so far as the repeal of a decision does not amount to recognition of its illegality. Furthermore, the repeal of the contested decisions took effect *ex nunc*, whereas their annulment would take effect *ex tunc*; it is only in the latter case that the decisions would be considered to be void within the meaning of Article 174 of the Treaty.

47 Next, the Court points out that, under Article 176 of the Treaty, an institution whose act has been declared void is required to take the necessary measures to comply with the judgment. Those measures involve, *inter alia*, the removal of the effects of the illegal conduct found in the judgment annulling the act. The institution may thus be required to take adequate steps to restore the applicant to his original position or avoid the adoption of an identical measure (see the judgment of 14 September 1995 in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraphs 59 and 60, and the case-law there cited).

48 It follows that the annulment of the contested decisions may, *per se*, have consequences in law, with the result that the applicants still have an interest in securing the annulment of those decisions. The Commission's argument that the claims seeking the annulment of the decisions are inadmissible because the applicants have no interest in securing their annulment must for that reason be rejected.

Admissibility of the claims for annulment submitted by the applicants other than the associations

49 The second paragraph of Article 173 of the EEC Treaty (now the fourth paragraph of Article 173 of the EC Treaty) provides that: 'any natural or legal person may ... institute proceedings ... against a decision which, although in the form of a regulation or decision addressed to another person, is of direct and individual concern to the former'.

50 It has been held in the case-law of the Court of Justice and the Court of First Instance that, in certain circumstances, even a legislative measure applying to the traders concerned in general may also be of individual concern to some of them (judgments in Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraphs 13 and 14, and in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19; order in Case T-116/94 *Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori* v *Council* [1995] ECR II-1, paragraph 26). In those circumstances, a Community measure could be of a legislative nature and, at the same time, *vis-à-vis* some of the traders concerned, in the nature of a decision.

51 Natural or legal persons may, however, claim that a contested measure is of individual concern to them only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (judgments in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at p. 107, and in *Codorniu*, cited above, paragraph 20; judgment of 27 April 1995 in Case T-12/93 *CCE de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 36).

52 For that reason, it is necessary to ascertain whether, in the present cases, the applicants other than the associations are affected by the contested decisions by reason of certain attributes peculiar to them or by reason of circumstances in which those decisions differentiate them from all other traders.

53 In this regard, the applicants submit first of all that their number and identity were already known before the contested decisions were adopted. Even assuming that the applicants' contention were true, the Court notes that the possibility of determining, more or less accurately, the number or even the identity of legal subjects to whom a measure applies is not in itself sufficient to establish that the measure is of individual concern to them (see, most recently, the order of 29 June 1995 in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48 and the case-law cited therein).

54 Secondly, the applicants rely on arguments derived from their alleged participation in the procedure which led to the adoption of the contested decisions.

55 The Court first notes in this regard that the relevant legislation, in particular Directive 90/425, does not contain any provision under which the Commission, prior to the adoption of a decision based on Article 10(3) or (4) of the directive, is required to follow a procedure by which persons of a category corresponding to that of the applicants are entitled to be heard.

56 Nor does it not follow from the case-law, in particular the above judgment in *Technische Universität München*, that, even if there were no express provision to that effect, the Commission would have been required to hear the applicants. In *Technische Universität München*, which was a reference for a preliminary ruling, the Court of Justice was called on to give a ruling on the validity of a Commission decision according to which a type of microscope similar to that acquired by the Technische Universität München could not be imported into the Community free of customs duty on the ground that apparatus having a scientific value equivalent to that acquired by the University and capable of being used for the same purposes was being manufactured within the Community. In its judgment, the Court stated that the University itself knew best which characteristics the apparatus in question had to have in view of the work for which it was intended. From this, the Court

concluded that, even in the absence of an express provision to that effect, the University was entitled to make its views known in the administrative procedure before the Commission.

57 The Court finds that the particular circumstances in *Technische Universität München* are absent from the present cases, with the result that the solution reached by the Court of Justice in that case, which the Court of First Instance has moreover applied in its judgment of 9 November 1995 in Case T-346/94 *France-Aviation* v *Commission* [1995] ECR II-2841, paragraph 36, cannot be applied in the present cases. In contrast to the issue in *Technische Universität München*, the Commission did not in the present cases adopt the contested decisions with a view to resolving a question which *de facto* specifically concerned one particular trader. Furthermore, the present cases do not involve a situation in which the characteristics of the matter in question are, by definition, best known to the applicants.

58 Furthermore, an obligation on the part of the Commission to listen to the views of the traders concerned, such as the applicants, before adopting a decision similar to those contested in the present cases would be difficult to reconcile with the purpose of Directive 90/425, that is to say, the protection of the health of animals and humans, and with the inherent nature of interim protective measures, which are taken in emergencies and must therefore be capable of being swiftly adopted.

59 Finally, the Court notes that the fact that a person intervenes, in one way or another, in the procedure leading to the adoption of a Community measure, particularly by sending to the competent Community institution letters criticizing a measure which that institution has already adopted and seeking to influence its future action, is not *per se* such as to differentiate that person from any other (see also the order of 9 August 1995 in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraph 56).

60 In those circumstances, the applicants' arguments based on their alleged participation in the procedure which led to the adoption of the contested decisions must be rejected.

