4. Is Article 5(3) of Group Exemption Regulation No 1475/95 to be interpreted as requiring that the termination of an agreement with a dealer on one year's notice must be effected on the basis of a reorganisation plan already drawn up by the supplier?

5. If Question 4 is answered in the affirmative:

   What requirement can be placed under Community law on the content and form of a reorganisation plan drawn up by the supplier and when must the reorganisation plan be submitted?

6. If the answer to Question 4 is in the affirmative:

   Must the supplier inform the dealer whose contract has been terminated of the content of the reorganisation plan, and when and in what form must notification to the dealer be effected in a particular case?

7. If the answer to Question 4 is in the affirmative:

   What is the consequence of a reorganisation plan not fulfilling the requirement which may be placed on the form and content of such a plan?

8. According to the Danish version of Article 5(3) of Group Exemption Regulation No 1475/95, the supplier's termination of an agreement with a dealer on one year's notice presupposes that '… det er nødvendigt at foretage en gennemgribende reorganisering af hele forhandlernettet eller en del heraf …' (it is necessary to reorganise radically the whole or part of the network). The word 'necessary' appears in all the language versions of Group Exemption Regulation No 1475/95 but the word 'gennemgribende' (radically) appears only in the Danish version.

   In this context:

   What requirement may be placed on the nature of the reorganisation so that the supplier is able to terminate the dealer's contract on one year's notice under Article 5(3) of Group Exemption Regulation No 1475/95?

9. In assessing whether the conditions — for the supplier to be able to terminate the agreement on one year's notice under Article 5(3) of Group Exemption Regulation No 1475/95 — are satisfied, is it of importance what the economic consequences would be for the supplier if it had terminated the dealer's contract on two years' notice?

10. Who bears the burden of proving that the conditions for the supplier being able to terminate the agreement on one year's notice under Article 5(3) of Group Exemption Regulation No 1475/95 are satisfied, and how can such a burden of proof be lifted?

11. Is Article 5(3) of Group Exemption Regulation No 1475/95 to be interpreted as meaning that the conditions — for the supplier to be able to terminate the agreement on one year's notice under that provision — can be satisfied simply on the grounds that the implementation of Group Exemption Regulation No 1400/2002 in itself could have necessitated a radical reorganisation of the supplier's dealer network?

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([1]) OJ L 145 of 29.6.1995, p. 25.

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## Action brought on 21 March 2005 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

**(Case C-127/05)**

(2005/C 143/26)

*(Language of the case: English)*

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 21 March 2005 by the Commission of the European Communities, represented by M.-J. Jonczy and N. Yerrell, of its Legal Service.

The Commission claims that the Court should:

1. declare that in restricting the duty upon employers to ensure the safety and health of workers in every aspect related to the work to a duty to do this 'so far as is reasonably practicable', the United Kingdom has failed to fulfil its obligations under Articles 5(1) and 5(4) of Council Directive 89/391/EEC of 12th June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ([1]);

2. order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

*Pleas in law and main arguments*

The Commission's complaint is based upon Section 2(1) of the Health and Safety at Work Act 1974 which states that it shall be the duty of every employer to ensure the health, safety and welfare of all his employees at work '*so far as is reasonable practicable*'. The Commission considers that this qualification placed upon the employers' duty is incompatible with Articles 5(1) and 5(4) of Directive 89/391/EEC ('the Directive').

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.

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([1]) OJ L 183, p. 1.

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**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 redispatch 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 redispatch?

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 redispatch, 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?

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([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).