



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

28 April 2022 *

(Reference for a preliminary ruling – Food law – Regulation (EC) No 2073/2005 – Microbiological criteria for foodstuffs – Article 1 – Annex I – Fresh poultry meat – Checks by the competent national authorities for the presence of the salmonella serotypes listed in point 1.28 of Chapter 1 of that annex – Checks for the presence of other pathogenic microorganisms – Regulation (EC) No 178/2002 – Article 14(8) – Discretion of the national authorities – Scope)

In Case C-89/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 10 February 2021, received at the Court on 12 February 2021, in the proceedings

‘Romega’ UAB

v

Valstybinė maisto ir veterinarijos tarnyba,

THE COURT (Eighth Chamber),

composed of N. Jääskinen, President of the Chamber, M. Safjan and N. Piçarra (Rapporteur),
Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ‘Romega’ UAB, by M. Endzinas, advokatas, and R. Čiupkevičius,
- the Lithuanian Government, by K. Dieninis and R. Dzikovič, acting as Agents,
- the Czech Government, by M. Smolek, J. Pavliš and J. Vlácil, acting as Agents,

* Language of the case: Lithuanian.

- the Danish Government, initially by M. Wolff, L. Teilgård and J. Nymann-Lindegren, and subsequently by M. Wolff, acting as Agents,
 - the Italian Government, by G. Palmieri, acting as Agent, and by L. Vignato, avvocato dello Stato,
 - the Hungarian Government, by M.Z. Fehér and K. Szíjjártó, acting as Agents,
 - the European Commission, by W. Farrell, I. Galindo Martín and A. Steiblyté, acting as Agents,
- having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1 and point 1.28 of Chapter 1 of Annex I to Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ 2005 L 338, p. 1), as amended by Commission Regulation (EU) No 1086/2011 of 27 October 2011 (OJ 2011 L 281, p. 7) ('Regulation No 2073/2005'), and of Article 14(1), (2) and (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 (OJ 2002 L 31, p. 1).
- 2 The request has been made in proceedings between 'Romega' UAB, a poultry meat wholesaler, and the Valstybinė maisto ir veterinarijos tarnyba (State Food and Veterinary Service, Lithuania; 'the Lithuanian authority') regarding the decision by that authority to impose a fine and order Romega to withdraw from the market poultry meat in which certain salmonella serotypes had been detected.

Legal context

Regulation No 178/2002

- 3 Article 1(1) of Regulation No 178/2002, entitled 'Aim and scope', provides:

'This Regulation provides the basis for the assurance of a high level of protection of human health and consumers' interest in relation to food, taking into account in particular the diversity in the supply of food including traditional products, whilst ensuring the effective functioning of the internal market. ...'
- 4 Article 14 of that regulation, headed 'Food safety requirements', reads:

'1. Food shall not be placed on the market if it is unsafe.'

2. Food shall be deemed to be unsafe if it is considered to be:
 - (a) injurious to health;
 - (b) unfit for human consumption.
3. In determining whether any food is unsafe, regard shall be had:
 - (a) to the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution, and
 - (b) to the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods.
4. In 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;
 - (b) to the probable cumulative toxic effects;
 - (c) to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers.
5. In 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.
...
7. Food that complies with specific Community provisions governing food safety shall be deemed to be safe in so far as the aspects covered by the specific Community provisions are concerned.
8. Conformity 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.
...'

Regulation No 2073/2005

- 5 Recitals 1 and 3 of Regulation No 2073/2005 state:
 - (1) 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]. Microbiological hazards in foodstuffs form a major source of food-borne diseases in humans.

...

(3) ... 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.'

6 Article 1 of that regulation, entitled 'Subject-matter and scope', provides:

'This Regulation lays down the microbiological criteria for certain micro-organisms and the implementing rules to be complied with by food business operators when implementing the general and specific hygiene measures ... The competent authority shall verify compliance with the rules and criteria laid down in this Regulation ... 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.

...'

7 Article 3(1) of that regulation, headed 'General requirements', requires food business operators to ensure that foodstuffs comply with the relevant microbiological criteria set out in Annex I. Chapter 1, entitled 'Food safety criteria', of that annex, as amended by Commission Regulation (EU) 2019/229 of 7 February 2019 (OJ 2019 L 37, p. 106), provides, in point 1.28 thereof:

'Food category	Micro-organisms/ their toxins, metabo- lites	Sampling plan ⁽¹⁾		Limits ⁽²⁾		Analytical refer- ence method ⁽³⁾	Stage where the criterion applies
		n	c	m	M		
1.28 Fresh poultry meat ⁽²⁰⁾	<i>Salmo- nella</i> Typhi- murium ⁽²¹⁾ <i>Salmo- nella</i> Enteriti- dis	5	0	Not detected in 25 g		EN ISO- 6579-1 (for detc- tion) White- Kauff- mann-Le Minor scheme (for serotyp- ing)	Products placed on the market during their shelf-life