61 Third, and last, the applicants derive an argument from the judgment in *Piraiki-Patraiki*, cited above. The Court notes in this regard that, according to a well-established line of decisions, the fact that the Commission is obliged, under specific provisions, to take account of the consequences of a measure which it plans to adopt with regard to the position of certain individuals is indeed of such kind as to distinguish them individually (in addition to the judgment in *Piraiki-Patraiki*, see the judgments in Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 11, and in *Antillean Rice Mills*, cited above, paragraph 67).

62 In the present cases, however, the Community legislation, in particular Directive 90/425, contains no provision requiring the Commission, when it adopts a decision such as those at issue here, to take account of the consequences which that decision may have for the position of individuals such as the applicants. This argument must therefore also be rejected.

63 It follows that the applicants other than the associations have not established that they are affected by the contested decisions by reason of certain attributes peculiar to them or by reason of circumstances which differentiate them, in respect of those decisions, from all other traders. They are for that reason not individually concerned by the contested decisions. The claims for annulment which the applicants have submitted are consequently inadmissible, without its being necessary to examine whether they are directly concerned by those decisions.

Admissibility of the claims for annulment submitted by the associations included among the applicants

64 According to the relevant case-law, an action for annulment of a measure brought by an association which is not the addressee of the measure is admissible in two sets of circumstances. The first is where the association has a particular interest in acting, especially because its negotiating position is affected by the measure which it seeks to have annulled (see, for example, the judgment in *Van der Kooy*, cited above, paragraphs 17 to 25). The second is where the association, by bringing its action, has substituted itself for one or more of the members whom it represents, on condition that those members were themselves in a position to bring an admissible action (see the judgment of 6 July 1995 in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraph 60).

65 The applicant associations in the present cases have not put forward any argument establishing that they have a particular interest in securing the annulment of the contested decisions. More specifically, they have not established that their negotiating position has been affected. Furthermore, it has already been held that the applicants other than the associations have no standing to bring an action for annulment (see paragraphs 49 to 63 above). Consequently, the claims for annulment submitted by the applicant associations cannot be regarded as admissible on the ground that those associations have substituted themselves for certain of their members. Accordingly, their claims are inadmissible.

66 It follows from all the foregoing that the claims for annulment are inadmissible in their entirety and must therefore be dismissed.

B — *Admissibility of the claims for compensation*

Arguments of the parties

67 The applicants submit that, in accordance with the judgment in Case 175/84 (*Krohn* v *Commission* [1986] ECR 753, paragraph 26), their claims for compensation, based on Articles 178 and 215 of the Treaty, are admissible irrespective of whether the claims for annulment are admissible. They accept that, in some cases, the admissibility of a claim for compensation may depend on the exhaustion of domestic remedies, but contend that this exception is irrelevant in these proceedings because the contested decisions left no choice to the Member States, and certainly not to the Netherlands.

68 The Commission notes that Decisions 93/128 and 93/177 were implemented in the Netherlands by national measures and that it is clear from the applicants' written pleadings that they have also instituted proceedings before the national courts against the Netherlands authorities. The Commission takes the view that these domestic legal remedies must first be exhausted before a claim for compensation can be brought before the Community judicature. The Commission submits that, in any event, the associations included among the applicants cannot prove the existence of a particular interest in the present cases, with the result that the claims for compensation are inadmissible so far as those associations are concerned.

Findings of the Court

Admissibility of the claims for compensation submitted by the applicants other than the associations

69 The Court points out first of all that, according to a well-established line of decisions, an action for damages is an autonomous form of action with a particular

function to fulfil within the system of remedies provided for by the Treaty (see, for example, the judgment in *Krohn*, cited above, paragraph 26, and that in Case T-489/93 *Unifruit Hellas* v *Commission* [1994] ECR II-1201, paragraph 31). Furthermore, in their applications, the applicants other than the associations have indicated in a sufficiently precise manner why they consider that the conditions laid down for reparation of the damage which they claim to have sustained are satisfied, with the result that, so far as they are concerned, the applications meet the requirements of Article 44(1)(c) of the Rules of Procedure.

70 With regard to the Commission's argument based on the fact that the applicants have not exhausted the remedies available under national law, the Court notes that, in order for an action for damages to be inadmissible on this ground, the remedies available under national law must effectively ensure protection for individuals aggrieved by measures of the Community institutions (see, for instance, the judgment in Case 20/88 *Roquette Frères* v *Commission* [1989] ECR 1553, paragraph 15).

71 That is not the position in the present cases, since the illegality alleged in the claims for compensation originates not from a national body but from a Community institution. Any damage ensuing from the implementation of the Community legislation by the Netherlands authorities would therefore be attributable to the Community (see, for example, the judgments in *Krohn*, cited above, paragraphs 18 and 19, and in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraph 9).

72 Since the Community judicature has exclusive jurisdiction under Article 215 of the Treaty to hear actions seeking compensation for damage attributable to the Community (judgments in Joined Cases 106/87 to 120/87 *Asteris and Others* v *Greece and EEC* [1988] ECR 5515, paragraph 14, and in Case C-282/90 *Vreugdenhil* v *Commission* [1992] ECR I-1937, paragraph 14), remedies available under national law cannot automatically guarantee effective protection of the applicants' rights.

The Commission's argument based on failure to exhaust national remedies must accordingly be rejected.

