

JUDGMENT OF THE COURT (Fifth Chamber)  
19 November 1998 \*

In Case C-162/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Helsingborgs Tingsrätten, Sweden, for a preliminary ruling in the criminal proceedings before that court against

**Gunnar Nilsson,**

**Per Olov Hagelgren,**

**Solweig Arrborn**

on the interpretation of Article 30 of the EC Treaty and Article 2 of Council Directive 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species (OJ 1987 L 167, p. 54),

THE COURT (Fifth Chamber),

composed of: P. Jann, acting as President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, L. Sevón (Rapporteur) and M. Wathelet, Judges,

\* Language of the case: Swedish.

Advocate General: J. Mischo,  
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- Mr Nilsson, by Anders Boquist, lawyer practising in Malmö,
  
- the Swedish Government, by Lotty Nordling, Rättschef in the Department of Foreign Trade, Ministry of Foreign Affairs, acting as Agent,
  
- the Belgian Government, by Jan Devadder, Director of Administration in the Legal Service of the Ministry of Foreign Affairs, Trade and Cooperation with Developing Countries, acting as Agent,
  
- the French Government, by Kareen Rispal-Bellanger, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, Central Administrative Attaché in the same directorate, acting as Agents,
  
- the Finnish Government, by Holger Rotkirch, Ambassador, Head of Legal Affairs in the Ministry of Foreign Affairs, acting as Agent,
  
- the Norwegian Government, by Jan Bugge-Mahrt, Deputy Director-General in the Ministry of Foreign Affairs, acting as Agent,
  
- the Commission of the European Communities, by Hans Støvlbæck and Lena Ström, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Nilsson, represented by Anders Boquist; Mr Hagelgren, represented by Lillemor Wählin, lawyer practising in Lund; the Swedish Government, represented by Lotty Nordling and Maria Lundqvist Norling, Kammarrättsassessor at the Legal Secretariat of the Ministry of Foreign Affairs, acting as Agent; the Belgian Government, represented by Leo van den Eynde, Head of the Legal Service of the Ministry of the Middle Classes and Agriculture, acting as Agent; and the Commission, represented by Lena Ström, at the hearing on 24 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 5 May 1998,

gives the following

### Judgment

- 1 By order of 28 April 1997, received at the Court on 30 April 1997, the Helsingborgs Tingsrätten (District Court, Helsingborg) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Article 30 of that Treaty and Article 2 of Council Directive 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species (OJ 1987 L 167, p. 54).
- 2 Those questions were raised in criminal proceedings against Mr Nilsson, Mr Hagelgren and Ms Arrborn, in which Mr Hagelgren was charged with selling bovine semen to Mr Nilsson without authorisation, Mr Nilsson with having four cows belonging to him inseminated without authorisation, Ms Arrborn with carrying out the insemination in question without authorisation, and each of them with infringing, by inseminating cattle belonging to Mr Nilsson with semen from bulls of the Belgian Blue breed, the national provisions prohibiting, for the purpose of protecting animal health, any breeding liable to entail suffering for animals or to affect their behaviour.

3 The second indent of Article 2(1) of Directive 87/328 provides as follows:

‘1. A Member State may not prohibit, restrict or impede:

— the acceptance for artificial insemination within its territory of pure-bred bulls or the use of their semen when those bulls have been accepted for artificial insemination in a Member State on the basis of tests carried out in accordance with Decision 86/130/EEC’.

4 Directive 87/328 is based on Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species (OJ 1977 L 206, p. 8), and aims at additional harmonisation with regard to the acceptance of those animals and their semen for breeding purposes.

5 The second indent of Article 2 of Directive 77/504, as amended by Article 11 of Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ 1994 L 178, p. 66), provides:

‘The Member States shall ensure that the following shall not be prohibited, restricted or impeded on zootechnical grounds:

— intra-Community trade in the semen, ova and embryos of pure-bred breeding animals of the bovine species’.

