Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

13 May 2026*

(Reference for a preliminary ruling – Public health – Food law – Regulation (EC) No 178/2002 – General principles and requirements – Regulation (EC) No 852/2004 – Food hygiene – Article 4(2) – General and specific obligations on all food business operators – Scope – Annex II – General provisions on hygiene for those operators – Article 5 – Hazard analysis and critical control points principles (HACCP principles) – Scope – Repeated finding, by the competent authority, of traces and droppings of pests in the shops and warehouses of an undertaking in the food sector – Criminal offence provided for in national law in implementation of the third subparagraph of Article 17(2) of Regulation No 178/2002)

In Case C-483/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, Belgium), made by decision of 26 June 2024, received at the Court on 10 July 2024, in the criminal proceedings against

Aldi SA,

intervening party:

Procureur général près la cour d'appel de Liège,

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, S. Rodin, N. Piçarra (Rapporteur) and N. Fenger, Judges,

Advocate General: J. Kokott,

Registrar: G. Chiapponi, Administrator,

having regard to the written procedure and further to the hearing on 25 June 2025,

after considering the observations submitted on behalf of:

– Aldi SA, by N. Cariat and D. Verwaerde, avocats, and H. Van Bavel, advocaat,

– the Belgian Government, by P. Cottin and M. Jacobs and C. Pochet, acting as Agents,

* Language of the case: French.

– Ireland, M. Browne, Chief State Solicitor, S. Finnegan, and A. Joyce, acting as Agents, and B. Quigley, Senior Counsel, and S. Brittain, Barrister-at-Law,

– the Greek Government, by E. Leftheriotou and A. Vasilopoulo, acting as Agents,

– the French Government, by P. Chansou and B. Travard, acting as Agents,

– the Luxembourg Government, by A. Germeaux and T. Schell, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

– the Polish Government, by B. Majczyna and D. Lutostańska, acting as Agents,

– the European Commission, by F. Le Bot and M. Zerwes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 October 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(2) of, and of Annex II, Chapter I, paragraph 2(c), Chapter V, paragraph 1(a), and Chapter IX, paragraphs 2 to 4, to, Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ 2004 L 139, p. 1, and corrigendum OJ 2004 L 226, p. 3).

2 The request has been made in criminal proceedings brought against a food business operator, Aldi SA, which is being prosecuted in respect of a number of criminal offences for the infringement of Regulation No 852/2004.

Legal context

Regulation (EC) No 178/2002

3 Recital 30 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) states:

‘A food business operator is best placed to devise a safe system for supplying food and ensuring that the food it supplies is safe; thus, it should have primary legal responsibility for ensuring food safety. …’

4 Article 1(1) of that regulation, 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. It establishes common principles and responsibilities, the means to provide a strong science base, efficient organisational arrangements and procedures to underpin decision-making in matters of food and feed safety.'

5 Article 3 of that regulation, entitled 'Other definitions', provides:

'For the purposes of this Regulation:

…

2. "food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food;

3. "food business operator" means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control;

…

9. "risk" means a function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard;

…

14. "hazard" means a biological, chemical or physical agent in, or condition of, food or feed with the potential to cause an adverse health effect;

…'

6 Article 14 of that regulation, entitled 'Food safety requirements', provides:

'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.

…

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 Article 17 of Regulation No 178/2002, entitled ‘Responsibilities’, provides:

‘1. Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.

2. Member States shall enforce food law, and monitor and verify that the relevant requirements of food law are fulfilled by food and feed business operators at all stages of production, processing and distribution.

…

Member States shall also lay down the rules on measures and penalties applicable to infringements of food and feed law. The measures and penalties provided for shall be effective, proportionate and dissuasive.’

Regulation No 852/2004

8 Recitals 1, 7, 8, 12 and 16 of Regulation No 852/2004 state:

‘(1) The pursuit of a high level of protection of human life and health is one of the fundamental objectives of food law, as laid down in [Regulation No 178/2002, which] also lays down other common principles and definitions for national and Community food law, including the aim of achieving free movement of food within the Community.

…

(7) The principal objective of the new general and specific hygiene rules is to ensure a high level of consumer protection with regard to food safety.

(8) An integrated approach is necessary to ensure food safety from the place of primary production up to and including placing on the market or export. Every food business operator along the food chain should ensure that food safety is not compromised.

