

Case C-89/21

Request for a preliminary ruling

Date lodged:

12 February 2021

Referring court:

Lietuvos vyriausiasis administracinis teismas (Lithuania)

Date of the decision to refer:

10 February 2021

Appellant:

‘Romega’ UAB

Respondent:

Valstybinė maisto ir veterinarijos tarnyba

[OMISSIS] [the numbers of the administrative case and of the present proceedings are indicated]



LIETUVOS VYRIAUSIASIS ADMINISTRACINIS TEISMAS

(SUPREME ADMINISTRATIVE COURT OF LITHUANIA)

ORDER

10 February 2021

[OMISSIS]

The present Chamber of the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) [OMISSIS] [the names of the judges are indicated] has examined the administrative proceedings relating to the appeal brought against the judgment of the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court) of 2 July 2019 in the administrative

proceedings relating to the complaint brought by [OMISSIS] the private limited company Romega against the respondent, the Valstybinė maisto ir veterinarijos tarnyba (State Food and Veterinary Service), concerning the annulment of decisions.

The present Chamber

has found as follows:

I.

- 1 The dispute in the proceedings between [OMISSIS] the private limited company Romega ('the appellant') and [OMISSIS] the Valstybinė maisto ir veterinarijos tarnyba (State Food and Veterinary Service) ('the respondent') has arisen in respect of the validity and legality of Decision No 33SV-68 of the Kauno valstybinė maisto ir veterinarijos tarnyba (Kaunas State Food and Veterinary Service) ('the Kaunas SFVS') of 12 April 2019 'On the application of measures to limit the placement of product(s) on the market' ('the Decision') and the respondent's Order No MIPN-37 of 4 April 2019 in the proceedings 'Concerning the infringement of the Law on Food of the Republic of Lithuania by 'Romega' UAB' ('the Order'). The Decision prohibited the placement of an unsafe product/unsafe products on the market and the appellant was obliged to recall [it (them)] [OMISSIS] from consumers, to withdraw [OMISSIS] it/them from the market and to destroy it/them [OMISSIS]. The Order imposed a fine of EUR 540 on the appellant for the infringement of Article 7(1) of the Law on Food of the Republic of Lithuania.

Legal context: EU law

- 2 Article 14 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ('Regulation No 178/2002') [OJ 2002 L 31, p. 1] sets out rules governing food safety requirements. Paragraph 1 of that article provides that '[f]ood shall not be placed on the market if it is unsafe'. According to points (a) and (b) of paragraph 2 of that article, '[f]ood shall be deemed to be unsafe if it is considered to be: (a) injurious to health; (b) unfit for human consumption'. [Or. p. 2]
- 3 According to Article 14(4)(a) of Regulation No 178/2002, '[i]n determining whether any food is injurious to health, regard shall be had: (a) not only to the probable immediate and/or short-term and/or long-term effects of that food on the health of a person consuming it, but also on subsequent generations'. Article 3.14 of Regulation No 178/2002 defines the term 'hazard', stating that this 'means a biological, chemical or physical agent in, or condition of, food or feed with the potential to cause an adverse health effect'. According to paragraph 5 of [Article

14], ‘[i]n determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay’.

- 4 Article 14(8) of Regulation No 178/2002 provides that ‘[c]onformity of a food with specific provisions applicable to that food shall not bar the competent authorities from taking appropriate measures to impose restrictions on it being placed on the market or to require its withdrawal from the market where there are reasons to suspect that, despite such conformity, the food is unsafe’.
- 5 [OMISSIS] Point 1 of Part E, relating to specific requirements concerning fresh meat, of Annex II (‘Control of zoonoses and zoonotic agents listed in Annex I’) to Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents (‘Regulation No 2160/2003’) [OJ 2003 L 325, p. 1] reads: ‘[f]rom 1 December 2011, fresh poultry meat from animal populations listed in Annex I shall meet the relevant microbiological criterion set out in to Row 1.28 of Chapter 1 of Annex I to Commission Regulation (EC) No 2073/2005.’
- 6 Recitals 1 to 3 of Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (‘Regulation No 2073/2005’) [OJ 2005 L 338, p. 1] state that ‘[a] high level of protection of public health is one of the fundamental objectives of food law, as laid down in Regulation (EC) No 178/2002. ... Microbiological hazards in foodstuffs form a major source of food-borne diseases in humans. Foodstuffs should not contain micro-organisms or their toxins or metabolites in quantities that present an unacceptable risk for human health. Regulation (EC) No 178/2002 lays down general food safety requirements, according to which food must not be placed on the market if it is unsafe. Food business operators have an obligation to withdraw unsafe food from the market. In order to contribute to the protection of public health and to prevent differing interpretations, it is appropriate to establish harmonised safety criteria on the acceptability of food, in particular as regards the presence of certain pathogenic micro-organisms.’
- 7 The first paragraph of Article 1 of Regulation No 2073/2005 provides that ‘...[t]he competent authority shall verify compliance with the rules and criteria laid down in this Regulation in accordance with Regulation (EC) No 882/2004, without prejudice to its right to undertake further sampling and analyses for the purpose of detecting and measuring other micro-organisms, their toxins or metabolites, either as a verification of processes, for food suspected of being unsafe, or in the context of a risk analysis’.