- 6 A 'pure-bred breeding animal of the bovine species' is defined in Article 1(a) of Directive 77/504, as amended by Article 3 of Council Directive 91/174/EEC of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC (OJ 1991 L 85, p. 37), as 'any bovine animal [including buffalo] the parents and grandparents of which are entered or registered in a herd-book of the same breed, and which is itself either entered or registered and eligible for entry in such a herd-book'.
- 7 A 'herd-book' is defined in Article 1(b) of Directive 77/504 as 'any book, register, file or data medium

— which is maintained by a breeders' organisation or association officially recognised by a Member State in which the breeders' organisation or association was constituted,

and

— in which pure-bred breeding animals of a given breed of the bovine species are entered or registered with mention of their ancestors'.

- 8 The first paragraph of Article 2 of Commission Decision 84/247/EEC of 27 April 1984 laying down the criteria for the recognition of breeders' organisations and associations which maintain or establish herd-books for pure-bred breeding animals of the bovine species (OJ 1984 L 125, p. 58), which was adopted on the basis of the second and third indents of Article 6(1) of Directive 77/504, states that the authorities of the Member State concerned must grant official recognition to any breeders' organisation or association which maintains or establishes herd-books if the latter meet the conditions laid down in the annex to the decision.

- 9 That annex provides *inter alia* that in order to be officially recognised, a breeders' association which maintains or establishes a herd-book must have a set of rules covering the definition of the breed's characteristics, the system for recording pedigrees, the definition of its breeding objectives and the systems for making use of livestock performance data.
- 10 The Commission, acting on the basis of the first indent of Article 6(1) of Directive 77/504, also adopted Decision 86/130/EEC of 11 March 1986 laying down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species (OJ 1986 L 101, p. 37). The annex to that decision was replaced by Commission Decision 94/515/EC of 27 July 1994 (OJ 1994 L 207, p. 30).
- 11 Part I of that annex, as amended, provides that the 'competent authorities of the Member States are to approve the bodies responsible for setting the rules for performance recording and assessing the genetic value and for publication of the evaluation results of pure-bred breeding animals of the bovine species'.
- 12 Part II of the Annex provides *inter alia* for the recording of data on reproduction of the animals, on the basis *inter alia* of the calving score, and for a morphological assessment.
- 13 As regards genetic evaluation, the last indent of point 1 of Part III of the Annex provides:

'Genetic peculiarities and genetic defects of an animal defined by the bodies officially appointed for the determination of these characters, in agreement with the breeders' organisations or associations, recognised in conformity with Commission Decision 84/247/EEC ... have to be published.'

- 14 As regards the genetic evaluation of bulls for artificial insemination, point 2 of Part III of the Annex provides that breeding values on them must be published.
- 15 In Sweden, activities in connection with the insemination of bovine animals such as the collection, handling and distribution of and insemination with semen are subject to authorisation by the State Board of Agriculture under the Statens Jordbruksverks Föreskrifter om Seminverksamhet met Nötkreatur (Rules of the State Board of Agriculture on insemination of bovine animals, SJVFS 1994: 98). Under Article 26 of those rules, distribution of animal sperm is subject to authorisation to carry out the insemination. Under Article 30 the person receiving the sperm is obliged to inform the distributor *inter alia* of the results of calving, the frequency of difficult calvings and the occurrence of hereditary diseases and malformations.
- 16 Article 29 of the Djurskyddsförordning (Animal Protection Regulations, SFS 1988: 539) prohibits 'breeding liable to entail suffering for animals'.
- 17 The Statens Jordbruksverks Föreskrifter om Djurhållning inom Lantbruket m. m. (Rules of the State Board of Agriculture on the keeping of animals for agricultural purposes, SJVFS 1993: 129) prohibit the insemination of heifers and cows or the implant of embryos if there is a probability of difficult calvings.
- 18 In addition, the first paragraph of Article 3 of Statens Jordbruksverks Föreskrifter om Djurskyddskrav vid Avelsarbete (Rules of the State Board of Agriculture on requirements for the protection of animals in breeding activity, SJVFS 1995: 113, as amended by 1995: 181) prohibits the use for breeding of breeding animals which have been shown to transmit fatal dispositions, defects or other hereditary characteristics entailing suffering for offspring or adverse effects on the natural behaviour

of offspring, or which might transmit such fatal dispositions, defects or hereditary characteristics. The annex to those rules refers *inter alia* to muscular hypertrophy.

