

The Commission maintains that:

- i) Article 5(1) imposes responsibility upon the employer in relation to *all* events adverse to the health and safety of his workers unless the very special circumstances of Article 5(4) can be invoked.
- ii) This is confirmed *inter alia* by the legislative history of the Directive and the express rejection of the inclusion of a 'so far as is reasonable practicable' clause by the Community legislator.
- iii) By way of contrast, the UK's legislation (as interpreted by the national courts) permits an employer to escape responsibility if he can prove that the sacrifice involved in taking further measures, whether in money, time or trouble, would be grossly disproportionate to the risk.
- iv) This 'balancing test' is apparently applied by the national courts in all cases and not only in the exceptional situations falling within Article 5(4) of the Directive.
- v) Further, the assessment of what is 'reasonably practicable' permits the incorporation of considerations of the cost (in financial terms) to the employer, contrary to Article 5(4) of the Directive as read in light of its 13th recital.

(¹) OJ L 183, p. 1.

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven te 's-Gravenhage by order of that court of 17 March 2005 in N.V. Raverco v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-129/05)

(2005/C 143/27)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven te 's-Gravenhage (Administrative Court for Trade and Industry) (Netherlands) of 17 March 2005, received at the

Court Registry on 21 March 2005, for a preliminary ruling in the proceedings between N.V. Raverco and Minister van Landbouw, Natuur en Voedselkwaliteit on the following questions:

1. Must the introduction to and subparagraph (a) of Article 17(2) of Directive 97/78/EC (¹) be so interpreted that the objection to the redispach of a consignment that does not satisfy the import conditions lies in the non-satisfaction of the Community conditions for import or in the conditions that apply at the destination outside the territories listed in Annex I to Directive 97/78/EC agreed with the person responsible for the load?
2. Must the introduction to and subparagraph (a) of Article 17(2) of Directive 97/78/EC, read in conjunction with Article 22(2) of Directive 97/78/EC and Article 5 of Regulation 2377/90/EEC (²), be so interpreted that in all cases in which any one of the checks provided for in Directive 97/78/EC indicates that a consignment of products is likely to constitute a danger to animal or human health this provision imperatively requires the destruction of the consignments of animal products concerned?
3. Must Article 22 of Directive 97/78/EC, in conjunction with Article 5 of Regulation 2377/90/EEC, be so interpreted that the mere fact that residues of a substance listed in Annex V to Regulation 2377/90/EC are found in a consignment means that the consignment in question is likely to constitute such a danger to animal or human health as to preclude redispach?
4. If the second question is answered in the negative, must Article 17(2) of Directive 97/78/EC be so interpreted that it also serves to protect the interests of the third country into which, after redispach, the consignment is to be imported, even if those interests do not also involve the protection of an interest that can be located in Member States of the EU?

(¹) Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ 1997 L 24, p. 9.)

(²) Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ L 224, p. 1).