JUDGMENT OF THE COURT (Grand Chamber)

6 December 2005 *

In Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04,

REFERENCES for preliminary rulings under Article 234 EC, brought by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom) (C-453/03), by the Consiglio di Stato (Italy) (C-11/04 and C-12/04) and by the Rechtbank 's-Gravenhage (Netherlands) (C-194/04), by decisions of 23 October 2003, 11 November 2003 and 22 April 2004, received by the Court on 27 October 2003, 15 January 2004 and 26 April 2004 respectively, in the proceedings

The Queen, on the application of:

ABNA Ltd (C-453/03),

Denis Brinicombe,

BOCM Pauls Ltd,

Devenish Nutrition Ltd,

Nutrition Services (International) Ltd,

Primary Diets Ltd

* Languages of the cases: English, Italian and Dutch.

v

Secretary of State for Health,

Food Standards Agency,

Fratelli Martini & C. SpA (C-11/04),

Cargill Srl

v

Ministero delle Politiche Agricole e Forestali,

Ministero della Salute,

Ministero delle Attività Produttive,

Ferrari Mangimi Srl (C-12/04),

Associazione nazionale tra i produttori di alimenti zootecnici (Assalzoo)

v

Ministero delle Politiche Agricole e Forestali,

Ministero della Salute,

Ministero delle Attività Produttive

and

Nederlandse Vereniging Diervoederindustrie (Nevedi) (C-194/04),

v

Productschap Diervoeder,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas (Rapporteur), Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, R. Silva de Lapuerta, P. Kūris, E. Juhász, G. Arestis, A. Borg Barthet and M. Ilešič, Judges,

Advocate General: A. Tizzano,
Registrars: M.-F. Contet, Principal Administrator, and K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 30 November 2004,

after considering the observations submitted on behalf of:

— ABNA Ltd, by D. Anderson QC and E. Whiteford, Solicitor,

— Fratelli Martini & C. SpA, by F. Capelli, avvocato, and B. Klaus, Rechtsanwältin,

— Ferrari Mangimi Srl, by E. Cappelli, P. De Caterini and A. Bandini, avvocati,

— Nederlandse Vereniging Diervoederindustrie (Nevedi), by H. Ferment, advocaat,

— the United Kingdom Government, by M. Bethell (C-453/03), acting as Agent, and C. Lewis (C-453/03), Barrister,

— the Italian Government, by I.M. Braguglia and M. Fiorilli (C-453/03, C-11/04, C-12/04 and C-194/04), acting as Agents, and by G. Albenzio (C-194/04), avvocato dello Stato,

— the Netherlands Government, by S. Terstal (C-453/03, C-11/04, C-12/04 and C-194/04), H. G. Sevenster (C-453/03 and C-194/04) and J.G.M. van Bakel (C-453/03 and C-194/04), acting as Agents,

— the Danish Government, by J. Molde (C-453/03, C-11/04, C-12/04 and C-194/04), acting as Agent,

— the Greek Government, by K. Marinou (C-453/03) and S. Charitaki (C-11/04 and C-12/04), and by G. Kanellopoulos and V. Kontolaimos (C-453/03, C-11/04, C-12/04 and C-194/04), acting as Agents,

— the Spanish Government, by M. Muñoz Pérez (C-453/03, C-11/04 and C-12/04) and J.M. Rodríguez Cárcamo (C-453/03, C-11/04, C-12/04 and C-194/04), acting as Agents,

— the French Government, by G. de Bergues (C-453/03) and R. Loosli-Surrans (C-453/03, C-11/04, C-12/04 and C-194/04), acting as Agents,

— the European Parliament, by E. Waldherr (C-453/03), and by M. Moore, G. Ricci (C-453/03, C-11/04, C-12/04 and C-194/04) and A. Baas (C-194/04), acting as Agents,

— the Council of the European Union, by T. Middleton and F. Ruggeri Laderchi (C-453/03, C-11/04, C-12/04 and C-194/04), and by A.-M. Colaert (C-194/04), acting as Agents,

— the Commission of the European Communities, by B. Doherty and P. Jacob (C-453/03, C-11/04, C-12/04 and C-194/04), and by C. Cattabriga (C-453/03, C-11/04, C-12/04 and C-194/04), acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 April 2005,

gives the following

Judgment

1 The references for preliminary rulings centre essentially on the validity of Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ 2002 L 63, p. 23), in particular Article 1(1)(b) and 1(4) thereof.

2 Those references have been made in the context of the examination of requests by manufacturers of compound feedingstuffs for animals or representatives of that industry for the annulment or suspension of the rules adopted for the purpose of transposing in national law the contested provisions of Directive 2002/2.

The legal framework

3 Directive 2002/2 is based on Article 152(4)(b) EC, which provides:

'The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting:

...

(b) by way of derogation from Article 37, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;'.

4 It is appropriate to set out the following recitals in the preamble to Directive 2002/2:

'(2) As regards labelling, the purpose of Directive 79/373/EEC is to ensure that stock farmers are informed objectively and as accurately as possible as to the composition and use of feedingstuffs.

(3) Hitherto, Directive 79/373/EEC provided for a flexible declaration confined to the indication of the feed materials without stating their quantity in feedingstuffs for production animals, while retaining the possibility of declaring categories of feed materials instead of declaring the feed materials themselves.

(4) Nonetheless, the bovine spongiform encephalopathy crisis and the recent dioxin crisis have demonstrated the inadequacy of the current provisions and the need for more detailed qualitative and quantitative information on the composition of compound feedingstuffs for production animals.

(5) Detailed quantitative information may help to ensure that potentially contaminated feed materials can be traced to specific batches, which will be beneficial to public health and avoid the destruction of products which do not present a significant risk to public health.

(6) Accordingly, it is appropriate, at this stage, to impose a compulsory declaration for all the feed materials as well as their amount in compound feedingstuffs for production animals.

(7) For practical reasons, it is appropriate that declarations of the feed materials included in compound feedingstuffs for production animals be provided on an ad hoc label or accompanying document.

(8) The declaration of the feed materials in feedingstuffs constitutes, in certain cases, an important item of information for stock farmers. It is therefore appropriate that the person responsible for labelling supply, at the customers' request, a detailed list of all the feed materials used and their exact percentages by weight.

...

(10) On the basis of a feasibility study, the Commission will submit a report to the European Parliament and the Council by 31 December 2002, accompanied by an appropriate proposal for the establishment of a positive list, taking account of the conclusions of the report.

...