- 19 The second paragraph of Article 3 of those rules further provides that bovine animals may not be used for breeding if they present to all appearances a hereditary disposition to unduly frequent sickness, difficult calving or mortality of offspring in connection with the birth.
  
- 20 According to the order for reference, Mr Hagelgren bought in Belgium semen from bulls of the Belgian Blue breed, which he then passed on to Mr Nilsson with a view to insemination of animals belonging to him. Mr Nilsson approached Ms Arrborn to carry out the insemination.
  
- 21 Since none of those persons had authorisation from the State Board of Agriculture, they were prosecuted for distributing semen or practising insemination without authorisation. They were also charged with using, contrary to the laws and regulations on protection of animals, semen of the Belgian Blue breed, that breed presenting 'the genetic defect of muscular hypertrophy' which produces excessive tissue development, underdevelopment of the internal organs of offspring and particular sensitivity to viral diseases and stress. There was also said to be a high frequency of difficult calvings.
  
- 22 The defendants denied that they had committed offences and submitted that, by requiring authorisation for insemination and prohibiting the use of semen from bulls of the Belgian Blue breed, the Swedish legislation was contrary to Community law, in particular to Article 2 of Directive 87/328.

23 Since it considered that the outcome of the proceedings before it depended on the interpretation of Community law, the Tingsrätten stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

1. Do Article 30 of the Treaty of Rome and Directive 87/328 allow a national authority to require authorisation for insemination operations using bovine semen, that is to say, the collection, handling and distribution of and insemination with semen, in the way indicated above?
  
2. Do Article 30 of the Treaty of Rome and Directive 87/328 allow a Member State to prohibit or subject to conditions the insemination and breeding of cattle
  - (a) liable, according to a national authority, to entail suffering for animals or affect their natural behaviour, or
  
  - (b) using a certain breed which is regarded by a national authority as having genetic defects?
  
3. (a) Does interpretation of the preamble to Directive 87/328 allow national exceptions to acceptance for artificial insemination in its territory with respect to animals with an undesirable pedigree, even where those exceptions entail a prohibition in relation to animals which fulfil the requirements laid down in Article 2 of the directive?
  - (b) If so, can the individual Member State be left to define "impairment of the pedigree" and "hereditary defects"?

**Question 1**

- 24 By its first question the national court essentially asks whether Article 30 of the Treaty or Directive 87/328 precludes national rules under which authorisation is required for insemination activities concerning bovine animals, in particular the distribution of and insemination with semen.
- 25 The Swedish, French, Finnish and Norwegian Governments submit that while the conditions governing the importation of bovine semen have been harmonised by Directives 77/504 and 87/328, those directives do not regulate the conditions of insemination or the training of inseminators. National rules on the point are compatible with Articles 30 and 36 of the EC Treaty where their purpose is not to regulate trade in semen between Member States but to protect animal health by ensuring in particular that inseminators possess the knowledge which enables them to satisfy the requirements of that protection.
- 26 The Commission submits, on the other hand, that Article 2 of Directive 87/328 precludes national rules which require authorisation for insemination with the semen of pure-bred bovine animals from another Member State, where the authorisation pursues an objective other than ascertaining the qualifications of the persons handling the semen and, in particular, involves a decision on the reasonableness of insemination with the semen of a given breed of cattle. According to the Commission, the Swedish provisions on the obligation to report any difficult calvings suggest that there is such an objective.
- 27 It should be borne in mind here that, according to settled case-law (see, in particular, Case 8/74 *Procureur du Roi v Dassonville* [1974] ECR 837, paragraph 5), all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.