…

(12) Food safety is a result of several factors: legislation should lay down minimum hygiene requirements; official controls should be in place to check food business operators’ compliance and food business operators should establish and operate food safety programmes and procedures based on the [hazard analysis and critical control points principles (“the HACCP principles”)].

…

(16) Flexibility is also appropriate to enable the continued use of traditional methods at any of the stages of production, processing or distribution of food and in relation to structural requirements for establishments. … However, flexibility should not compromise food hygiene objectives. …’

9 Article 1of that regulation, entitled ‘Scope’, provides, in paragraph 1:

‘This Regulation lays down general rules for food business operators on the hygiene of foodstuffs, taking particular account of the following principles:

(a) primary responsibility for food safety rests with the food business operator;

(b) it is necessary to ensure food safety throughout the food chain, starting with primary production;

…

(d) general implementation of procedures based on the HACCP principles, together with the application of good hygiene practice, should reinforce food business operators’ responsibility;

…’

10 Article 2 of that regulation, entitled ‘Definitions’, provides:

‘1. For the purposes of this Regulation:

(a) “food hygiene”, hereinafter called “hygiene”, means the measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff taking into account its intended use;

…

(d) “competent authority” means the central authority of a Member State competent to ensure compliance with the requirements of this Regulation or any other authority to which that central authority has delegated that competence; it shall also include, where appropriate, the corresponding authority of a third country;

…

(f) “contamination” means the presence or introduction of a hazard;

…

2. The definitions laid down in Regulation (EC) No 178/2002 shall also apply.

…’

11 Article 3 of that regulation, headed ‘General obligation’, provides:

‘Food business operators shall ensure that all stages of production, processing and distribution of food under their control satisfy the relevant hygiene requirements laid down in this Regulation.’

12 Article 4 of Regulation No 852/2004, entitled ‘General and specific hygiene requirements’, provides, in paragraph 2:

‘Food business operators carrying out any stage of production, processing and distribution of food … shall comply with the general hygiene requirements laid down in Annex II …’

13 Article 5 of the regulation, entitled ‘Hazard analysis and critical control points’, provides:

‘1. Food business operators shall put in place, implement and maintain a permanent procedure or procedures based on the HACCP principles.

2. The HACCP principles referred to in paragraph 1 consist of the following:

(a) identifying any hazards that must be prevented, eliminated or reduced to acceptable levels;

(b) identifying the critical control points at the step or steps at which control is essential to prevent or eliminate a hazard or to reduce it to acceptable levels;

(c) establishing critical limits at critical control points which separate acceptability from unacceptability for the prevention, elimination or reduction of identified hazards;

(d) establishing and implementing effective monitoring procedures at critical control points;

(e) establishing corrective actions when monitoring indicates that a critical control point is not under control;

(f) establishing procedures, which shall be carried out regularly, to verify that the measures outlined in subparagraphs (a) to (e) are working effectively;

and

(g) establishing documents and records commensurate with the nature and size of the food business to demonstrate the effective application of the measures outlined in subparagraphs (a) to (f).

…’

14 Annex II to the regulation is entitled ‘General hygiene requirements for all food business operators (except when Annex I applies)”. Chapter I of that annex, entitled ‘General requirements for food premises (other than those specified in [Chapter III])’, provides, in paragraph 2:

‘The layout, design, construction, siting and size of food premises are to:

…

(c) permit good food hygiene practices, including protection against contamination and, in particular, pest control;

…’

15 Chapter V of that Annex II, entitled 'Equipment requirements', provides, in paragraph 1 thereof:

'All articles, fittings and equipment with which food comes into contact are to:

(a) be effectively cleaned and, where necessary, disinfected. Cleaning and disinfection are to take place at a frequency sufficient to avoid any risk of contamination;

…'

16 Chapter IX of that Annex II, entitled 'Provisions applicable to foodstuffs', provides, in paragraphs 2 to 4 thereof:

'2. Raw materials and all ingredients stored in a food business are to be kept in appropriate conditions designed to prevent harmful deterioration and protect them from contamination.

3. At all stages of production, processing and distribution, food is to be protected against any contamination likely to render the food unfit for human consumption, injurious to health or contaminated in such a way that it would be unreasonable to expect it to be consumed in that state.