(12) Since it will no longer be possible in the future to declare categories of feed materials instead of declaring the feed materials themselves in the case of compound feedingstuffs for production animals, Commission Directive 91/357/EEC of 13 June 1991 laying down the categories of feed materials which may be used for the purposes of labelling compound feedingstuffs for animals other than pet animals ... should be repealed'.

5 Article 1(1)(b) of Directive 2002/2 amends Article 5 of Council Directive 79/373/EEC of 2 April 1979 on the marketing of compound feedingstuffs (OJ 1979 L 86, p. 30). Article 1(1)(b) provides:

'1. Article 5(1) is hereby amended as follows:

...

(b) the following point shall be added:

"(l) in the case of compound feedingstuffs other than those intended for pets, the indication 'the exact percentages by weight of feed materials used in this feedingstuff may be obtained from: ...' (name or trade name, address or registered office, telephone number and e-mail address of the person responsible for the particulars referred to in this paragraph). This information shall be provided at the customer's request.";'.

6 Article 1(4) of Directive 2002/2 includes a number of provisions replacing Article 5c of Directive 79/373/EC. Article 1(4) is worded as follows:

'4. Article 5c shall be replaced by the following:

"*Article 5c*

1. All feed materials used in the compound feedingstuff shall be listed by their specific names.

2. The listing of feed materials for feedingstuffs shall be subject to the following rules:

(a) compound feedingstuffs intended for animals other than pets:

(i) listing of feed materials for feedingstuffs with an indication, in descending order, of the percentages by weight present in the compound feedingstuff;

(ii) as regards the above percentages, a tolerance of ± 15% of the declared value shall be permitted;

...'.

7 Article 1(5) of Directive 2002/2 provides for a paragraph to be added to Article 12 of Directive 79/373. That paragraph provides that Member States 'shall stipulate that the manufacturers of compound feedingstuffs are obliged to make available to the authorities responsible for carrying out official inspections, on request, any document concerning the composition of feedingstuffs intended to be put into circulation which enables the accuracy of the information given by the labelling to be verified'.

8 Article 2 of Directive 2002/2 provides:

'Commission Directive 91/357/EEC shall be repealed as from 6 November 2003.'

9 The stages in the adoption of Directive 2002/2 that are material to the present cases may be set out in the following terms.

10 On 7 January 2000 the Commission of the European Communities presented a proposal for a European Parliament and Council directive amending Directive 79/373 (document COM(1999) 744 final).

11 The explanatory memorandum on that proposal explains that, as a result of the crisis brought about by bovine spongiform encephalopathy ('BSE'), the European Parliament wished to require manufacturers of compound feedingstuffs for animals to make a declaration regarding the quantities of the various ingredients used in their feedingstuffs. In the debate surrounding the text, that declaration became known as the 'open declaration'.

12 The explanatory memorandum states in particular:

'The Commission realises the advantages of an "open declaration" in the labelling provisions of compound feedingstuffs for production animals in order to facilitate the traceability of feed materials.

The recent events of oils and additives contaminated by dioxins [originating] in Belgium and Germany respectively reinforce the importance of detailed information on the labels of compound feedingstuffs. Actually the contamination level of a compound feedingstuff depends on the quantity of contaminated feed material incorporated [in] the feed and consequently ... exhaustive information [on] all feed materials included in the compound feedingstuff as well as their different amounts is of great importance.'

13 In response to the objections of Member States, which were in favour of an optional declaration, and those of the manufacturers of compound feedingstuffs for animals, which wished to protect the intellectual property of the feed formulas, the explanatory memorandum states as follows:

'The Commission, on the contrary, is of the opinion that a facultative open declaration is against the farmers' right [to] information and against the envisaged transparency. Furthermore, the Commission considers that an optional open declaration would inevitably lead to distortions of competition between the feed compounders.

... With regard to the protection of the intellectual property of the feed formulas, the Commission, in order to seek a maximum of transparency, cannot accept this argument. There is actually no breach of commercial confidentiality, because there are normally no patented feedingstuff formulas. Even if it [were] the case, the formula could not be kept as a secret. In fact, the publication of the ingredients would not undermine the intellectual property rights.'

14 On 4 October 2000, the Parliament, on its first reading, proposed five amendments to that proposal for a directive (OJ 2001 C 178, p. 177).

15 On 19 December 2000, the Council of the European Union adopted Common Position (EC) No 6/2001 with a view to adopting Directive 2002/2 (OJ 2001 C 36, p. 35). According to the Council's statement of reasons, it took the view that it was not realistic to require manufacturers to provide a declaration of the precise quantities of feed materials, and for that reason it proposed the solution of a declaration indicating the feed materials according to their percentage by weight, in descending order, within given bands. However, a detailed and precise list of those quantities was to be provided by the manufacturer on individual request by a customer. On 21 December 2000 the Commission presented an amended proposal

for a European Parliament and Council directive amending Directive 79/373 which was in line with the Common Position (document COM(2000) 780 final) (OJ 2001 C 120 E, p. 178).

16 On 5 April 2001, on a second reading, the Parliament proposed amendments to that modified proposal for a directive which reinstated the 'open declaration' (document A5-0079/2001) (OJ 2002 C 21 E, p. 310).

17 As the result of a conciliation procedure, a compromise text was adopted and incorporated in Directive 2002/2. Under that compromise text, manufacturers must indicate the quantities of feed materials used in the composition of the products with a tolerance of ± 15% of the declared value, but are required, on request by a customer, to provide the exact percentages by weight of the feed materials making up a feedingstuff product.

18 On 24 April 2003 the Commission presented a feasibility report on a positive list of feed materials for animal feedingstuffs (document COM(2003) 178 final). That report states that the establishment of such a list would not contribute to ensuring the safety of animal feedingstuffs and that the Commission would for that reason not be submitting any proposal in that regard. It did, however, announce in that report initiatives in other areas designed to improve the safety of animal feedingstuffs.

The disputes in the main proceedings and the questions referred for preliminary ruling

In Case C-453/03

19 The claimants in the main proceedings, which specialise in the manufacture of compound feedingstuffs for animals, seek the annulment of the legislation adopted to transpose the contested provisions of Directive 2002/2 into national law. By

judgment of 6 October 2003, the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), temporarily suspended application of that legislation.

20 Also by judgment of 6 October 2003, the High Court set out the grounds of its reference for a preliminary ruling. The question, as worded in a decision of 23 October 2003, is as follows:

'Are Article 1(1)(b) of Directive 2002/02 and/or Article 1(4) of Directive 2002/02, to the extent that it amends Article 5c(2)(a) of Directive 79/373 by requiring percentages to be listed, invalid by reason of:

a. the absence of a legal basis in Article 152(4)(b) EC;

b. infringement of the fundamental right to property;

c. infringement of the principle of proportionality?'