- 28 However, as the Court has held, an obligation on all traders to have their products distributed by a method authorised under national rules which apply without distinction as to the origin of the products in question, and so do not affect the marketing of products from other Member States differently from that of domestic products, does not fall within the scope of Article 30 of the Treaty (Case C-387/93 *Banchero* [1995] ECR I-4663, paragraphs 37 and 44).
- 29 With respect in particular to the conditions of acceptance for breeding of pure-bred breeding animals of the bovine species and their semen, they have been harmonised, with a view to eliminating zootechnical barriers to the free movement of bovine semen, by Directives 77/504 and 87/328 (see Case C-17/94 *Gervais and Others* [1995] ECR I-4353, paragraph 32). It follows that a requirement whose purpose or effect is to control or verify imports of bovine semen by reference to zootechnical or pedigree considerations could be laid down only in conformity with those directives.
- 30 Having regard to that harmonisation, the requirement of authorisation for insemination activities may not be used for the purpose of controlling the genetic quality of breeding animals in a manner not provided for in the directives.
- 31 The answer to the first question must therefore be that Article 30 of the Treaty and Article 2(1) of Directive 87/328 do not preclude national rules under which authorisation is required for the distribution of and insemination with semen of pure-bred breeding animals of the bovine species from another Member State, provided that the sole purpose of that authorisation is to ensure that the person authorised possesses the necessary qualifications for the operation intended.

**Question 2**

- 32 By its second question the national court essentially asks whether Article 30 or Directive 87/328 precludes national rules prohibiting or subjecting to certain conditions the insemination and breeding of bovine animals where those activities are liable, in the opinion of the competent national authorities, to entail suffering for animals or affect their natural behaviour, or where the breed in question is regarded by those national authorities as carrying genetic defects.
- 33 It appears from the order for reference that that question has been raised in the context of a dispute concerning the Belgian Blue breed. It is common ground that bulls of that breed have been accepted for artificial insemination in Belgium on the basis of tests carried out in accordance with Decision 86/130, referred to in the second indent of Article 2(1) of Directive 87/328.
- 34 The Swedish, Finnish and Norwegian Governments consider that, despite the harmonisation carried out by Directive 87/328, it is still possible to rely on grounds of animal health protection within the meaning of Article 36 of the Treaty in order to prohibit the import of semen of breeding animals carrying the muscular hypertrophy gene. The Swedish Government notes that muscular hypertrophy produces a number of undesirable characteristics, including inadequate development of various organs, sensitivity to stress and proportionally weaker bone structure. Calves whose parents both carry the muscular hypertrophy gene most often have to be delivered by Caesarean section, which causes unnecessary suffering for the mother and requires treatment with large doses of antibiotics.
- 35 Those Governments submit that the frequent use of Caesarean sections in calving is incompatible with the Protocol of amendment to the European Convention for the Protection of Animals kept for Farming Purposes (European Treaty Series 145). Those two instruments have been approved on behalf of the Community, the convention by Council Decision 78/923/EEC of 19 June 1978 (OJ 1978 L 323, p. 12)

and the protocol of amendment by Council Decision 92/583/EEC of 14 December 1992 (OJ 1992 L 395, p. 21), although the latter is not yet in force. The Recommendation concerning Cattle adopted by the Standing Committee of the European Convention at its 17th session (21 October 1988) also opposes that method of calving. Point 13 of Appendix B to that recommendation, containing special provisions on cows and heifers, provides that Caesarean sections should be performed only in the interests of the animals concerned and not as routine measures.

- 36 Mr Nilsson and the Belgian and French Governments submit, on the other hand, that since the zootechnical and pedigree conditions applicable to trade in pure-bred bovine animals have been fully harmonised by Directives 77/504 and 87/328, a Member State may no longer resist the marketing of bovine semen from another Member State on grounds of protection of animal health or considerations relating to genetic characteristics of animals.
- 37 As regards the argument concerning suffering caused to animals, the Belgian Government refers to the explanatory report to the Protocol of amendment to the European Convention for the Protection of Animals kept for Farming Purposes, which states that the new Article 3 of that convention, inserted by the protocol of amendment, which prohibits breeding procedures which cause or are likely to cause suffering or injury to the animals, does not prevent breeding procedures which require operations such as Caesarean sections which are not likely to cause lasting harm. The prohibition by Sweden of using semen from Belgian Blue bulls is thus the result of an incorrect interpretation of the concept of the prohibition of breeding procedures likely to cause suffering.
- 38 The French and Belgian Governments further observe that the muscular hypertrophy gene is not a genetic defect, that is, a characteristic which is incompatible with the survival and reproduction of the breed. That is confirmed by the everyday reality of Belgian cattle farming. The French Government also states that if it were

a genetic defect, it should have been published, in accordance with the annex to Decision 86/130.