4. Adequate procedures are to be in place to control pests. …'

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

17 Following checks carried out on 20 September 2020, 25 November 2021, 12 January 2022, 4, 7 and 8 February 2022, 29 June 2022 and 6 and 13 July 2022 in six shops and a warehouse operated by Aldi, the competent authority, within the meaning of Article 2(1)(d) of Regulation No 852/2004, drew up several reports finding, inter alia, on 11 occasions, the presence of rodent droppings and, on 3 occasions, the presence of nibbled and soiled products offered for sale in store, the presence of dirt and risks of contamination as well as a lack of a system of checks upon receipt of delivered goods.

18 Consequently, the Belgian public prosecutor's office instituted criminal proceedings against Aldi in respect of a criminal offence provided for in national law for the infringement, by any food business operator, within the meaning of Article 3(3) of Regulation No 178/2002, of its obligations pursuant to Article 4 of Regulation No 852/2004, read in conjunction with certain provisions of Annex II thereto.

19 By a judgment of 15 March 2023, the tribunal correctionnel du Luxembourg, division Neufchâteau (Criminal Court, Luxembourg, Neufchâteau Division, Belgium) acquitted Aldi of all the charges brought against it.

20 By a judgment of 12 February 2024, the cour d'appel de Liège (Court of Appeal, Liège, Belgium) upheld that judgment, finding that Regulation No 852/2004 did not impose on food business operators, operating at no matter which stage of production, processing and distribution of food, an obligation of result as regards pest control, but a set of obligations to use best endeavours. The presence of traces and droppings of pests within the shops and the warehouse concerned does not therefore constitute, in itself, an infringement of the regulation. That court relied, to that effect, on the HACCP principles set out in Article 5 of that regulation, and on Commission Notice on the

implementation of food safety management systems covering Good Hygiene Practices and procedures based on the HACCP principles, including the facilitation/flexibility of the implementation in certain food businesses (OJ 2022 C 355, p. 1).

21 The procureur général près la cour d'appel de Liège (Public Prosecutor attached to the Court of Appeal, Liège, Belgium) brought an appeal on a point of law against that judgment before the Cour de cassation (Court of Cassation, Belgium), which is the referring court, submitting that that interpretation deprives of its substance the requirement of food hygiene and safety established by Regulation No 852/2004. According to that public prosecutor, the discretion left to food business operators by that regulation covers only the choice of practices to adopt, and not the result to be obtained. Accordingly, a finding, by the competent authority, of the presence of traces and droppings of pests is sufficient to prove that that obligation was not complied with, without that authority being required to establish that the business concerned has not implemented all possible measures to tackle that hazard.

22 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the obligations laid down in Article 4(2) of [Regulation No 852/2004], in Annex II thereto and, more specifically, in paragraph 2(c) of Chapter I, paragraph 1(a) of Chapter V, and paragraphs 2, 3 and 4 of Chapter IX, impose on wholesale and retail food business operators an obligation as to the result to be achieved, such that the presence of droppings and traces of pests in shops and warehouses is sufficient, except in cases of *force majeure*, some external cause or unavoidable mistake, to establish an infringement of that regulation, or are food business operators subject only to an obligation to use best endeavours, that is to say[,] to do everything possible to control pests, such that the mere finding by the national administrative authority of the presence of droppings and traces of pests in shops and warehouses is not sufficient to establish an infringement of that regulation?'

Consideration of the question referred

Admissibility

23 In its written observations, Aldi submits that, since it is not being prosecuted in respect of infringements of the provisions of Annex II, Chapter V, paragraph 1(a), and Chapter IX, paragraph 2, to Regulation No 852/2004, only the interpretation of Chapter I, paragraph 2(c), and of Chapter IX, paragraphs 3 and 4, of that annex is relevant for the outcome of the criminal procedure in the main proceedings.

24 In accordance with settled case-law, in proceedings under Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgments of 2 December 2025, *Stichting Right to Consumer Justice and Stichting App Stores Claims*, C-34/24, EU:C:2025:936, paragraph 39, and of 18 December 2025, *Lukoil Bulgaria*, C-260/24, EU:C:2025:988, paragraph 18 and the case-law cited).

25 The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 29 January 2026, *Fondazione Teatro alla Scala di Milano*, C-668/24, EU:C:2026:60, paragraph 35 and the case-law cited).

26 In the present case, irrespective of whether the provisions Annex II, Chapter V, paragraph 1(a), and Chapter IX, paragraph 2, to Regulation No 852/2004 were specifically invoked in the context of the criminal prosecution brought against Aldi, it suffices to note that those provisions contribute to ensuring food safety and form part of the context in the light of which all of that annex must be interpreted. Therefore, it cannot be held that the interpretation sought of those provisions is unrelated to the facts or object of the main proceedings, or that the problem raised by the referring court in connection with those provisions is hypothetical.