- 8 Article 3(1) of Regulation No 2073/2005 provides that food business operators must ensure that foodstuffs comply with the relevant microbiological criteria set out in Annex I. Row 1.28 of Chapter 1 ('Food safety criteria') of that annex provides:

'1.28.	<i>Salmonella</i>	5	0	Absence	EN/ISO 6579	Products
Fresh	<i>Typhimurium</i> ⁽²¹⁾			in 25 g	(for	placed on
poultry	<i>Salmonella</i>				detection)	the market
meat ⁽²⁰⁾	<i>Enteritidis</i>				White-	during
					Kaufmann-	their shelf-
					Le Minor	life
					scheme (for	
					serotyping)	

⁽²⁰⁾ This criterion shall apply to fresh meat from breeding flocks of *Gallus*, laying hens, broilers and breeding and fattening flocks of turkeys.

⁽²¹⁾ As regards monophasic *Salmonella Typhimurium* only 1,4,[5],12:i:- is included.'

- 9 Recitals 7 to 10 of Commission Regulation (EU) No 1086/2011 of 27 October 2011 amending Annex II to Regulation (EC) No 2160/2003 of the European Parliament and of the Council [OJ 2011 L 281, p. 7] [Or. p. 3] and Annex I to Commission Regulation (EC) No 2073/2005 as regards *salmonella* in fresh poultry meat read as follows: '[i]n the interests of consistency of Union legislation, it is appropriate to amend the specific requirements concerning fresh poultry meat set out in Part E of Annex II to Regulation (EC) No 2160/2003 and to introduce detailed rules of the salmonella criterion in Annex I to Regulation (EC) No 2073/2005. ... The application of the criterion to all salmonella serotypes before a notable reduction of the prevalence of salmonella in flocks of broilers and turkeys has been demonstrated may result in a disproportionate economic impact for the industry. Chapter 1 of Annex I to Regulation (EC) No 2073/2005 should therefore be amended. ... approximately 80% of human salmonellosis cases are caused by *Salmonella Enteritidis* and *Salmonella Typhimurium* ... Poultry meat remains a major source of human salmonellosis. ... Setting a criterion for *Salmonella Enteritidis* and *Salmonella Typhimurium* would provide the best balance between reducing human salmonellosis attributed to the consumption of poultry meat and the economic consequences of the application of that criterion. ...'.

Legal context: National law

- 10 Article 4(1) of the Law on Food of the Republic of Lithuania ('the Law on Food') provides that '[f]ood and materials and articles intended to come into contact with food that are placed on the market must meet safety, quality and handling requirements provided for by this Law and by other legislative measures. Safety of food shall be determined in accordance with the criteria set out in Article 14 of

Regulation (EC) No 178/2002. Safety of materials and articles intended to come into contact with food shall be determined in accordance with the criteria set out in Article 3(1) of Regulation (EC) No 1935/2004'. Point 1 of paragraph 2 of the that article provides that '[f]ood and materials and articles intended to come into contact with food must meet the following basic requirements: (1) food must be of such composition and quality as to make it suitable for human consumption; it must not be contaminated with chemical, physical, microbial or other contaminants to a greater degree than is permitted by legislation; it must also be in conformity with the mandatory safety and quality requirements'.