21 By application lodged at the Registry of the Court on 18 February 2004, the company Lambey SA sought leave to intervene in Case C-453/03, in accordance with Article 40 of the Statute of the Court of Justice, with a view to submitting its observations. That application was declared inadmissible by order of the President of the Court of 30 March 2004.

In Cases C-11/04 and C-12/04

22 Directive 2002/2 was transposed in Italian law by way of a decree of the Minister for Agricultural and Forestry Policy of 25 June 2003, concerning additions and amendments to the annexes to Law No 281 of 15 February 1963 on the rules for the preparation and marketing of animal feedingstuffs and implementing Directive 2002/2/EC of 28 January 2002 (GURI No 181 of 6 August 2003) ('Law No 281/1963'), which applied with effect from 6 November 2003.

23 As the Consiglio di Stato (Council of State) points out in the decisions to refer which underlie Cases C-11/04 and C-12/04, the effect of that decree was to make it compulsory for manufacturers of compound feedingstuffs to set out on the labelling the list of the feed materials, indicating, in descending order, the percentages in relation to the total weight. In accordance with Directive 2002/2, those feed materials must be designated by their specific name, which may be replaced by the name of the category to which they belong, by following the categories grouping together several feed materials established in accordance with Article 10(a) of Directive 79/373, which was implemented by way of Commission Directive 91/357/EEC of 13 June 1991 laying down the categories of ingredients which may be used for the purposes of labelling compound feedingstuffs for animals other than pet animals (OJ 1991 L 193, p. 34).

24 The Consiglio di Stato points out in this connection that Directive 91/357, which was adopted pursuant to the abovementioned Article 10(a), was revoked by Directive 2002/2 with effect from 6 November 2003, without the Commission having been able to submit a draft measure containing the positive list of feed materials which could be used. The Italian authorities referred to the provisional list of feed materials contained in Annex VII, Part A, to Law No 281/1963 and, for those feed materials not featuring on that list, to the designations contained in Part B, that is to say, specifically to the general categories laid down by Directive 91/357.

25 The appellants in the main proceedings, which specialise in the manufacture of compound animal feedingstuffs, brought appeals before the Consiglio di Stato against decisions by the Tribunale amministrativo di Lazio (Lazio Administrative Court). They seek the annulment of the rules adopted for the purpose of transposing, in Italian law, the contested provisions of Directive 2002/2. The Consiglio di Stato, by two separate decisions, suspended temporarily the implementation of those rules.

26 With regard to the protection of public health, the Consiglio di Stato points out that plant-based animal feedingstuffs present less risks than compound feedingstuffs containing meat and bone meal, the use of which lay behind the emergence of BSE. Moreover, Article 152(4)(b) EC covers only measures relating to animal diseases and treatment, whereas the question of the labelling of plant-based animal feedingstuffs would not directly have the objective of protecting public health.

27 In the decision to refer underlying Case C-11/04, the Consiglio di Stato sets out the view that, in the light of the doubt expressed as to the proportionality of the contested Community measure, a question concerning infringement of the right to property under Article 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, restated in Article 17 of the Charter of Fundamental Rights of the European Union signed at Nice on 7 December 2000 (OJ 2000 C 364, p. 1), concerning intellectual property relating to business secrecy and industrial know-how, does not appear to be manifestly unfounded.

28 In the decision to refer underlying Case C-12/04, the Consiglio di Stato expresses uncertainty as to whether Directive 2002/2 is applicable. In its view, the failure to draw up the list of feed materials which may be used renders the Community legislation incomplete and makes it impossible to impose guidelines as to the labelling of the products intended for animal feedingstuffs and renders obligations as to food safety pointless.

29 The Consiglio di Stato also points out, in its reference in Case C-12/04, that the obligation to indicate the quantities of feed materials is not provided for under the legislation on the labelling of foodstuffs, that is to say, Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29). From this it concludes that, paradoxically, compound animal feedingstuffs are subject to a much stricter regime, with regard to the obligations concerning the information on labelling, than that applicable to foodstuffs intended for human consumption.

30 In Case C-11/04, the Consiglio di Stato decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must Article 152(4)(b) EC be interpreted as being the correct legal basis for the adoption of measures on labelling, contained in Directive 2002/2/EC, where they refer to the labelling of vegetable feedingstuffs?

2. In so far as it imposes an obligation to indicate the precise feed materials contained in compound feedingstuffs, which applies even to vegetable-based feedingstuffs, is Directive 2002/2/EC justified on the basis of the precautionary principle in the absence of a risk assessment, based on scientific studies, which requires that precautionary measure on the basis of a possible correlation between the quantity of feed materials used and the risk of the diseases to be prevented? And is that directive nevertheless justified in the light of the principle of proportionality, in so far as the obligations on the part of the feedingstuffs industry to disclose information to the public authorities, which are required to maintain business secrecy, and are competent to monitor health protection, are not sufficiently directed to the attainment of the public health

objectives supposed to be the purpose of the measure, instead imposing general rules requiring the indication of the percentage quantities of feed materials used on the labels of vegetable-based feedingstuffs?

3. In so far as it fails to respect the principle of proportionality, does Directive 2002/2/EC conflict with the fundamental right of property of the citizens of the Member States?'

31 In Case C-12/04, the Consiglio di Stato decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. [Question identical to the first question referred in Case C-11/04]

2. [Question identical to the second question referred in Case C-11/04]

3. Must Directive 2002/2/EC be interpreted as meaning that its application, and therefore its effectiveness, is subject to the adoption of a positive list of feed materials containing their specific names, as set out in the tenth recital to the preamble and the Commission Report (COM (2003) 178) dated 24 April 2003 or must the implementation of the directive in the Member States take place before the adoption of the positive list of feed materials laid down by the directive, with reference to a list of the feed materials contained in the compound feedingstuffs by the names and generic definitions of their commodity classes?

4. Is Directive 2002/2/EC to be regarded as unlawful on the grounds of infringement of the principle of equal treatment and non-discrimination to the detriment of feedingstuff producers when compared with the producers of foodstuffs for human consumption in so far as the former are subject to rules requiring indications of the quantities of feed materials in compound feedingstuffs?'

32 In each of the cases in the main proceedings the Consiglio di Stato states that similar questions were referred to the Court by the High Court of Justice on [23] October 2003 but that the respective decisions to refer are justified in order not to prejudice the appellants' right to a fair hearing before the Community Court.