- 39 According to the Commission, the aspect of protection of animals on acceptance for breeding has not been the subject of Community harmonisation and a Member State may still have recourse to Article 36 of the Treaty in cases where the result of a cross requires immediate protection of the mother and/or the offspring. However, the circumstances described by the national court do not appear to justify an exception, as Caesarean deliveries are not the rule for calvings of the Belgian Blue breed. Moreover, under the Protocol of amendment to the European Convention for the Protection of Animals kept for Farming Purposes, Caesarean sections are not regarded as permanent suffering.
- 40 The Commission also pointed out at the hearing that the proposal for a directive (Proposal for a Council Directive concerning the protection of animals kept for farming purposes, COM(92) 192 final, OJ 1992 C 156, p. 11) implementing *inter alia* the Standing Committee's Recommendation concerning Cattle has not yet been adopted by the Council.
- 41 As the Court has already held, the zootechnical and pedigree conditions relating to intra-Community trade in bovine semen have been fully harmonised under Directives 87/328 and 91/174 (Case C-323/93 *Centre d'Insémination de la Crespelle v Coopérative de la Mayenne* [1994] ECR I-5077, paragraph 33). It follows from that harmonisation that a Member State may not obstruct the use in its territory of the semen of pure-bred bulls where they have been accepted for artificial insemination in another Member State on the basis of tests carried out in accordance with Decision 86/130.
- 42 It is common ground that Belgian Blue bulls have been accepted for artificial insemination in Belgium on the basis of tests carried out in accordance with Decision 86/130.

- 43 The characteristics mentioned by the Swedish national authorities as likely to entail suffering for bovine animals of the Belgian Blue breed or to affect their behaviour are inherent in their genetic heritage. In particular, it is the specific muscular hypertrophy gene which produces a muscular mass which is large in comparison to the animals' internal organs or bones and results in the more frequent use of Caesarean sections in calving.
- 44 It therefore necessarily follows that those characteristics were taken into consideration when the genetic value of the Belgian Blue breed was assessed in accordance with the method laid down in the annex to Decision 86/130.
- 45 The national authorities of a Member State of import therefore may not obstruct the use of semen of bulls of the Belgian Blue breed on grounds of the protection of animals.
- 46 With respect, second, to the existence of genetic defects, these are taken into consideration in the genetic assessment of pure-bred breeding animals of the bovine species and the system of recognition of acceptance for artificial insemination in a Member State, since the annex to Decision 86/130, as amended by Decision 94/515, provides that they are to be published.
- 47 It follows that the genetic peculiarities and defects of an animal may be defined only in the Member State in which the breed of cattle has been accepted for artificial insemination, by the bodies officially authorised to determine those characteristics, in agreement with the breeders' organisations or associations which maintain herd-books for pure-bred breeding animals of the bovine species.

- 48 The national authorities of a Member State of import therefore may not prevent the use of the semen of a breeding animal of the bovine species of a breed which has been accepted for artificial insemination on the ground that they regard that breed as carrying a genetic defect.
- 49 As to the Protocol of amendment to the European Convention for the Protection of Animals kept for Farming Purposes, that protocol has not yet entered into force and thus has no binding effect. As to the Recommendation concerning Cattle of 1988, while the Court has already held that it does not contain legally binding obligations for the Community (Case C-1/96 *R v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming* [1998] ECR I-1251, paragraph 36), it is an act adopted on the basis of a convention approved by the Community, and as such may be of use in interpreting the provisions of the convention (see Case C-188/91 *Deutsche Shell v Hauptzollamt Hamburg-Harburg* [1993] ECR I-363, paragraph 18).
- 50 However, it does not appear from the wording of the Recommendation that it should be interpreted as precluding the keeping and use of breeds of cattle with muscular hypertrophy, or, more particularly, the practice of calvings assisted if necessary by Caesarean section.
- 51 The answer to the second question must therefore be that the second indent of Article 2(1) of Directive 87/328 precludes national rules which prohibit or subject to authorisation the use in the territory of that Member State of semen from bulls of the Belgian Blue breed, where they have been accepted for artificial insemination in another Member State on the basis of tests carried out in accordance with Decision 86/130. The national authorities of the Member State of import are not entitled to reject the use of semen of that breed on the ground that it carries the

muscular hypertrophy gene, or that use of the semen would be likely to entail suffering for the animals or affect their natural behaviour, or that the breed is regarded by those national authorities as carrying genetic defects.