73 Furthermore, the applicants stated at the hearing that the national proceedings which they initiated against the Netherlands authorities, and which had in any event already been concluded, related not to Decisions 93/128 and 93/177, but rather to the manner in which those authorities had implemented Decision 93/243. Consequently, in the present cases there is no risk whatsoever of the applicants being compensated twice in respect of the same claim.

74 For the foregoing reasons, the claims for compensation submitted by the applicants other than the associations are admissible.

Admissibility of the claims for compensation submitted by the associations included among the applicants

75 The Court notes that, according to Article 44(1)(c) of the Rules of Procedure, an application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. In order to meet those requirements, an application seeking compensation for damage caused by a Community institution must set out the evidence from which, *inter alia*, the damage allegedly sustained by the applicant may be identified, along with its nature and extent. Moreover, an infringement of Article 44(1)(c) constitutes an absolute bar to proceeding with a case, which the Court may consider at any time of its own motion in accordance with Article 113 of the Rules of Procedure (see the judgment in Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraphs 73 and 74).

76 The Court finds that, in the two applications, the applicant associations have not adduced any evidence of the damage which they claim to have suffered by reason

of the contested decisions, since all the information and data concerning damage relate to the other applicants.

77 Nor have the applicant associations established, or even contended, that they are exercising a right to compensation assigned to them by other persons (see the judgment in Case 238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, paragraph 5).

78 In those circumstances, the claims for compensation submitted by the associations included among the applicants must be held to be inadmissible.

The question whether the claims for compensation submitted by the applicants other than the associations are well founded

A — *Preliminary observations*

79 The Court notes that the second paragraph of Article 215 of the Treaty provides that, in the case of non-contractual liability, the Community is required, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its institutions in the performance of their duties.

80 According to well-established case-law of the Court of Justice and the Court of First Instance, the Community's non-contractual liability is dependent on the coincidence of a series of conditions as regards the unlawfulness of the acts alleged against the Community institution, the fact of damage and the existence of a causal link between the wrongful act and the damage complained of (see, for instance, the

judgment in Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18, and that of 18 September 1995 in Case T-168/94 *Blackspur and Others* v *Council and Commission* [1995] ECR II-0000, paragraph 38).

81 As regards the first condition, concerning the existence of unlawful conduct, the Court of Justice has ruled that the liability of the Community for legislative measures, particularly those relating to economic policy, can be incurred only if there has been a breach of a superior rule of law for the protection of individuals. If the institution has adopted the measure in the exercise of a wide discretion, the Community cannot be rendered liable unless, in addition, the breach is explicit, that is to say, it is of a manifest and serious nature (see, for instance, the judgments in Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975, paragraph 11, and in Joined Cases 83/76 and 94/76, 4/77, 15/77 and 40/77 *HNL and Others* v *Council and Commission* [1978] ECR 1209, paragraph 6).

82 It is therefore necessary first of all to examine whether the contested decisions are legislative measures and, second, if they are, whether the Commission adopted the decisions in the exercise of a wide discretion.

B — *The question whether the contested decisions are legislative measures*

Arguments of the parties

83 The Commission takes the view that the contested decisions are legislative measures. It stresses, in particular, that the decisions are general in scope, apply to situations described objectively and have legal effects for general categories of persons defined in abstract terms.

84 In reply, the applicants state first that the present cases do not concern regulations or directives having a legislative character pursuant to Article 189 of the Treaty, but individual decisions. It follows, in their view, that the decisions are not generally applicable but are addressed exclusively to two individually designated parties, namely the Netherlands and Italy. Furthermore, the applicants deny that the decisions apply to situations described objectively, since they do not describe any situation whatsoever but simply impose specific obligations on the two parties to which they are addressed.

85 The applicants also observe that the mandatory legal effects of the contested decisions in relation to them flow not from the decisions themselves, but from the measures taken by the Netherlands authorities to implement those decisions, that is to say, in particular, the refusal of those authorities to issue the necessary export licences. Furthermore, the existence of those implementing measures in no way affects the admissibility of the actions for damages, since those decisions left no discretion to the Netherlands authorities.

Findings of the Court

86 The Court notes at the outset that it has been consistently held that the nature of a measure is not to be sought in its external form, but rather in whether or not the measure at issue is of general application (see, for example, the judgments in *Zuckerfabrik Watenstedt*, cited above, at p. 414, and in Case 101/76 *Koninklijke Scholten Honig* v *Council and Commission* [1977] ECR 797, paragraphs 7 and 9).

87 In that regard, the Netherlands and Italy were required under Article 1 of Decision 93/128 to refrain from sending live pigs to other Member States while the decision remained in force. It is true that the decision produces, *vis-à-vis* those two Member States, the legal effects of an individual measure. In relation to the applicants, however, the decision produces the effects of a generally applicable measure, in the

same way, for example, as a regulation prohibiting exporters established in the Netherlands and Italy from exporting live pigs to other Member States. Decision 93/128 is therefore a generally applicable measure *vis-à-vis* the abstract category to which the applicants belong and is, consequently, of a legislative nature in relation to them.

88 So far as concerns Decision 93/177, the Court notes that it sets out, *inter alia*, a number of conditions to be met by exports of live pigs from Italy and the Netherlands to other Member States (see Article 1). Those conditions are drafted in general and abstract terms and produce legal effects for categories of persons defined in a general and abstract manner. The Court accordingly takes the view that Decision 93/177 is generally applicable and consequently of a legislative nature.