33 By order of the President of the Court of 25 March 2004, Cases C-11/04 and C-12/04 were joined for the purposes of the written and oral procedures and of the judgment.

In Case C-194/04

34 The Nederlandse Vereniging Diervoederindustrie (Nevedi) (Netherlands Association for the Animal Feedingstuff Industry) ('Nevedi'), the claimant in the main proceedings, applied for suspension of the legislation adopted to transpose the contested provisions of Directive 2002/2 in Netherlands law.

35 The Productschap Diervoeder (Commodity Board for Animal Feedingstuffs) ('the Productschap'), the defendant in the main proceedings, is a public body within the terms of the Law on the organisation of undertakings (Wet op de Bedrijfsorganisatie). Under that legislation the Productschap is empowered to adopt regulations concerning animal feedingstuffs. Such regulations must, however, be approved by the Netherlands Minister for Agriculture, Nature and Food Quality.

36 Article 1(4) of Directive 2002/2 was transposed in Netherlands law, with effect from 6 November 2003, in Articles 7.3.2(1) and 7.3.1(1)(1) of the 2003 Productschap Diervoeder regulation on animal feedingstuffs (Verordening PDV Diervoeders 2003), in the version resulting from amending regulation No PDV-25 of 11 April 2003 (PBO Blad No 42 of 27 June 2003).

37 By letter of 24 November 2003, the Productschap called on the Minister for Agriculture, Nature and Food Quality to approve a new regulation abrogating the rules on labelling which resulted from the transposition of the provisions of Directive 2002/2. In his response to that request, that Minister, on 19 January 2004, refused to approve the proposal submitted to him on the ground that it was incompatible with Community law. The Minister stated that only the Court of Justice or a national court — the latter pending a decision by the Court of Justice — had jurisdiction, in certain cases, to suspend the implementation of measures giving effect to Community law. The national authority itself, he stated, did not enjoy any such competence.

38 Nevedi requested the Rechtbank 's-Gravenhage to suspend the regulation transposing Directive 2002/2 pending a decision by the Court of Justice on the validity of that directive. It referred, inter alia, to a question referred for a preliminary ruling in this regard by a court in the United Kingdom of Great Britain and Northern Ireland.

39 By its decision making the reference, the chamber of the Rechtbank 's-Gravenhage responsible for granting interim relief upheld the application for suspension brought before it, and decided to stay the proceedings in respect of the remaining heads of claim and to refer the following questions to the Court for a preliminary ruling:

1. Is Article 1(1)(b) of Directive 2002/2 and/or Article 1(4) of Directive 2002/2, to the extent to which it amends Article 5c(2)(a) of Directive 79/373 by requiring ‚percentages to be listed, invalid by reason of:

   (a) the absence of a legal basis in Article 152(4)(b) EC;

   (b) infringement of fundamental rights, such as the right to property and the right freely to exercise a trade or profession;

   (c) infringement of the principle of proportionality?

2. If the conditions are satisfied under which a national court of a Member State is entitled to suspend implementation of a contested measure of the Community institutions, in particular also the condition that the question concerning the validity of the contested measure has already been referred by a national court of that Member State to the Court of Justice, are the competent public authorities of the other Member States themselves also entitled, without judicial intervention, to suspend the contested measure until such time as the Court ... has given a ruling on the validity of that measure?'

40 In view of the similarity of the questions referred, it is appropriate to join the different cases for the purpose of delivering one single judgment.

The requests for the reopening of the oral procedure

41 By letter of 9 May 2005 Fratelli Martini & Co. SpA ('Fratelli Martini') and Cargill Srl, the appellants in the main proceedings in Case C-11/04, requested the Court to order, pursuant to Article 61 of the Rules of Procedure, that the oral procedure be reopened. As the basis for their application, they submitted that they had established scientific errors in the example given in the course of the hearing by the Agent of the Danish Government, and that that example has been used by the Advocate General as a basis for his reasoning. They attached a technical report to that application.

42 It must be pointed out in this regard that the Court may, of its own motion, on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure, in accordance with Article 61 of the Rules of Procedure, if it takes the view that it lacks sufficient information or that the case should be decided on the basis of an argument which has not been debated between the parties (see Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraph 42, Case C-434/02 *Arnold André* [2004] ECR I-11825, paragraph 27, and Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 25).

43 In the present case, however, the Court, after hearing the Advocate General, takes the view that it has all the information necessary for it to answer the questions referred for a preliminary ruling. The application for the oral procedure to be reopened must therefore be dismissed.

The admissibility of the questions referred for preliminary ruling in Case C-194/04

44 The Parliament, the Council and the Commission submit that the questions referred for preliminary ruling are inadmissible on the ground that the Rechtbank 's-Gravenhage has failed to set out in sufficient detail the factual and legislative context or the reasons which induced it to refer those questions. In particular, they argue, the Rechtbank 's-Gravenhage does not in any way explain the breaches of fundamental rights and infringement of the principle of proportionality relied on, no more than in regard to the second question referred.

45 On this point, according to settled case-law, the need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, inter alia, the order in Case C-190/02 *Viacom* [2002] ECR I-8287, paragraph 15 and the references there cited, and the judgments in Case C-134/03 *Viacom Outdoor* [2005] ECR I-1167, paragraph 22, and Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 29).

46 The Court has also stressed that it is important for the referring court to set out the precise reasons why it was unsure as to the interpretation of Community law and why it considered it necessary to refer questions to the Court for a preliminary ruling. The Court has thus ruled that it is essential that the referring court provide at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and of the link it establishes between those provisions and the national legislation applicable to the dispute (see, inter alia, the order in *Viacom*, cited above, paragraph 16, and the judgment in Case C-318/00 *Bacardi-Martini and Cellier des Dauphins* [2003] ECR I-905, paragraph 43).

47 One of the reasons for those requirements is that the information provided in orders for reference must not only be such as to enable the Court to reply usefully but must also enable the Governments of the Member States and other interested parties to submit observations pursuant to Article 23 of the Statute of the Court of Justice (orders in Case C-422/98 *Colonia Versicherung and Others* [1999] ECR I-1279, paragraph 5, and in *Viacom*, paragraph 14; judgment in *Keller*, cited above, paragraph 30).

48 In the case in the main proceedings, the Rechtbank 's-Gravenhage, ruling in an application for interim relief, indicated the factual and legal context of the questions which it referred. It set out, concisely but adequately, the reasons which led it to refer those questions.