- 11 Article 7(1) of the Law on Food provides that '[f]ood business entities and producers or suppliers of articles and materials intended to come into contact with food must place on the market safe food and materials and articles intended to come into contact with food'.
- 12 Article 2(11) of the Law on Food provides that '[s]afety shall mean the totality of requirements laid down by this Law and other legislation for food properties and the handling of food, ensuring that the consumption of food under normal conditions established by the producer or reasonably foreseeable conditions of use, including long durability, does not present any risk or only the minimum risks for consumers' health or life, or that it will not be higher than that established by legal acts as acceptable and consistent with a high level of protection for the safety of consumers'.
- 13 Article 7(3) of the Law on Food provides that '[f]ood business entities or producers or suppliers of articles and materials intended to come into contact with food must comply with the requirements established in this Law and other legislation, orders and instructions of the State Food and Veterinary Service'. Article 11(2) of the Law provides that '[t]he Government authority, namely the State Food and Veterinary Service, shall inspect foodstuffs in order to ensure that the food intended for both the domestic market and export is safe, adequately labelled, does not adversely affect consumers' interests, and that it meets the requirements laid down by this Law and other legislative measures. Control shall be exercised in accordance with the principle that food safety is an unconditional priority for human health'.

Relevant facts

- 14 On 16 October 2018, the Valstybinės maisto ir veterinarinės tarnybos Klaipėdos valstybinė maisto ir veterinarinės tarnyba (Klaipėda State Food and Veterinary Service of the State Food and Veterinary Service) ('the Klaipėda SFVS') published an urgent notice regarding unsafe food and animal feed [OMISSIS], which stated that pathogenic micro-organisms, namely *Salmonella Kentucky*, had been found in chicken meat imported from Poland. Responding to the notice received [OMISSIS], on 19 October 2018, the Kaunas SFVS conducted an unannounced inspection, during which it was found that the appellant had placed on the market the following food products of a Polish producer: chilled chicken

broilers, chilled chicken broiler fillets, fresh chicken broiler thighs, [Or. p. 4] and fresh chicken broiler calves in which pathogenic micro-organisms of the type *Salmonella Kentucky* had been detected. The products had been distributed to food-processing entities in the Republic of Lithuania. On 19 October 2018, the Kaunas SFVS adopted Decision No 33SV-179 ‘On the application of measures to limit the placement of product(s) on the market’, by which it prohibited the appellant from placing unsafe products on the market and obliged it to remove and destroy them. The investigation was completed when the Kaunas SFVS drew up a report which stated that the appellant, by placing on the market the aforementioned food products, in which pathogenic micro-organisms of the type *Salmonella Kentucky* had been detected, had infringed the requirements of Article 14(1) and Article 14(2)(a) and (b) of Regulation No 178/2002 as well as Article 4(1), Article 4(2)(1) and Article 7(1) of the Law on Food. In the light of the foregoing, on 4 April 2019 the respondent adopted [OMISSIS] the Order [OMISSIS] [the grounds for the Order, the provisions infringed and the penalty imposed are again indicated].

- 15 On the basis of the results of an investigation report of the National Food and Veterinary Risk Assessment Institute of 8 April 2019 (*Salmonella Infantis* had been detected in the investigated sample) and an urgent notice of 10 April 2019 regarding unsafe food and feed [OMISSIS], on 12 April 2019 the Kaunas SFVS adopted the contested Decision [OMISSIS] [the title of the decision is again indicated]. It was established in the Decision that the food products of a Polish producer placed on the market by the appellant (fresh chicken broiler fillet, fresh chicken broiler quarters, and fresh chicken broilers) failed to meet the requirements of Article 14(1) and Article 14(2)(a) and (b) of Regulation No 178/2002 as well as those of Article 4(1) and Article 4(2)(1) of the Law on Food. In order to prevent the unsafe products from reaching consumers or livestock, and acting pursuant to Article 54 of Regulation No 882/2004 and Articles 14, 16 and 17 of Regulation No 178/2002, [OMISSIS] the Kaunas SFVS, by the Decision, prohibited the appellant from placing the unsafe products on the market, required it to withdraw such products from consumers and to remove them from the market and destroy them.
- 16 The appellant brought an action before the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court) with a request that it annul the Order adopted by the respondent and the Decision adopted by the Kaunas SFVS. On 2 July 2019, the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court) delivered a judgment rejecting the appellant’s complaint. The appellant lodged an appeal with the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania), requesting, inter alia, that it submit a request to the Court of Justice of the European Union for an interpretation of Articles 7(1), 14(1) and 14(2) of Regulation (EC) No 178/2002 in the context of the powers of national supervisory authorities under Regulation (EC) No 2073/2005.

The present Chamber

Finds as follows:

II.