C — *The question whether the Commission adopted the contested decisions in the exercise of a wide discretion*

Arguments of the parties

89 The applicants take the view that the powers which Directive 90/425, and in particular Article 10(3) thereof, confers on the Commission do not amount to a wide discretion. For that reason, they argue that the Commission did not adopt the contested decisions in the exercise of a wide discretion.

90 The Commission considers that it did adopt the contested decisions in the exercise of a wide discretion. It notes in this regard that the legislative context of Directive 90/425, which gives it such a discretion, must extend to any decisions taken to implement the directive's provisions.

Findings of the Court

91 The Court finds first of all that, having regard to the reference to Article 43 of the Treaty in Directive 90/425, on the basis of which the contested decisions were taken, as well as to their actual content, the decisions come within the scope of the common agricultural policy, a field in which the Community institutions must generally be recognized as having a wide discretion in view of the responsibilities with which the Treaty entrusts them (see, for example, the judgment in Case 27/85 *Vandemoortele* v *Commission* [1987] ECR 1129, paragraph 31).

92 Next, the Court notes, specifically with regard to Decision 93/128, that it was adopted on the basis of Article 10(3) of Directive 90/425. Article 10(3) of the directive provides that 'if the Commission has not been informed of the measures taken, or if it considers the measures taken to be inadequate, it may ... take interim protective measures ...'. It is clear from the words 'considers' and, more particularly, 'may' that the Commission enjoys a wide discretion when adopting a decision based on that article.

93 With particular regard to Decision 93/177, the Court observes first of all that it was adopted on the basis of Article 10(4) of Directive 90/425. Although the second citation in the preamble to the decision suggests, in the Dutch language version, that it was adopted on the basis of Article 10(3) of the directive, it is clear from all the other language versions, as well as from the reference in the decision to consultation of the Standing Veterinary Committee, that the reference in the Dutch language version is a typing error and that the decision was in fact adopted on the basis of Article 10(4) of Directive 90/425.

94 Next, the Court notes that Article 10(4) of Directive 90/425 provides that 'the Commission shall ... adopt the necessary measures ... in accordance with the procedure laid down in Article 17. ...'. The procedure in question requires the Standing Veterinary Committee to deliver an opinion on measures proposed by the

Commission. The Commission can adopt the measures in question only if the opinion of the Committee is favourable; if not, the Commission must submit the measures to the Council.

95 The Court observes that the procedure under Article 17 of Directive 90/425 restricts, to some extent, the Commission's discretion when it seeks to adopt measures on the basis of Article 10(4). However, having regard, in particular, to the fact that the initiation of measures is a matter for the Commission, that it can determine, at the initial stage, the content and nature of those measures, and that Article 10(4) does not set out any other condition for the exercise of the Commission's power, the Court considers that the Commission also enjoys a wide discretion in adopting a decision on the basis of that provision.

96 It follows that the contested decisions are, *vis-à-vis* the applicants, legislative measures which the Commission has adopted in the exercise of a wide discretion. The Commission can therefore incur liability for the damage which the applicants claim to have suffered by virtue of those decisions only if it has infringed, in a manifest and serious manner, a superior rule of law for the protection of individuals.

97 At this stage of the Court's reasoning, it is necessary to determine in the first place which of the rules claimed by the applicants to have been infringed by the Commission are superior rules of law for the protection of individuals. It will then be necessary to examine whether, by adopting the contested decisions, the Commission infringed one or more of those rules in a manifest and serious manner.

D — *The superior rules of law for the protection of individuals*

Preliminary observations

98 The applicants rely on six pleas in law, identical in each case, for the purpose of establishing that the contested decisions are illegal. The first plea is based on a breach of Article 10(3) of Directive 90/425, the second on infringement of the principle of proportionality, the third on misuse of powers, the fourth on infringement of the principle of equal treatment, the fifth on infringement of the principle of the protection of legitimate expectations, and the sixth, and last, on breach of the right to be heard. The applicants also raise a seventh plea in Case T-484/93, based on breach of Article 190 of the Treaty.

Arguments of the parties

99 In their written pleadings, the parties discuss, in particular, whether Article 10(3) of Directive 90/425 constitutes a superior rule of law for the protection of individuals.

100 The applicants take the view that Article 10(3) also provides guarantees for individuals. In support of that contention, they refer to paragraph 26 of the judgment in *Sofrimport*, cited above.

101 The Commission takes the view that Article 10(3) of Directive 90/425 does not provide any guarantees for the protection of individuals but merely effects a division of powers between the Member States and the Community. In its opinion, it follows from paragraphs 20 and 21 of the judgment in *Vreugdenhil*, cited above, that such a rule governing competence is not one of the 'superior rules of law' and that a breach of that rule cannot therefore render the Community liable in the present cases.