27 Furthermore, at the hearing before the Court, Aldi submitted that the question referred concerns not the interpretation of EU law, but the application of criminal penalties provided for by Belgian legislation, as Regulation No 852/2004 does not contain any criminal penalty provision.

28 As the Advocate General observed in point 29 of her Opinion, the referring court has doubts as to the scope of the obligations imposed on food business operators by Regulation No 852/2004, which expressly refers to Regulation No 178/2002. That regulation, in the third subparagraph of Article 17(2) thereof, requires Member States to lay down effective, proportionate and dissuasive measures and penalties, which are to apply in the event of an infringement of the EU food law.

29 Therefore, the present case falls within the scope of EU law, as the procedure in the main action concerns infringements of Regulation No 852/2004 which are alleged against Aldi and criminalised by the Belgian legislature, and the question posed in fact refers to the interpretation of that regulation.

30 It follows from the foregoing that the question referred for a preliminary ruling is admissible.

Substance

31 It should be noted as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. Moreover, the Court may find it necessary to consider provisions of EU law which the national court has not referred to in its question (see judgments of 20 March 1986, *Tissier*, 35/85, EU:C:1986:143, paragraph 9, and of 1 August 2025, *Alace and Canpelli*, C-758/24 and C-759/24, EU:C:2025:591, paragraph 44).

32 By its sole question, the referring court asks, in essence, whether the provisions of Annex II, Chapter I, paragraph 2(c), Chapter V, paragraph 1(a), and Chapter IX, paragraphs 2 to 4, to Regulation No 852/2004, read in conjunction with Article 4(2) and Article 5(1) and (2) of that regulation, must be interpreted as meaning that a finding, by the competent authority, of traces and droppings of pests in the shops and warehouses of a food business operator suffices to establish that there is an infringement of the obligations imposed on the food business operator

which controls that business, pursuant to those provisions, without it being necessary also to prove that that operator has failed to take all available measures to prevent the presence of those pests.

33 As a preliminary point, it should be recalled that the principal objective of Regulation No 852/2004 is to ensure a high level of consumer protection with regard to food safety, as is apparent inter alia from recital 7 of that regulation. That objective contributes to attaining a fundamental objective of the EU food law, namely the assurance of a high level of protection of human life and health, which is also the aim of Regulation No 178/2002 as is clear, in particular, from Article 1(1) thereof.

34 That latter regulation, as recital 1 of Regulation No 852/2004 recalls, also sets out other common principles and definitions in the area of national and EU food law. Regulation No 178/2002 is therefore closely connected to Regulation No 852/2004, Article 2(2) of which provides that the definitions laid down by the first of those regulations also applies in the context of the second.

35 First of all, Article 14(1) and (2) of Regulation No 178/2002 provides that no food is to be placed on the market if it is 'unsafe', that is to say, if it is considered to be injurious to health or unfit for human consumption.

36 Next, Article 17(1) of that regulation, read in the light of recital 30, imposes on a food business operator, as defined in Article 3(3) of the regulation, the primary legal responsibility for ensuring, at all stages of production, processing and distribution within the businesses under their control, that foods satisfy the requirements of food law which are relevant to their activities and for verifying that those requirements are met. In that context, Article 1(1)(a) of Regulation No 852/2004 establishes the principle that primary responsibility for food safety rests with the food business operator.

37 Lastly, the concept of 'contamination' is defined in Article 2(1)(f) of Regulation No 852/2004 as being the presence or introduction of a 'hazard', which is a concept defined in Article 3(14) of Regulation No 178/2002 as being a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

38 That broad definition of the concept of 'contamination' demonstrates the clear wish of the EU legislature to promote a high level of food safety (see, to that effect, judgments of 12 September 2019, *A and Others*, C-347/17, EU:C:2019:720, paragraph 40, and of 22 February 2024, *Micreos Food Safety*, C-745/22, EU:C:2024:160, paragraph 42).

39 The Court has already held that the importance of the objective of ensuring food safety and, accordingly, assuring a high level of consumer protection may justify even substantial negative economic consequences for certain food business operators (see, to that effect, judgment of 2 September 2021, *Association of Independent Meat Suppliers and Cleveland Meat Company*, C-579/19, EU:C:2021:665, paragraph 97).