49 Furthermore, it must be pointed out that the Rechtbank 's-Gravenhage made reference to the questions submitted by the United Kingdom court concerning the same subject. The Parliament, Council and Commission could not have failed to identify Case C-453/03, in which each of those institutions had just submitted observations at the moment when the decision to refer underlying Case C-194/04 was notified to them. There are consequently no grounds on which those institutions can argue that it was impossible for them to submit observations in full knowledge of the facts.

50 Finally, with regard to the second question, this cannot be regarded as being hypothetical on the ground that the claimant in the main proceedings in any event requested a national court to suspend application of the Community measure. It is clear from the observations submitted by that claimant that it is challenging the refusal of the competent minister to repeal the national legislation transposing Directive 2002/2 and the need to request a court to suspend application of that legislation, and that it also makes reference to the associated costs and to the harm occasioned thereby to the individual concerned. The question thus does not appear to be manifestly bereft of relevance within the context of the dispute in the main proceedings.

51 The questions referred in Case C-194/04 must for those reasons be declared admissible.

The questions referred for preliminary ruling

The legal basis

52 By heading (a) of the question referred in Case C-453/03, Question 1 in both Case C-11/04 and Case C-12/04, and Question 1(a) in Case C-194/04, the respective referring courts are essentially asking the Court to rule on the validity of Article 1(1)(b) and 1(4) of Directive 2002/2, on the ground that Article 152(4)(b) EC is not an appropriate legal basis for the adoption of those provisions, having particular regard to the fact that they relate to the labelling of plant-based animal feedingstuffs.

53 As the Council has stated in its observations and argued at the hearing, if the contested measure had not directly had the objective of safeguarding public health, it could have come under Article 37 EC, which also confers competence on the Community legislature. Review of the legal basis of Directive 2002/2 does, however, remain relevant for the purpose of verifying whether the procedure for the adoption of that directive was vitiated by any irregularity (see, in this connection, Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 111).

54 According to settled case-law, in the context of the organisation of the powers of the European Community the choice of the legal basis for a measure must rest on objective factors which are amenable to judicial review. Those factors include in

particular the aim and content of the measure (see, in particular, Case C-269/97 *Commission* v *Council* [2000] ECR I-2257, paragraph 43, Case C-36/98 *Spain* v *Council* [2001] ECR I-779, paragraph 58, and *British American Tobacco (Investments) and Imperial Tobacco*, cited above, paragraph 93).

55 Directive 2002/2 is based on Article 152(4)(b) EC, which allows the adoption of measures in the veterinary and phytosanitary fields having as their direct objective the protection of public health.

56 The third and fourth recitals in the preamble to Directive 2002/2 set out the position in law with regard to the indication of feed materials for animal feedingstuffs as it existed prior to the adoption of that directive and the need for more detailed information, as evidenced by the BSE and dioxin crises. According to the fifth recital in the preamble to Directive 2002/2, detailed quantitative information may help to ensure that potentially contaminated feed materials can be traced to specific batches, which will be beneficial to public health.

57 It follows from an examination of those recitals that the objective pursued by the Community legislature, when it adopted the provisions relating to the indication of feed materials for animal feedingstuffs, was to safeguard the protection of public health.

58 Contrary to what has been stated by the Consiglio di Stato in its referral decisions underlying Cases C-11/04 and C-12/04, plant-based feedingstuffs may present health risks that are comparable to those found in feedingstuffs of animal origin. Fratelli Martini and the institutions which have submitted observations in those cases referred correctly to the problems posed by aflatoxin B1, which is a carcinogenic, genotoxic toxin produced by certain types of fungus present on cereals

and nuts, to the 1999 dioxin crisis, which had an impact on the manufacture of compound feedingstuffs in Belgium, and to cases of contamination of cereals by herbicides and the presence, in waste water used for the production of animal feedingstuffs, of a hormone used in the manufacture of human contraceptives.

59 As the Agent of the Danish Government stated at the hearing, it appears that the indication of the percentages of the components of a product allows for targeted examination in the event of contamination and makes it possible rapidly to remove suspect feedingstuffs from the market. According to the Danish Government, the indication of a high percentage of biological maize contained in a feedingstuff administered by a farmer to cattle allowed the Danish authorities, in 2004, to identify that component as being the likely source of a high level of aflatoxin B1 present in the milk produced by that farmer and intended for human consumption. This made it possible to withdraw immediately the contaminated product, without any need to await the result of laboratory analyses.

60 It must accordingly be held that the provisions of Directive 2002/2 which are under challenge in the cases in the main proceedings are likely to contribute directly to the pursuit of the objective of safeguarding public health.

61 It follows that the objections alleging that those provisions are invalid by reason of an incorrect legal basis are unfounded.

Infringement of the principle of equal treatment

62 By its fourth question in Case C-12/04, the Consiglio di Stato asks whether Directive 2002/2 is to be declared unlawful as infringing the principle of equal treatment and

non-discrimination by reason of the fact that manufacturers of animal feedingstuffs are subject to a regime under which they are required to provide quantitative information on the feed materials used in the manufacture of the compound animal feedingstuffs, whereas manufacturers of foodstuffs intended for human consumption are not so required.

63 It is settled case-law that the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (*Arnold André*, cited above, paragraph 68; *Swedish Match*, cited above, paragraph 70; and Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451, paragraph 115).

64 The objective pursued by Directive 2002/2 is the protection of public health. Such an objective may justify a difference in treatment, particularly when one bears in mind the obligation under Article 152(1) EC to ensure a high level of human health protection in the definition and implementation of all Community policies and activities.

65 Furthermore, as the Council has quite correctly stressed, even though one might be able to demonstrate that equally restrictive measures may also be justified in areas in which such measures have not yet been taken, such as that of foodstuffs intended for human consumption, that does not constitute a sufficient reason for taking the view that the measures adopted within the area which is the subject of the Community measures in issue are not lawful on the ground of their discriminatory character. If that were not so, this would have the effect of bringing the level of public health protection down to that of the existing legislation which provides the least protection.

66 It follows that the examination of the question referred has not revealed any factor liable to affect the validity of Article 1(1)(b) and 1(4) of Directive 2002/2 in regard to the principle of equal treatment and non-discrimination.

Infringement of the principle of proportionality

67 By heading (c) of the question referred in Case C-453/03, Question 2 in both Case C-11/04 and Case C-12/04, and Question 1(c) in Case C-194/04, the respective referring courts are essentially asking whether the provisions of Article 1(1)(b) and 1 (4) of Directive 2002/2 infringe the principle of proportionality. In this context, the Consiglio di Stato also asks the Court whether there may be an infringement of the precautionary principle in that those provisions were adopted without a risk analysis based on scientific studies having been carried out.