- 17 The present case raises questions concerning the interpretation of Article 1 of [OMISSIS] [R]egulation [OMISSIS] [OMISSIS] No 2073/2005 [OMISSIS] [the title of the regulation is again indicated] and Article 14(8) of [OMISSIS] [R]egulation [OMISSIS] [OMISSIS] No 178/2002 [OMISSIS] [the title of the regulation is again indicated]. It is therefore necessary to request the Court of Justice to deliver a preliminary ruling [OMISSIS] [reference to a provision of national law]. **[Or. p. 5]**
- 18 In the main proceedings, taking into account the fact that pathogenic micro-organisms of the type *Salmonella Kentucky* had been detected in the fresh poultry meat supplied by the appellant, the respondent determined that those food products failed to meet the requirements of Article 14(1) and Article 14(2)(a) and (b) of Regulation No 178/2002 as well as those of Article 3 of Regulation No 2073/2005; therefore, by the Order, it found that there had been a breach of Article 7 of the Law on Food and imposed a penalty. The Kaunas SFVS, by its Decision, taking into account the fact that pathogenic micro-organisms of the type *Salmonella Infantis* had been detected in the fresh poultry meat supplied by the appellant, held that the aforementioned food products failed to meet the requirements of Article 14(1) and Article 14(1)(a) and (b) of Regulation No 178/2002 as well as those of Article 4(1), Article 4(2)(1) and Article 7(1) of the Law on Food. It accordingly prohibited the appellant from placing those products on the market, required it to withdraw such products from consumers, remove them from the market and destroy them.
- 19 The appellant, referring to Row 1.28 of Chapter 1 of Annex I to [OMISSIS] [R]egulation [OMISSIS] [OMISSIS] No 2073/2005 [OMISSIS] [the title of the regulation is again given] amended by [OMISSIS] [R]egulation [OMISSIS] No 1086/2011, essentially states that the aforementioned provision prohibits only *Salmonella Enteritidis* and *Salmonella Typhimurium* serotypes in fresh poultry meat, and for that reason if any pathogenic micro-organisms other than those specified in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 (in this specific case, *Salmonella Kentucky* and *Salmonella Infantis*) are detected in such a category of food, such food should not be regarded as unsafe.
- 20 In this connection, the respondent points out that, according to Article 1 of Regulation No 2073/2005, it can verify compliance with the rules and criteria laid down in that regulation, without prejudice to its right, as the competent authority, to undertake further sampling and analyses for the purpose of detecting and measuring other micro-organisms, their toxins or metabolites, either as a verification of processes, for food suspected of being unsafe, or in the context of a risk analysis. In the light of the foregoing, the respondent takes the view that, pursuant to the provisions of that legislation, it has the right to perform tests to determine other *Salmonella* serotypes in the exercise of official control. The

respondent states that, irrespective of what *Salmonella* serotype is found during the investigation, it does not form a basis on which to state that a product is safe and can be supplied for human use if a pathogenic micro-organism other than those specified in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 is detected. The respondent states that it assesses each case of hazard to food safety and human health individually and, in order to prevent the placement of unsafe food on the market and, if such is placed on the market, to eliminate the hazard, first of all, follows the provisions of Regulation No 882/2004, Regulation No 178/2002, Regulation No 2073/2005 and other EU Regulations as well as the Law on Food and other national legislative measures and applies them in a systemic manner rather than separately.

- 21 The present Chamber, in assessing the relevant EU legal norms in this case, first of all draws attention to Regulation No 2160/2003, which is designed to ensure that proper and effective measures are taken to detect and control salmonella and other zoonotic agents at all relevant stages of production, processing and distribution in order to reduce their prevalence and the risk they pose to public health. Regulation No 2160/2003 covers, amongst other things, the adoption of targets for the reduction of the prevalence of specified zoonoses in animal populations and the adoption of rules concerning trade within the European Union and imports from third countries of certain animals and products thereof. Annex II to Regulation No 2160/2003 sets out specific measures to be taken for the control of the zoonoses and zoonotic agents listed in Annex I thereto. More specifically, point 1 of Part E of Annex II to Regulation No 2160/2003 (in the version that was in effect before the adoption of Regulation No 1086/2011) provides that, as from 12 December 2010, certain fresh poultry meat from animals listed in Annex I thereto may not be placed on the market for human consumption unless it meets the criterion: ‘Salmonella: not detected in 25 [grams]’.
- 22 In this context, Regulation No 2073/2005 is a relevant legal measure. First of all, it should be noted that recitals 1 to 3 of that regulation state that a high level of protection of public health is one of the fundamental objectives of food law, as laid down in Regulation No 178/2002. [OMISSIS] **[Or. p. 6]** [OMISSIS] [recitals 1 to 3 are again quoted] These recitals [OMISSIS] note that Regulation No 178/2002 lays down general food safety requirements, according to which unsafe food must not be placed on the market, and food business operators are required to withdraw such food from the market.
- 23 In assessing the obligations imposed on food business operators, account should be taken of Article 3(1) of Regulation No 2073/2005, according to which it is those entities which must ensure that foodstuffs comply with the relevant microbiological criteria set out in Annex I to that regulation.
- 24 It should be noted that, prior to the adoption of Regulation No 1086/2011, which amended, inter alia, Annex I to Regulation No 2073/2005, Chapter 1 of Annex I to Regulation No 2073/2005, which establishes food safety criteria, did not distinguish fresh poultry meat as a separate category of food. Row 1.5 of Chapter