Findings of the Court

102 The Court finds that all of the following pleas in law relate to a breach of a superior rule of law for the protection of individuals:

— the plea concerning infringement of the principle of proportionality (see, by way of example, the judgments in Joined Cases 63/72 to 69/72 *Werhahn and Others* v *Council* [1973] ECR 1229, points 14 to 28, particularly point 18, and in *Unifruit Hellas*, cited above, paragraph 42);

— the plea concerning misuse of powers (see, by way of example, the judgments in Case C-119/88 *AERPO and Others* v *Commission* [1990] ECR I-2189, paragraph 19, and in *Unifruit Hellas*, cited above, paragraph 40);

— the plea concerning infringement of the principle of equal treatment (see, by way of example, the judgments in Joined Cases 64/76 and 113/76, 167/78 and 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others* v *Council* [1979] ECR 3091, paragraph 11, and in Case T-120/89 *Stahlwerke Peine-Salzgitter* v *Commission* [1991] ECR II-279, paragraph 92);

— the plea concerning infringement of the principle of the protection of legitimate expectations (see, by way of example, the judgments in *Mulder*, cited above, paragraph 15, and in *Unifruit Hellas*, cited above, paragraph 42);

— the plea concerning breach of the right to be heard (see, in this regard, the judgment in Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraphs 39 and 40).

103 Next, with regard to Article 10(3) of Directive 90/425, the Court finds that this provision can be regarded as a superior rule of law for the protection of individuals only in so far as it provides that interim protective measures may be taken 'with regard to animals ... from the region affected by the epizootic disease or from a given holding, centre or organization'. The Court notes that this constitutes an expression of the principle of proportionality, which is already the subject of a separate plea in law (see paragraph 102 above).

104 Finally, with regard to the plea concerning the statement of reasons for the contested decisions, the Court notes that, according to the settled case-law of the Court of Justice and the Court of First Instance, the obligation to state reasons, laid down in Article 190 of the Treaty, is not a superior rule of law for the protection of individuals (see the judgments in Case 106/81 *Kind* v *EEC* [1982] ECR 2885, paragraph 14, in *AERPO*, cited above, paragraph 20, and in *Unifruit Hellas*, cited above, paragraph 41). For that reason, the Court does not propose to examine whether this plea is well founded, since it cannot result in the Community's incurring non-contractual liability.

E — *The question whether, by adopting the contested decisions, the Commission infringed, in a manifest and serious manner, a superior rule of law for the protection of individuals*

The plea based on infringement of the principle of proportionality

Arguments of the parties

105 The applicants contend that Decisions 93/128 and 93/177 were adopted in breach of the principle of proportionality, as set out in Articles 30 to 36 of the Treaty and in the case-law (judgment in Case 116/82 *Commission* v *Germany* [1986] ECR 2519, paragraph 21). In support of this contention, they submit, in the main, that

the decisions do not satisfy the condition of necessity and, in the alternative, that the measures for which they provide are not the least restrictive ones for attaining the objective pursued.

106 So far as the condition of necessity is concerned, the applicants state first of all that the Commission has not established or even plausibly demonstrated that it was necessary to adopt measures applicable to the whole of the territory of the Netherlands. They refer to Article 10(3) of Directive 90/425, which provides that interim protective measures may be taken only in respect of, *inter alia*, a region affected by the epizootic disease. They stress that the live pigs in which the presence of the virus had been confirmed came from the collection centre at Oirschot and submit that there were no grounds for the view that the entire territory of the Netherlands was a region affected by the disease.

107 The applicants go on to claim that the condition of necessity was not satisfied inasmuch as there was no finding that the disease had manifested itself at all in the Netherlands. They point out in this regard that the incubation period for the disease is a few days and that consequently the contamination may have occurred in Italy, that is to say, over the two or three days during which the pigs were awaiting slaughter in Nola (Italy). The applicants also emphasize that, before it adopted the contested decisions, the Commission failed to carry out any investigation to establish the source of the contamination.

108 The applicants also take the view that there was no need to adopt the contested decisions because the possibility of adopting national measures had not been exhausted. Finally, in their view, the fact that the contested decisions were unnecessary is evident from the background to their adoption: the very fact that the Commission replaced Decision 93/128 by Decision 93/177, which was, in its turn, repealed, at least to a large extent, by Decision 93/243, demonstrates, in the applicants' opinion, that the adoption of those decisions was unnecessary.

109 In the alternative, the applicants contend that, according to the case-law (see, in particular, the judgment in Case 116/82 *Commission* v *Germany*, cited above, paragraph 21), restrictions imposed by measures of the Community institutions cannot exceed the limits of what is necessary to achieve the objective pursued. They submit that even if the contested decisions satisfied the condition of necessity (which is not the case), they do not, in any event, satisfy the condition of proportionality. In their view, it follows that, by adopting the decisions, the Commission infringed the principle of proportionality.

110 The Commission accepts that any action taken pursuant to Article 10(3) and (4) of Directive 90/425 must comply with the principle of proportionality and must therefore be necessary and not disproportionate. In the present cases, however, the Commission considers that the contested decisions satisfy those two conditions.

111 The Commission observes in the first place that, in the context of the common agricultural policy, the Community enjoys a wide discretion which, moreover, does not apply exclusively to the nature and scope of the measures to be taken but also to some extent to the establishment of the basic facts (judgment in Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 25).

112 So far as the necessity of Decision 93/128 is concerned, the Commission states that it acted in response to a letter from the Italian authorities of 19 February 1993. According to the Commission, that letter justified the conclusion that the place of contamination was either in the Netherlands (in one or more holdings or the collection centre at Oirschot), or in the means of transportation, or else in Italy (the slaughterhouse at Nola).

113 The Commission goes on to state that, when it adopted the decisions, it had every reason to be extremely vigilant in the light of the poor record of the Netherlands

and Italy in combating the disease. According to the Commission, the disease was rampant in the Netherlands for five months in 1992 and was endemic in Italy.