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

Regulation No 1086/2011

8 Recitals 9 and 10 of Regulation No 1086/2011 are worded as follows:

- ‘(9) According to the Community Summary Report on trends and sources of zoonoses, and zoonotic agents and food-borne outbreaks in the European Union in 2008 [(EFSA Journal (2010); 8(1): 1496)] by the European Food Safety Authority approximately 80% of human salmonellosis cases are caused by *Salmonella enteritidis* and *Salmonella typhimurium* which is similar to preceding years. Poultry meat remains a major source of human salmonellosis.
- (10) 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. At the same time, it would encourage food business operators to take measures at previous stages of poultry production that may contribute to the reduction of all serotypes of salmonella with public health significance. Focusing on those two serotypes would also be consistent with the Union targets set for primary production of poultry.’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 9 On 19 October 2018, following the publication of an urgent notice stating that pathogenic *Salmonella Kentucky* microorganisms had been detected in fresh poultry meat imported from Poland, the Lithuanian authority conducted an inspection of Romega. During that inspection, that salmonella serotype was detected in fresh poultry meat that Romega had placed on the market. By order of 4 April 2019, that authority fined Romega EUR 540 for infringement of, inter alia, Article 14(1) and (2)(a) and (b) of Regulation No 178/2002.
- 10 By decision of 12 April 2019, the Lithuanian authority, after having identified the presence of *Salmonella Infantis* in fresh poultry meat placed on the market by Romega, prohibited that undertaking from continuing to place such meat on the market and ordered it to withdraw and destroy the meat that had already been placed on the market.
- 11 Romega brought an action before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) seeking annulment of the order of 4 April 2019 and of the decision of 12 April 2019. The action was dismissed by judgment of 2 July 2019, against which Romega appealed before the referring court. It claims, in essence, that point 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 prohibits the presence in fresh poultry meat only of *Salmonella Enteritidis* and *Salmonella Typhimurium*. According to Romega, the presence of other salmonella serotypes such as *Salmonella Kentucky* or *Salmonella Infantis* in that meat does not enable it to be regarded as unsafe food for the purposes of Article 14(1) and (2) of Regulation No 178/2002.
- 12 As for the Lithuanian authority, it contends that, given that its power to ensure compliance with the rules and criteria laid down in Regulation No 2073/2005 is, in accordance with Article 1 of that regulation, without prejudice to its right to undertake further samplings and analyses, it is competent to verify, in fresh poultry meat, the presence not only of the salmonella serotypes listed in point 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005, but also of the other

salmonella serotypes that are not listed in that point. The fact that the salmonella serotypes listed in that point 1.28 have not been detected does not automatically allow them to be regarded as safe for human consumption.

- 13 The referring court notes that, in order to comply with point 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005, fresh poultry meat must not contain either of the two salmonella serotypes listed in that point, namely *Salmonella Typhimurium* and *Salmonella Enteritidis*. However, as that criterion was introduced by Regulation No 1086/2011, that court is uncertain, having regard in particular to the objective set out in recital 10 of that latter regulation of reducing human salmonellosis attributed to the consumption of fresh poultry meat, as to the scope of the competent authorities' discretion to check for the presence, in that meat, of salmonella serotypes other than those listed that point 1.28 or of other pathogenic microorganisms.
- 14 In that connection, the referring court points out, first, that, although the criteria set out in that annex apply to the two salmonella serotypes only, Article 1 of Regulation No 2073/2005 states clearly that the competent authority can undertake further sampling and analyses for the purpose of detecting and measuring other microorganisms, their toxins or metabolites, either as a verification of processes, for food suspected of being unsafe, or in the context of a risk analysis. Second, that court observes that Article 14(1) of Regulation No 178/2002 prohibits unsafe food from being placed on the market, paragraph 8 of that article granting the competent authorities a broad discretion to that end.
- 15 In those circumstances, the Lietuvos vyriausiosios administracinės teisėsaugos apeliacinis skyrius (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 1 of [Regulation No 2073/2005] and Article 14(8) of [Regulation No 178/2002] 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 [point] 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 [point] 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005, as has been established in the present case?'

Consideration of the question referred

- 16 By its question, the referring court asks, in essence, whether Article 1 of Regulation No 2073/2005, read in conjunction with Article 14(8) of Regulation No 178/2002, must be interpreted as meaning that the competent authority of a Member State may regard as unsafe within the meaning of Article 14(1) and (2) of Regulation No 178/2002 the food category consisting in fresh poultry meat in which pathogenic microorganisms other than the salmonella serotypes listed in point 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 have been detected.
- 17 It must be borne in mind from the outset that Article 1 of Regulation No 2073/2005 lays down 'the microbiological criteria for certain micro-organisms' in the food sector and empowers competent authorities not only to verify compliance with those criteria, but also 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’.