- 1 of that annex established food safety criteria applicable to minced meat and meat preparations made from poultry meat intended to be eaten cooked; Row 1.7 dealt with mechanically separated meat; Row 1.9 dealt with meat products made from poultry meat intended to be eaten cooked. According to Chapter 1 of Annex I to Regulation No 2073/2005 (in the version that was in force prior to the adoption of Regulation No 1086/2011), the aforementioned food categories had to be checked for *Salmonella* (without distinguishing any specific serotypes).
- 25 Upon the adoption of Regulation No 1086/2011 on 27 October 2011, Annex II to Regulation No 2160/2003 and Annex I to Regulation No 2073/2005 were amended. Recitals 7 to 10 of Regulation No 1086/2011 reveal that the appropriateness of establishing the detailed rules governing the application of *Salmonella* requirements set out in Annex I to Regulation No 2073/2005 was based on the objective of the consistency of EU legislation. [OMISSIS] [the content of recitals 7 to 10 is again set out].
- 26 Article 1 of Regulation No 1086/2011 amended point 1 of Part E of Annex II to Regulation No 2160/2003 as follows: ‘1. ‘From 1 December 2011, fresh poultry meat from animal populations listed in Annex I shall meet the relevant microbiological criterion set out in Row 1.28 of Chapter 1 of Annex I to Commission Regulation (EC) No 2073/2005.’ Article 2 of Regulation No 1086/2011 amended Annex I to Regulation No 2073/2005 by inserting Row 1.28 and footnotes 20 and 21 in Chapter 1. According to this row, the requirements relating to *Salmonella Typhimurium* (as regards monophasic *Salmonella Typhimurium* only with the antigenic formula ...) and to *Salmonella Enteritidis* are to apply to fresh meat from breeding flocks of *Gallus gallus*, laying hens, broilers and breeding and fattening flocks of turkeys.
- 27 In other words, Row 1.28 of Chapter 1 of Annex 1 to [OMISSIS] [R]egulation [OMISSIS] [OMISSIS] No 2073/2005 [OMISSIS] [the title of the regulation is again indicated], amended by [OMISSIS] [R]egulation [OMISSIS] No 1086/2011, establishes fresh poultry meat as a separate food category and the specific requirements relating to two serotypes applicable to it: *Salmonella Typhimurium* and *Salmonella Enteritidis*. Therefore, it is clear that fresh poultry meat must specifically comply with the microbiological criteria established in the aforementioned provision. The case-law of the Court of Justice of the European Union makes it clear that fresh poultry meat from domestic animal populations must satisfy the microbiological criterion mentioned in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 at all stages of distribution, including the retail sale stage (judgment of the Court of Justice of 13 November 2014, *Ute Reindl*, C-443/13, EU:C:2014:2370, paragraph 30). [Or. p. 7]
- 28 Under such circumstances, especially taking into account the purposes of the amendments to Regulation No 2160/2003 and Regulation No 2073/2005 indicated in the preamble to Regulation No 1086/2011 relating to the objective of providing the best balance between reducing human salmonellosis attributed to the consumption of poultry meat and the economic consequences of the application of

that criterion, the present Chamber has doubts as to the discretion of the competent supervisory authorities of Member States to check this food category in respect of contamination with *Salmonella* serotypes other than those specified in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005.