114 The Commission also points out that, in view of the large number of live pigs which the Netherlands exported to other Member States, there was an appreciable risk that, if the disease had broken out in the Netherlands, it would spread to other Member States, a risk which, in the Commission's opinion, warranted rapid action on its part. In view of the urgency of the matter, moreover, it could not await the results of more detailed investigations and was consequently obliged to adopt measures on the strength of assumptions.

115 In those circumstances, the Commission considers that Decision 93/128 satisfies the condition of necessity.

116 So far as concerns the need for Decision 93/177, which is based on Decision 93/128, the Commission explains that when it adopted that decision, it still did not know precisely where the contamination had originated. The Commission also contests the applicants' claim that the adoption of Decision 93/177 shows that Decision 93/128 was unnecessary. In its view, it was in a position to adopt the less restrictive measures provided for by Decision 93/177 only because it had sufficient time to adopt that decision, which had not been the case prior to the adoption of Decision 93/128.

117 With regard to the allegedly disproportionate nature of Decision 93/128, the Commission states that it was necessary to impose a ban for the whole of the Netherlands because it was difficult, at the time, to identify precisely where the disease had originated and also because it was possible that the disease might already have spread within the Netherlands. Furthermore, in view of the urgency of the matter

and the time which national authorities require in order to prepare the requisite implementing measures, there was no viable alternative solution.

18 As for Decision 93/177, the Commission disputes the applicants' contention that this decision is disproportionate. It also observes that, by contesting Decision 93/177, the applicants are in fact objecting to a system of control which they themselves proposed, in their letter of 9 March 1993, to replace the measures laid down by Decision 93/128.

Findings of the Court

— *Preliminary observations*

119 The principle of proportionality has been recognized in the settled case-law of the Court of Justice and Court of First Instance as one of the general principles of Community law. According to that principle, the measures imposed by Community legislation must be appropriate for achieving the objective pursued and must not go beyond what is necessary to that end (see, for instance, the judgments in Case 281/84 *Zuckerfabrik Bedburg and Others* v *Council and Commission* [1987] ECR 49, paragraph 36, and in Case 116/82 *Commission* v *Germany*, cited above, paragraph 21). The principle of proportionality also requires that, where there is a choice between several appropriate measures, recourse must be had to the least restrictive one and that the disadvantages it entails must not be disproportionate to the aims pursued (see, for example, the judgments in Case C-24/90 *Hauptzollamt Hamburg-Jonas* v *Werner Faust* [1991] ECR I-4905, paragraph 12, and in Joined Cases T-6/92 and T-52/92 *Reinarz* v *Commission* [1993] ECR II-1047, paragraph 111).

120 With regard to judicial review of the conditions laid down, however, it must be pointed out that, as stated above (paragraph 91), in matters concerning the common agricultural policy, the Community legislature has a wide discretion corresponding to the political responsibilities entrusted to it by Articles 40 to 43 of the

Treaty. Consequently, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see the judgments in Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 22, and in Case C-331/88 *The Queen* v *Minister for Agriculture, Fisheries and Food and Secretary of State for Health*, ex parte *Fedesa and Others* [1990] ECR I-4023, paragraph 14). Furthermore, in order for the principle of proportionality to be infringed in a manifest and serious manner, in such a way as to involve the Community in non-contractual liability in circumstances such as those of the present cases, there must be an error so serious that the conduct of the institution may be said to verge on the arbitrary (see the judgment in Joined Cases 116/77 and 124/77 *Amylum and Tunnel Refineries* v *Council and Commission* [1979] ECR 3497, paragraph 19).

121 It is necessary to examine, in the light of those principles, whether, by adopting the contested decisions, the Commission infringed the principle of proportionality in a manifest and serious manner.

— *Decision 93/128*

122 The Court notes first of all that the Commission acted in response to a finding that a dangerous disease, namely swine vesicular disease, was present and that it adopted Decision 93/128 in order to protect public and animal health. The Court considers that, in so doing, the Commission took account of a higher public interest (see also the judgment in *Mulder*, cited above, paragraph 21).

123 Second, Decision 93/128 bans exports of live pigs from both the Netherlands and Italy to other Member States and, according to the scientific report produced by the applicants themselves and attached as annex 11 to their applications, the source

of the swine vesicular disease could have been either in the Netherlands (the collection centre at Oirschot) or in Italy (the slaughterhouse in Nola). Moreover, the applicants stated during the hearing that, at the material time, it could not be ruled out that live pigs which were initially in one collection centre might subsequently be moved to another centre, with the result that, if the source of the disease was in Oirschot, the disease could spread within the Netherlands.

124 Third, the Netherlands, as the applicants have confirmed, are an important exporter of live pigs. According to the statistics submitted by the applicants, the number of slaughter pigs ('vleesvarkens') and the number of piglets ('biggen') exported from the Netherlands to other Member States were each, in 1992 and 1993, in excess of two million units, levels which make the Netherlands one of the largest exporters of live pigs within the Community. The Commission was therefore correct to take account of the fact that, if the disease did indeed have its source in the Netherlands, it would easily spread to other Member States if no measures were taken.