### Question 3

- 52 By its third question the national court asks first whether the preamble to Directive 87/328 authorises a Member State to prohibit or subject to authorisation the use in its territory of semen from pure-bred bulls which have been accepted for artificial insemination in another Member State on the basis of tests carried out in accordance with Decision 86/130 but are regarded in the Member State of import as having an undesirable pedigree. If that part of the third question is answered in the affirmative, the national court asks whether it is for a single Member State to define 'impairment of the pedigree' and 'hereditary defects'.
- 53 The passage referred to by the national court is the fourth recital in the preamble to Directive 87/328:

'Whereas artificial insemination constitutes an important technique for increasing the use of the best breeders and, hence, for improving the bovine species; whereas in so doing, however, any impairment of the pedigree must be avoided, particularly with regard to male breeders, which must possess all guarantees of their genetic value and of their freedom from hereditary defects'.

- 54 On this point, it must be stated that the preamble to a Community act has no binding legal force and cannot be relied on as a ground for derogating from the actual provisions of the act in question.
- 55 Besides, a reading of the fourth recital in the preamble to Directive 87/328, in which the expressions used in the question appear, does not show any contradiction between that recital and the actual provisions of the directive.
- 56 It is precisely the system of acceptance for artificial insemination on the sole basis of tests carried out in accordance with Decision 86/130 by bodies approved by the competent authorities of the Member States which aims to avoid impairment of the pedigree of cattle breeds caused by the acceptance for insemination of male breeders which do not possess all guarantees as to their genetic value and freedom from hereditary defects.
- 57 In those circumstances, the answer to the first part of the third question must be that the preamble to Directive 87/328 does not authorise a Member State to prohibit or subject to authorisation the use in its territory of semen from pure-bred bulls which have been accepted for artificial insemination in another Member State on the basis of tests carried out in accordance with Decision 86/130 but are regarded by the national authorities of the Member State of import as having an undesirable pedigree.
- 58 Having regard to the answer to the first part of the third question, there is no need to answer the second part.

## Costs

- 59 The costs incurred by the Swedish, Belgian, French, Finnish and Norwegian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

### THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Helsingborgs Tingsrätten by order of 28 April 1997, hereby rules:

- 1) Article 30 of the EC Treaty and Article 2(1) of Council Directive 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species do not preclude national rules under which authorisation is required for the distribution of and insemination with semen of pure-bred breeding animals of the bovine species from another Member State, provided that the sole purpose of that authorisation is to ensure that the person authorised possesses the necessary qualifications for the operation intended.
- 2) The second indent of Article 2(1) of Directive 87/328 precludes national rules which prohibit or subject to authorisation the use in the territory of that Member State of semen from bulls of the Belgian Blue breed, where they have been accepted for artificial insemination in another Member State on the basis of tests carried out in accordance with Commission Decision 86/130/EEC

of 11 March 1986 laying down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species. The national authorities of the Member State of import are not entitled to reject the use of semen of that breed on the ground that it carries the muscular hypertrophy gene, or that use of the semen would be likely to entail suffering for the animals or affect their natural behaviour, or that the breed is regarded by those national authorities as carrying genetic defects.

- 3) The preamble to Directive 87/328 does not authorise a Member State to prohibit or subject to authorisation the use in its territory of semen from pure-bred bulls which have been accepted for artificial insemination in another Member State on the basis of tests carried out in accordance with Decision 86/130 but are regarded by the national authorities of the Member State of import as having an undesirable pedigree.

Jann

Moitinho de Almeida

Gulmann

Sevón

Wathelet

Delivered in open court in Luxembourg on 19 November 1998.

R. Grass

J.-P. Puissochet

Registrar

President of the Fifth Chamber