- 29 On the other hand, it should be noted that, according to point (a) of Article 6 of the Treaty on the Functioning of the European Union, the protection and improvement of human health are attributed to the European Union's ancillary competence. This type of competence is characterised by the fact that the actions of the European Union in the areas attributed to such competence are limited to supporting, coordinating and supplementing the actions of the EU countries. In this context, the present Chamber takes into account the fact that, irrespective of the requirements established in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 in respect of only two *Salmonella* serotypes, Article 1 of that regulation, which defines its subject matter and scope, indicates clearly that that regulation applies without prejudice to the right of the competent authority 'to undertake further sampling and analyses for the purpose of detecting and measuring other micro-organisms, their toxins or metabolites, either as a verification of processes, for food suspected of being unsafe, or in the context of a risk analysis'.
- 30 In this context, attention should also be paid to the provisions of Regulation No 178/2002, which strengthened EU food and feed safety rules. Article 14(1) of that regulation prohibited the placing of unsafe food on the market. According to Article 14(2)(a) and (b), food must be deemed to be unsafe if it is considered to be: (a) injurious to health; (b) unfit for human consumption. It should be noted that the Court of Justice has stated in its case-law that food is not to be placed on the market if it is unsafe, namely if it is injurious to health or unfit for human consumption (judgement of the Court of Justice of 19 January 2017, *Queisser Pharma GmbH & Co*, C-282/15, EU:C:2017:26, paragraph 44.). According to Article 14(4)(a) of Regulation No 178/2002, in determining whether any food is injurious to health, regard must be had: (a) not only to the probable immediate and/or short-term and/or long-term effects of that food on the health of a person consuming it, but also to the effects on subsequent generations. In this regard, it should be noted that Article 3.14 of that regulation defines the term 'hazard' as a biological, chemical or physical agent in, or condition of, food or feed with the potential to cause an adverse health effect. Furthermore, Article 14(5) of Regulation No 178/2002 states that contamination is one of the criteria which should be taken into account in determining whether any food is unfit for human consumption.
- 31 In the opinion of the present Chamber, Article 14(8) of Regulation No 178/2002 [OMISSIS] [Article 14(8) is again quoted] is particularly relevant with regard to the discretion available to the competent supervisory authorities. The Court of Justice has not interpreted this provision in its case-law, and for that reason the present Chamber has questions concerning clarification of the scope of the discretion of the authorities established in that provision to determine that a food

product which satisfies the requirements in Chapter 1 of Annex I to Regulation No 2073/2005 is to be regarded as being unsafe.

- 32 In other words, taking into account point (a) of Article 6 of the Treaty on the Functioning of the European Union, Article 1 of Regulation No 2073/2005 and Article 14(8) of Regulation No 178/2002, the present Chamber seeks clarification as to whether the competent supervisory authorities, under circumstances such as those in the present case, may determine that fresh poultry meat which complies with the requirements established in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 fails to satisfy the requirements of Article 14(1) and (2) of Regulation No 178/2002.

III.

- 33 The Lietuvos vyriausiosios administracinės teisėsaugos (Supreme Administrative Court of Lithuania) is the court of final instance for administrative cases [OMISSIS] [reference to a provision of national procedural law]; therefore, in a case where a question arises on the interpretation of legislation adopted by the institutions of the European Union which must be examined in order for a decision **[Or. p. 8]** to be adopted in that case, it must refer the matter to the Court of Justice for a preliminary ruling (third paragraph of Article 267 TFEU [OMISSIS] [reference to a provision of national law]).
- 34 [OMISSIS]. The answer to the question set out in the operative part of this Order will be of crucial importance to the present case because it will establish unequivocally and explicitly, inter alia, the conditions governing the discretion of the competent supervisory authorities of a Member State, while ensuring the primacy of EU law, to decide that fresh poultry meat which meets the requirements established in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 fails to comply with the requirements of Article 14(1) and (2) of Regulation No 178/2002, and it will also create the preconditions for uniform case-law of national courts.

In view of the foregoing, [OMISSIS] [OMISSIS] [indication of national legal provisions], the present Chamber

hereby decides:

[OMISSIS] [reference to a procedural issue] [OMISSIS] to request the Court of Justice to give a preliminary ruling in the present case on the following question of significance for the present case:

Must Article 1 of Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs and Article 14(8) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in

matters of food safety be interpreted as conferring on the competent supervisory authorities of a Member State the discretion to determine that fresh poultry meat which meets the requirements set out in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 fails to satisfy the requirements of Article 14(1) and (2) of Regulation No 178/2002 in the case where a food product coming under that food category is contaminated by *Salmonella* serotypes other than those referred to in Row 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005, as has been established in the present case[?]

The present administrative proceedings are stayed pending receipt of the preliminary ruling from the Court of Justice of the European Union.

[OMISSIS] [indication of a procedural issue and the names of the judges]
[OMISSIS]

WORKING DOCUMENT