125 Fourth, the Commission was right to lay emphasis, during the hearing, on the risk that, unless it adopted strict measures to combat the spread of the disease, other Member States would themselves take action and adopt their own measures, thereby creating a situation in which trade between Member States might be distorted to a greater extent.

126 Fifth, there was an emergency situation in the face of which the Commission was required to act rapidly. As a result of that emergency, the Commission had to adopt measures which could easily be implemented without requiring too much time for preparation.

127 Sixth, and last, Decision 93/128 was to apply for a relatively limited period, namely four weeks, and therefore any inconvenience occasioned by it was also of relatively limited duration.

128 In the light of those findings, the Court considers that, in adopting Decision 93/128, the Commission did not, at least not in a manner verging on the arbitrary, go beyond what was necessary for attaining the objective of the decision. It follows that Decision 93/128 does not infringe the principle of proportionality, at least not in a manifest and serious manner.

— *Decision 93/177*

129 The Court notes first of all that Decision 93/177, unlike Decision 93/128, does not ban exports altogether from the Netherlands (and Italy) to other Member States, but makes such exports subject to a number of conditions. As the statistics produced by the applicants (annexes 3 to 5 to the reply) make clear, exports of live pigs from the Netherlands to other Member States were in fact resumed under that decision and regained their former level within a matter of weeks.

130 Next, the Court points out that the measures laid down by Decision 93/177 were approved by the Standing Veterinary Committee and that the most important of those measures, namely those contained in Article 1, were applied for a relatively short period of five to six weeks.

131 In those circumstances, the Court considers that, in adopting Decision 93/177, the Commission did not infringe the principle of proportionality, and certainly not in a manifest and serious manner.

The plea based on misuse of powers

Arguments of the parties

132 The applicants, who point out that the export ban introduced by Decision 93/128 and the restrictions on exports imposed by Decision 93/177 constitute extremely effective means by which both to end the supremacy of the Netherlands in the exportation of live pigs to other Member States and to protect the domestic production of other Member States, argue essentially that, by adopting those decisions, the Commission was guilty of misusing its powers.

133 The Commission refers to paragraph 24 of the judgment in *Fedesa*, cited above, and submits that the applicants' contention is entirely unfounded.

Findings of the Court

134 It is consistent case-law that a Community measure may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an aim other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see, for example, the judgments in Joined Cases 140/82, 146/82, 221/82 and 226/82 *Walzstahl-Vereinigung and Thyssen* v *Commission* [1984] ECR 951, paragraph 27, and in *Fedesa*, cited above, paragraph 24).

135 The Court notes that, in their written pleadings, the applicants have not adduced any objective, relevant and consistent evidence that the Commission adopted the contested decisions with the purpose of achieving an aim other than that stated or

evading a procedure specifically prescribed by the Treaty. It follows that the plea in law based on misuse of powers must be rejected.

The plea in law based on infringement of the principle of equal treatment

Arguments of the parties

136 The applicants claim that, by adopting the contested decisions, the Commission infringed the principle of equality contained in Article 40(3) of the Treaty, as interpreted by the Court of Justice, *inter alia*, in the judgment in Case 281/82 (*Unifrex* v *Commission and Council* [1984] ECR 1969, paragraph 30).

137 In support of this plea, the applicants point out first of all that, according to the second recital in the preamble to Decision 93/128, the decision was adopted *inter alia* because 'swine vesicular disease virus has been isolated and antibodies to the said virus have been detected in pigs sent from the Netherlands to Italy'. They further observe that the fact of establishing the presence of antibodies and isolating the virus does not make it possible to determine the place of contamination.

138 In that regard, the applicants state that, according to the tests carried out in Brescia, antibodies to the disease virus were found, over the period from 2 September 1992 to 15 February 1993, mainly in pigs coming from Belgium (242), and then, in descending order, from the Netherlands (90), Germany (34) and France (32). They emphasize that, while the presence of antibodies was established in pigs coming from the Netherlands, particularly in September and October 1992, the number of confirmed cases in January 1993 was low and no cases were confirmed in February 1993.

139 In those circumstances, the applicants take the view that, by adopting measures only in respect of the Netherlands, the Commission treated that Member State differently from the other Member States and thereby infringed the principle of equal treatment.

140 The Commission submits that the presence of the virus in Italy was established only in pigs coming from the Netherlands and that this circumstance already in itself constitutes an objective difference justifying the application of different treatment as regards the Netherlands and Italy.

Findings of the Court

141 According to the case-law, the principle of equal treatment means that like situations should not be treated differently unless such different treatment is objectively justified (see, for instance, the judgment in *Unifrex*, cited above, paragraph 30).

142 The Court finds that, in these cases, the Commission adopted measures regarding the Netherlands and Italy on the basis of the finding, in Italy, that the *virus* of swine vesicular disease was present in live pigs sent from the Netherlands, whereas only the presence of *antibodies to the virus* had been established in live pigs coming from other Member States. The parties agree that the presence of antibodies is insufficient to determine whether or not animals have been contaminated by the disease, since cases of 'false seropositivity' may occur. In contrast, the presence of the virus is proof that animals have been contaminated by the disease. The Court therefore considers, as the Commission has also rightly contended, that the difference in treatment between the Netherlands and Italy, on the one hand, and the remaining Member States, on the other, is objectively justified. The plea in law based on infringement of the principle of equal treatment cannot therefore be upheld.