- 18 It thus follows from that article, read in the light of recital 3 of Regulation No 2073/2005, that, although the microbiological criteria laid down by that regulation apply only to the pathogenic microorganisms listed in Annex I to that regulation, the competent authority is not required to restrict itself, when analysing foodstuffs, to verifying whether only those microorganisms are present.
- 19 In addition, although Article 3(1) of Regulation No 2073/2005 obliges food business operators to ensure that foodstuffs comply with the relevant microbiological criteria set out in Annex I to that regulation, that obligation cannot prevent competent authorities from searching for pathogenic microorganisms other than those listed in that annex, in accordance with the objective of a high level of protection of public health set out in recital 1 of that regulation. As the European Commission has emphasised in its written observations, in order to take account of the food safety criteria set out in Chapter 1 of that annex, food business operators must include, in the procedures they apply, systematic checks of contamination by certain microorganisms, although such an obligation does not mean that the pathogenic microorganisms covered by those criteria are the only ones unsafe for human health.
- 20 That analysis is borne out by Regulation No 178/2002, which lays down, in accordance with Article 1(1) thereof, the basic provisions of EU food law. Article 14(8) of that regulation provides expressly that ‘conformity 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’.
- 21 As for Article 14(1) and (2) of Regulation No 178/2002, it follows from those provisions that the placing on the market of any food injurious to health or unfit for human consumption must be prohibited (judgment of 19 January 2017, *Queisser Pharma*, C-282/15, EU:C:2017:26, paragraph 44).
- 22 In that context, Article 14(7) of that regulation specifies that the classification of food as safe pursuant to specific provisions of EU food safety law, such as those of Regulation No 2073/2005, applies only ‘in so far as the aspects covered by [those] provisions are concerned’.
- 23 Article 14(1), (2), (7) and (8) of Regulation No 178/2002 thus allows competent national authorities to take appropriate measures to impose restrictions on food being placed on the market or to require its withdrawal from the market, despite its conformity to specific provisions of EU law which are applicable to it, where those authorities have objective reasons to suspect that that food is unsafe. That provision, having regard to its importance for the attainment of a high level of protection of human health and consumer interests, in accordance with Article 1(1) of that regulation, must be interpreted broadly.
- 24 It follows that Regulation No 2073/2005 cannot be interpreted as preventing competent authorities, if presented with a category of food, such as fresh poultry meat, which is under the conditions described in the previous paragraph of this judgment, from adopting the appropriate measures referred to in Article 14(8) of Regulation No 178/2002.

- 25 In that connection, it is appropriate to add that it is apparent from recital 9 of Regulation No 1086/2011 that approximately 80% of human salmonellosis cases in 2008, like preceding years, were caused by *Salmonella Enteritidis* and *Salmonella Typhimurium*, and that poultry meat remains a major source of human salmonellosis. Recital 10 of that regulation nevertheless specifies that focusing on those two serotypes would, at the same time, encourage food business operators to take measures at previous stages of poultry production that may contribute to the reduction of all serotypes of salmonella with public health significance.
- 26 As the Lithuanian, Czech and Italian Governments and the Commission emphasise, in essence, even though the serotypes detected in the present case by the Lithuanian authority in fresh poultry meat, namely *Salmonella Kentucky* and/or *Salmonella Infantis*, appear to be less prevalent than *Salmonella Typhimurium* and *Salmonella Enteritidis*, the adverse health effect of the first two serotypes cannot, for all that, be ruled out.
- 27 It is for the competent national court to ascertain, pursuant to Article 14(8) of Regulation No 178/2002, as interpreted in paragraph 23 of the present judgment, whether the presence of those serotypes, which are not mentioned in point 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005, gives rise to a suspicion that the fresh poultry meat in question is unsafe, within the meaning of Article 14(2) to (5) of Regulation No 178/2002, and can justify the measures adopted by that authority as ‘appropriate measures’ taken on the basis of the former provision.
- 28 Having regard to the foregoing considerations, the answer to the question referred is that Article 1 of Regulation No 2073/2005, read in conjunction with Article 14(8) of Regulation No 178/2002, must be interpreted as meaning that the competent authority of a Member State may regard as unsafe within the meaning of Article 14(1) and (2) of Regulation No 178/2002 the food category consisting in fresh poultry meat in which pathogenic microorganisms other than the salmonella serotypes listed in point 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 have been detected.

Costs

- 29 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 1 of Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs, as amended by Commission Regulation (EU) No 1086/2011 of 27 October 2011, read in conjunction with 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, must be interpreted as meaning that the competent authority of a Member State may regard as unsafe within the meaning of Article 14(1) and (2) of Regulation No 178/2002 the food category consisting in fresh poultry meat in which pathogenic microorganisms other than the salmonella serotypes listed in point 1.28 of Chapter 1 of Annex I to Regulation No 2073/2005 have been detected.

[Signatures]