68 According to settled case-law, the principle of proportionality, which is one of the general principles of Community law, requires that measures implemented through Community provisions be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (*Arnold André*, paragraph 45, and *Swedish Match*, paragraph 47).

69 With regard to judicial review of the conditions referred to in the previous paragraph, it should be noted that the Community legislature must be allowed a broad discretion in an area such as that in issue in the present case, which involves political, economic and social choices on its part, and in which it is called on to undertake complex assessments. Consequently, the legality of a measure adopted in that area can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institutions are seeking to pursue (see, in this regard, *Arnold André*, paragraph 46, *Swedish Match*, paragraph 48, and *Alliance for Natural Health and Others*, cited above, paragraph 52).

Observations submitted to the Court

70 The claimants in the main proceedings, supported by the Spanish and United Kingdom Governments, submit essentially that the notification of the precise composition of the feedingstuffs in question seriously affects their economic rights and interests and is not necessary for the protection of health in view of the legislation which already exists within the animal feedingstuff sector.

71 They rely in this regard on the other provisions of Directive 79/373, as amended by Directive 2002/2, in particular Article 5(5)(d), which requires the batch reference number to be indicated, and Article 12, which requires manufacturers to make available to the competent national authorities any document concerning the composition of feedingstuffs. According to the claimants in the main proceedings, those two obligations, the need for which they do not dispute, make it possible to ensure traceability of those feedingstuffs while at the same time respecting the economic interests of manufacturers, since those authorities are bound by an obligation of confidentiality and may use the information received only for the purpose of safeguarding public health.

72 With regard to the content of animal feedingstuffs, the claimants in the main proceedings cite Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs (OJ, English Special Edition 1970 (III), p. 840) and Council Directive 1999/29/EC of 22 April 1999 on the undesirable substances and products in animal nutrition (OJ 1999 L 115, p. 32). At the date of the hearing, the latter directive had been amended and recast by Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed (OJ 2002 L 140, p. 10).

73 Finally, the claimants in the main proceedings cite 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), which was adopted on the same day as Directive 2002/2 and which, they argue, constitutes the new framework legislation in regard to food safety. Article 18 of that regulation requires traceability, inter alia, of any substance liable to be incorporated into animal feed, and Article 20 of that regulation provides for procedures for withdrawing from the market foodstuffs which may be regarded as not satisfying animal feed safety requirements.

74 The Italian, Netherlands, Danish, Greek and French Governments, and the Parliament, Council and Commission, by contrast, take the view that, regard being had to the public-health objective being pursued, the requirement that the percentages of ingredients making up a feedingstuff be indicated does not infringe the principle of proportionality.

75 The Parliament also invokes an objective of transparency. It refers to the loss of credibility of the competent authorities as a result of the BSE crisis, which can be offset only by a policy of transparency. This factor, it submits, ought to be taken into consideration for the purpose of assessing the proportionality of a measure intended simply to allow breeders to decide on the feedingstuff for their livestock. It is in particular for that reason that it is not sufficient for manufacturers to inform the competent health authorities of the exact composition of feedingstuffs.

Reply of the Court

76 As has been pointed out in paragraphs 59 and 60 of the present judgment, the obligation to indicate the percentages of the ingredients of a feedingstuff is a measure which is liable to contribute to the objective of safeguarding animal and human health. It makes it possible to identify the ingredients of a feedingstuff that are suspected of having been contaminated without awaiting the results of laboratory analyses and to withdraw that feedingstuff rapidly from use.

77 In view of the requirement under Article 1(3) of Directive 2002/2 that the batch reference number of the product be indicated, that measure does not appear to be redundant. That indication makes it possible to establish the traceability of the batch of compound feedingstuffs, but not directly that of its ingredients. Furthermore, the investigation into traceability may require a certain period of time, whereas a situation involving the risk of a food crisis calls for a rapid reaction.

78 The same applies with regard to the other legislative measures referred to by the claimants in the respective main proceedings. These relate to the content of products (Directives 70/524 and 1999/29) or procedures relating to food safety (Regulation No 178/2002), but none of these contains any provision imposing an obligation to indicate the ingredients on a product. Those legislative measures thus do not enable the authorities concerned or the person using a product to have sufficient information for the immediate adoption of appropriate preventive measures in the event of a food crisis.

79 The different claimants in the respective main proceedings argue that the indication of the exact percentages of the ingredients of a product is no guarantee that the compound feedingstuff is safe or that its ingredients are not contaminated. It must, however, be pointed out that the purpose of the obligation to indicate the ingredients is not to guarantee that there is no contamination but rather, in the event that those ingredients are contaminated, to allow rapid identification of the feedingstuffs containing those ingredients.

80 That said, as the Advocate General has correctly stated in points 115 to 119 of his Opinion, it does not appear that the obligation imposed on manufacturers to inform customers, on request, of the exact quantitative composition of animal feedingstuffs is necessary for the purpose of pursuing that objective.

81 Apart from the indication of data within brackets, that is to say, with a margin of tolerance of ± 15% of the declared value, which must feature on the labelling of the product pursuant to Article 1(4) of Directive 2002/2, the manufacturer is required, on request by a customer, to notify the latter in writing of the exact percentages by weight of the feed materials used in the feedingstuff, in accordance with Article 1(1)(b) of Directive 2002/2.

82 As the claimants in the main proceedings have emphasised, the obligation to provide customers with the exact indication of the ingredients of a feedingstuff impacts seriously on the economic interests of manufacturers, as it obliges them to disclose the formulas for the composition of their products, at the risk of those products being used as models, possibly by those customers themselves, and that the manufacturers cannot obtain the benefit of the investments which they have made in terms of research and innovation.

83 An obligation of this kind cannot be justified by the objective of protecting public health which is being pursued and manifestly goes beyond what is necessary to attain that objective. It must be pointed out, inter alia, that this obligation is independent of any problem relating to foodstuff contamination and has to be met only if the customer so requests. Furthermore, it is clear from the explanations provided and from the examples submitted to the Court that the indication, on the labelling, of the percentages within brackets should normally make it possible to identify a foodstuff suspected of being contaminated, in order to assess the degree of danger which it represents in relation to the weight indicated and to decide, if necessary, to withdraw it temporarily pending the results of laboratory analyses, or for the establishment of the traceability of the product by the public authorities concerned.