The plea in law based on infringement of the principle of the protection of legitimate expectations

Arguments of the parties

143 According to the applicants, it follows from the judgment in *Zuckerfabrik Bedburg*, cited above, that the principle of the protection of legitimate expectations is infringed and the Community rendered liable if a Community measure is adopted (i) in the absence of an overriding public interest to the contrary, (ii) with immediate effect and without warning, (iii) in a manner which could not be foreseen by a prudent trader, and (iv) without appropriate transitional measures.

144 The applicants take the view that those four conditions are satisfied in the present cases and that the Commission, in adopting the contested decisions, therefore infringed the principle of the protection of legitimate expectations. Specifically with regard to the overriding public interest to the contrary, they take the view that, in the light of paragraphs 26 to 29 of the judgment in *Sofrimport*, cited above, no such interest exists in the present cases.

145 In response, the Commission submits that the judgment in *Zuckerfabrik Bedburg*, cited above, cannot be relied on in the present dispute in view of the fact that it concerned a measure intended to alter monetary compensatory amounts and the factual position was thus different from that in the present cases.

146 The Commission also takes the view that the fight against the spread of swine vesicular disease is indeed in the overriding public interest and that any trader in animals must take account of the measures which the public authorities may adopt with a view to combating veterinary diseases capable of adversely affecting such traders.

147 So far as the judgment in *Sofrimport* is concerned, the Commission further points out that it is irrelevant to the present dispute because that case concerned legislation which expressly provided that it was necessary to take account of a certain category of interested parties, whereas Directive 90/425, and in particular Article 10(3) thereof, contains no such provisions.

Findings of the Court

148 It is apparent from the case-law that any trader in whom an institution has aroused justified expectations may rely on the principle of the protection of legitimate expectations. However, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained (see, for instance, the judgment in Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 33). If a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted (see, for example, the judgments in Case 265/85 *Van den Bergh en Jurgens* v *Commission* [1987] ECR 1155, paragraph 44, and in *Unifruit Hellas*, cited above, paragraph 51).

149 The Court notes that, in the present cases, the applicants have not adduced any evidence that the Commission aroused justified expectations on their part to the effect that it would not adopt any interim protective measures such as those contested in this dispute. The Court also considers that the wide discretion which the Commission has in the matter empowered it to make any necessary changes to the existing situation, with the result that traders were not justified in their expectation that the situation would be maintained. Moreover, the Court considers that a prudent and discriminating trader must be able to foresee that, in cases such as these, where the presence of the virus of a disease covered by Directive 90/425 has been

confirmed in animals sent from one Member State to another, the Commission may be required to adopt, under Article 10(3) and (4) of Directive 90/425, interim protective measures of the kind taken in the present cases.

150 It follows that the plea in law based on infringement of the principle of the protection of legitimate expectations must be rejected.

The plea in law based on breach of the right to be heard

Arguments of the parties

151 The applicants claim that, by adopting the contested decisions, the Commission infringed the principle requiring that, before a measure adversely affecting a person is adopted, the Community institutions must allow interested parties to make their views known and must provide adequate reasons for the measure in that regard (judgments in *Technische Universität München*, cited above, paragraphs 13 and 14, in Case 234/84 *Belgium* v *Commission* [1986] ECR 2263, paragraph 27, and in Joined Cases C-48/90 and C-66/90 *Netherlands and Others* v *Commission* [1992] ECR I-565, paragraph 45).

152 The Commission points out first of all that Italy and the Netherlands were invited to discuss the matter with it and that the latter Member State did in fact express its views at the meeting on 26 February 1993. The Commission goes on to state that, in its view, there is no general principle of Community law that interested parties must be heard before a Community measure is adopted. In its opinion, it follows from paragraph 27 of the judgment in *Belgium* v *Commission*, cited above, that a particular person need be heard only if administrative proceedings have been instituted against him. Since no such proceedings have been brought in the present cases, the Commission is of the opinion that it was under no obligation to hear the applicants.

153 The Commission also observes that the applicants are asking that the Community institutions should consult the relevant economic sectors before adopting policy decisions of the kind taken in the present cases. According to the Commission, the exercise of the powers conferred on the Community institutions would be completely paralysed if there was such an obligation, a situation which would be unacceptable.

Findings of the Court

154 Suffice it to note, with regard to this plea in law, that, as has been established during the examination of admissibility (see paragraphs 55 to 57 above), the Commission was not under an obligation to hear the applicants before the contested decisions were adopted. This is in itself sufficient reason not to uphold the plea based on breach of the right to be heard.

F — *Final observations*

155 It follows from all of the foregoing considerations that the applicants have been unable to establish that, by adopting the contested decisions, the Commission infringed, in a manifest and serious manner, a superior rule of law for the protection of individuals. In view of the fact that the first condition for the Community to incur liability, that is to say, the existence of unlawful conduct on the part of an institution, has not been satisfied, the aforesaid claims for compensation must be rejected, without its being necessary to examine whether the other conditions for the Community to incur liability have been fulfilled.

156 It follows that the applications must be dismissed in their entirety.

Costs

157 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have failed in their submissions and the Commission has applied for costs to be awarded against them, the applicants must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the applications;

2. Orders the applicants to pay the costs.

Briët Bellamy Azizi

Delivered in open court in Luxembourg on 13 December 1995.

H. Jung C. P. Briët

Registrar acting as President