84 Finally, irrespective of the control procedures established within the framework of Regulation No 178/2002, which was adopted on the same day as Directive 2002/2, it must be pointed out that Article 1(5) of Directive 2002/2 provides that manufacturers of compound feedingstuffs are obliged to make available to the authorities responsible for carrying out official inspections, on request, any document concerning the composition of feedingstuffs intended to be put into circulation which enables the accuracy of the information given by the labelling to be verified.

85 Regard being had to those factors, it must be held that Article 1(1)(b) of Directive 2002/2, which requires manufacturers of compound feedingstuffs to indicate, at a customer's request, the exact composition of a feedingstuff, is invalid in the light of the principle of proportionality. By contrast, examination of the question submitted has not revealed any factor capable of affecting the validity of Article 1(4) of Directive 2002/2 in the light of that principle.

86 By heading (b) of the question referred in Case C-453/03, Question 3 in Case C-11/04 and Question 1(b) in Case C-194/04, the respective referring courts also in substance asked the Court to rule on the validity of the provisions of Article 1(1)(b) and 1(4) of Directive 2002/2 on the ground that they are in breach of fundamental rights, in particular the right to property and the right freely to carry on a trade or profession.

87 It must be noted in this regard that, as is clear from settled case-law, the right to property, in the same way as the freedom to pursue an economic activity, forms part of the general principles of Community law. However, those principles are not absolute but must be viewed in relation to their social function. Consequently, the exercise of the right to property and the freedom to pursue an economic activity may be restricted, provided that any restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute in relation to the aim pursued a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see, most recently, *Alliance for Natural Health and Others*, cited above, paragraph 126).

88 However, in view of the reply given to the question concerning the principle of proportionality, it is no longer necessary to examine whether the contested

provision adversely affects the right to property enjoyed by manufacturers of compound feedingstuffs or the right freely to carry on a trade or profession.

The fact that no positive list was adopted

89 By Question 3 in Case C-12/04, the Consiglio di Stato asks whether Directive 2002/2 is to be interpreted as meaning that its application and, consequently, its effectiveness are subject to the adoption of the positive list of feed materials designated by their specific names, as provided for in recital (10) in the preamble to that directive.

Observations submitted to the Court

90 Ferrari Mangimi Srl and the Spanish Government submit that this must be the case. They point out that the previous legislation imposed an obligation to indicate the feed materials in accordance with a provisional list and, in the event that that list could not be used, imposed the alternative obligation to declare the general categories of feed materials, such as those indicated in the annex to Directive 91/357. Directive 2002/2, they argue, repealed that legislation and provided for the establishment, by the Commission, of a positive list of feed materials. Following a study, however, the Commission concluded that the definition of such a list would not be entirely conclusive for the purpose of guaranteeing the safety of animal feedingstuffs and it did not submit any proposal for the establishment of such a list. The Commission's report, they continue, stressed that it was impossible to include on a positive list thousands of separate products manufactured at different sites with a variety of technological methods and liable to present divergent levels of safety and differing nutritional and technical characteristics. That report also pointed out that the safety risk lay, not in the feed materials themselves, but rather in the possibility that they could be accidentally or maliciously contaminated.

91 The Spanish Government insists on the mandatory requirement of legal certainty, which requires that Community legislation should enable concerned persons to be aware of the precise scope of the obligations which it imposes on them.

92 The Greek Government finds that, as the registration, on a single list, of the substances liable to be used has not been harmonised by Community legislation, the regulation of this is accordingly a matter for national law. That de facto situation does not, it argues, prevent effective application of Directive 2002/2 in the Member States.

93 The Parliament, the Council and the Commission take the view that there is no connection between the adoption of the positive list envisaged in recital (10) in the preamble to Directive 2002/2, which is no more than an aspiration without any independent legal status and engages the Commission only in a political sense, and the implementation of the provisions on labelling. The Member States are therefore required to apply that directive independently of the adoption of such a list by confining themselves to insisting on the use of the common designations of the feed materials.

Reply of the Court

94 Recital (10) in the preamble to Directive 2002/2 provided that, on the basis of a feasibility study, the Commission should present a report to the Parliament and the Council by 31 December 2002, accompanied by an appropriate proposal and taking account of the conclusions of that report, for the establishment of a positive list of feed materials used in compound feedingstuffs for production animals.

95 It follows from the wording of that recital that the establishment of a proposal for a positive list of feed materials can constitute only an aspiration on the part of the Community legislature. That recital envisages merely the carrying-out of a feasibility study, the drafting of a report and the submission of an appropriate proposal which takes account of the conclusions reached in that report.

96 Moreover, the content of that recital is not reproduced in the operative part of the directive and examination of the directive does not in any way indicate that its implementation is contingent on the adoption of that positive list. More specifically, it does not appear that the labelling obligation cannot be complied with in the absence of such a list.

97 In regard to the repeal of Directive 91/357, it does not appear that this made it impossible to implement Directive 2002/2, as manufacturers can, in the absence of Community rules, or even national rules, in that regard, use current specific designations of the feed materials.

98 It follows that Directive 2002/2 must be interpreted as meaning that its application is not contingent on the adoption of the positive list of feed materials designated by their specific names referred to in recital (10) in the preamble to that directive.

The powers of the competent national authorities to suspend application of a Community measure

99 By its second question, the Rechtbank 's-Gravenhage asks whether, if the conditions are satisfied under which a national court of a Member State is entitled to suspend implementation of a contested measure of the Community institutions, in particular where the question concerning the validity of that contested measure has already been referred by a national court of that Member State to the Court of Justice, the competent national authorities of the other Member States are themselves also entitled, without judicial intervention, to suspend application of that measure until such time as the Court of Justice has given a ruling on its validity.

Observations submitted to the Court

100 Nevedi, the claimant in the main proceedings in Case C-194/04, submits that the national court addressed its second question to the Court of Justice by reason of the fact that, as the body with competence to issue regulations applicable in matters of livestock feed in the Netherlands, the Productschap was about to suspend of its own motion, that is to say, without judicial intervention, the application of the open declaration rules pending a ruling by the Court in Case C-453/03. It was because of the refusal of the Minister concerned to suspend the applicable rules that Nevedi was constrained to institute legal proceedings and to request the Rechtbank 's-Gravenhage, acting pursuant to its jurisdiction to grant interim relief, to suspend those rules.

101 Nevedi points out that, when the conditions which, according to the Court's case-law, govern the possibility of relying on the provisions of a directive before a national

court are satisfied, all authorities, including the administrative authorities, are themselves also obliged to apply those provisions (see Case 103/88 *Fratelli Costanzo* [1989] ECR 1839, paragraphs 31 and 32). If those administrative authorities are obliged, in the same way as the judicial authorities, to apply the provisions of a directive, they ought also to be authorised, on grounds of procedural economy, to suspend application of a disputed Community measure under the same conditions as are those judicial authorities.

102 The Italian, Netherlands and Greek Governments, together with the Commission, refer to the Court's case-law on interim measures, the guarantees of impartiality and independence provided by a national court, the need for a uniform application of Community law, and the objectives of the preliminary-ruling procedure.

Reply of the Court

103 As the Court has held in its judgment in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraph 18 ('*Zuckerfabrik*'), references for preliminary rulings on the validity of a measure, like actions for annulment, allow the legality of acts of the Community institutions to be reviewed. In the context of actions for annulment, Article 242 EC enables applicants to request enforcement of the contested act to be suspended and empowers the Court to order such suspension. The coherence of the system of interim legal protection therefore requires that national courts should also be able to order suspension of enforcement of a national administrative measure based on a

Community regulation, the legality of which is contested (see also Case C-465/93 *Atlanta Fruchthandelsgesellschaft and Others* (I) [1995] ECR I-3761, paragraph 22, and Case C-68/95 *T. Port* [1996] ECR I-6065, paragraph 49; on the Court's lack of jurisdiction to order interim measures in the context of preliminary-ruling proceedings, see the order of the President of the Court in Case C-186/01 R *Dory* [2001] ECR I-7823, paragraph 13).

104 The Court has, however, ruled that the uniform application of Community law, which is a fundamental requirement of the Community legal order, means that the suspension of enforcement of administrative measures based on a Community regulation, whilst it is governed by national procedural law, in particular as regards the making and examination of the application, must in all the Member States be subject, at the very least, to conditions which are uniform so far as the granting of such relief is concerned and which it has defined as being the same conditions as those of the application for interim relief brought before the Court (*Zuckerfabrik*, cited above, paragraphs 26 and 27).

105 The Court has pointed out in particular that, in order to determine whether the conditions relating to urgency and the risk of serious and irreparable damage have been satisfied, the national court dealing with the application for interim relief must examine the circumstances particular to the case before it and consider whether immediate enforcement of the measure which is the subject of the application for interim relief would be likely to result in irreversible damage to the applicant which could not be made good if the Community act were to be declared invalid (*Zuckerfabrik*, paragraph 29; *Atlanta Fruchthandelsgesellschaft and Others* (I), cited above, paragraph 41).

106 As the court responsible for applying, within the framework of its jurisdiction, the provisions of Community law and consequently under an obligation to ensure that Community law is fully effective, the national court, when dealing with an

application for interim relief, must take account of the damage which the interim measure may cause to the legal regime established by a Community measure for the Community as a whole. It must consider, on the one hand, the cumulative effect which would arise if a large number of courts were also to adopt interim measures for similar reasons and, on the other, those special features of the applicant's situation which distinguish it from the other operators concerned (*Atlanta Fruchthandelsgesellschaft and Others* (I), paragraph 44).

107 In particular, if the grant of interim relief may represent a financial risk for the Community, the national court must also be in a position to require the applicant to provide adequate guarantees, such as the deposit of money or other security (*Zuckerfabrik*, paragraph 32; *Atlanta Fruchthandelsgesellschaft and Others* (I), paragraph 45).

108 The unavoidable conclusion in this regard is that national administrative authorities, such as those in issue in Case C-194/04, are not in a position to adopt interim measures while complying with the conditions for granting such measures as defined by the Court.

109 In this context, it is in particular appropriate to point out that the actual status of those authorities is not in general such as to guarantee that they have the same degree of independence and impartiality as that which national courts are recognised as having. Likewise, it is not certain that such authorities would benefit from the exercise of the adversarial principle inherent to judicial proceedings, which allows account to be taken of the arguments put forward by the different parties before the interests in issue are weighed one against the other at the time when a decision is being taken.

110 So far as concerns the argument that considerations of expedition or cost may justify the need to recognise the national administrative authorities as having competence, it must be emphasised that national courts ruling in applications for interim relief may in general adopt decisions within very short periods of time. In any event, an argument relating to expedition or cost cannot be conclusive in regard to the guarantees offered by the systems of judicial protection established by the respective legal systems of the Member States.

111 The answer to the question referred must therefore be that, even in the case in which a court of a Member State forms the view that the conditions have been satisfied under which it may suspend application of a Community measure, in particular where the question of the validity of that measure has already been referred to the Court, the competent national administrative authorities of the other Member States cannot suspend application of that measure until such time as the Court of Justice has ruled on its validity. National courts alone are entitled to verify, taking into consideration the specific circumstances of the cases brought before them, whether the conditions governing the grant of interim relief have been satisfied.

Costs

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

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

1. **Examination of heading (a) of the question referred in Case C-453/03, of Question 1 in Cases C-11/04 and C-12/04, and of Question 1(a) in Case C-194/04 has not revealed any factor capable of supporting the conclusion that Article 1(1)(b) and 1(4) of Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC was not validly adopted on the basis of Article 152(4)(b) EC.**

2. **Examination of Question 4 in Case C-12/04 has not revealed any factor capable of affecting the validity of Article 1(1)(b) and 1(4) of Directive 2002/2 in the light of the principle of equal treatment and non-discrimination.**

3. **Article 1(1)(b) of Directive 2002/2, which requires manufacturers of compound animal feedingstuffs to indicate, at a customer's request, the exact composition of a feedingstuff, is invalid in the light of the principle of proportionality. By contrast, examination of heading (c) of the question referred in Case C-453/03, of Question 2 in Cases C-11/04 and C-12/04, and Question 1(c) in Case C-194/04 has not revealed any factor capable of affecting the validity of Article 1(4) of Directive 2002/2 in the light of that principle.**

4. **Directive 2002/2 must be interpreted as meaning that its application is not contingent on the adoption of the positive list of feed materials designated by their specific names referred to in recital (10) in the preamble to that directive.**

5. **Even in the case in which a court of a Member State forms the view that the conditions have been satisfied under which it may suspend application of a Community measure, in particular where the question of the validity of that measure has already been referred to the Court, the competent national administrative authorities of the other Member States cannot suspend application of that measure until such time as the Court has ruled on its validity. National courts alone are entitled to determine, taking into consideration the specific circumstances of the cases brought before them, whether the conditions governing the grant of interim relief have been satisfied.**

[Signatures]