40 Each of the provisions of Regulation No 852/2004 relevant for answering the question referred must be interpreted in the light of the objectives and principles recalled in paragraphs 33 to 39 of the present judgment, with a view to those provisions being effectively implemented.

41 In the first place, Article 4(2) of Regulation No 852/2004 requires food business operators carrying out any stage of production, processing and distribution of food to comply with, inter alia, the general hygiene requirements laid down in Annex II to that regulation.

42 That obligation forms part of the 'general obligation', provided for in Article 3 of Regulation No 852/2004, read in the light of recital 8 of that regulation, which requires food business operators to ensure that all stages of production, processing and distribution of food under their control satisfy the relevant hygiene requirements laid down in that regulation, in order to ensure that food safety is not compromised.

43 The concept of 'food hygiene' is defined in Article 2(1)(a) of the same regulation as encompassing the measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff taking into account its intended use.

44 In the second place, the provisions of Annex II to Regulation No 852/2004, to which Article 4(2) of that regulation refers, establish the general hygiene requirements applicable, in principle, to all food business operators. The request for a preliminary ruling explicitly refers to five of those requirements.

45 First, pursuant to the provisions of Chapter I, paragraph 2(c), of that Annex II, food premises must, by their layout, design, construction, siting and size, permit the implementation of good food hygiene practices, including protection against contamination and, in particular, pest control.

46 That provision thus imposes an obligation relating to the characteristics of the food premises, which must permit the implementation of good hygiene practices in order to prevent 'contamination', within the meaning of Regulation No 852/2004, of that food. It follows that the presence, in the food premises, of traces and droppings of pests which food business operators are obliged to seek to prevent, does not constitute, in itself, an infringement of the obligation imposed on those operators pursuant to Chapter I, paragraph 2(c), of Annex II to that regulation, provided that the characteristics of those premises are apt to permit the implementation of such good practices.

47 Secondly, the provisions of paragraph 1(a) of Chapter V of that Annex II provide that the articles, fittings and equipment with which food comes into contact must be effectively cleaned and, where necessary, disinfected at a frequency sufficient to avoid any risk of contamination. The concept of 'risk' is defined in Article 3(9) of Regulation No 178/2002 as being a function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard.

48 That obligation to clean and disinfect with sufficient frequency permitting the avoidance of any risk of contamination cannot be regarded as having been complied with if the competent authorities find the presence of traces and droppings of pests within the fittings and equipment with which food comes into contact.

49 Thirdly, in accordance with the provisions of paragraph 2 of Chapter IX of that Annex II, which lays down the requirements applicable to food, raw materials and all ingredients stored in a food business are to be kept in appropriate conditions designed to prevent harmful deterioration and protect them from any contamination.

50 It follows from the wording of those provisions, notably the phrases 'all ingredients stored' and '[any] contamination', read in the light of the objective pursued by Regulation No 852/2004, consisting of ensuring a high level of consumer protection with regard to food safety, that the obligation of storing raw materials and ingredients adequately, within the meaning of those provisions, is not complied with if, in the premises for storage within a food business, the competent authority finds the presence not only of traces and droppings of pests, but also of nibbled and soiled products.

51 Fourthly, the provisions of paragraph 3 of Chapter IX of Annex II to Regulation No 852/2004 require that, at all stages of production, processing and distribution, food is to be protected against any contamination likely to render the food unfit for human consumption, injurious to health or contaminated in such a way that it would be unreasonable to expect it to be consumed in that state.

52 The requirement to protect food against '[any] contamination' at 'all stages of production, processing and distribution' of that food, caused by biological, chemical or physical agents likely to render it unfit for consumption, as well as the objective of ensuring a high level of protection of the health of consumers, means that those provisions are not complied with if the competent authority finds food that is soiled and nibbled by pests in the shops or warehouses of a food business.

53 Fifthly, pursuant to the provisions of paragraph 4 of Chapter IX of that Annex II, every food business operator must put in place adequate procedures to control pests in the food business that it controls.

54 It is clear from those provisions, read in the light of the objective of Regulation No 852/2004, consisting of ensuring food safety and assuring a high level of protection of consumer health, that a finding, by the competent authority, of the presence of pests in the shops or warehouses of a food business is a strong indication that contributes to establishing that the operator of that business has not put in place adequate procedures for the control of those pests. Furthermore, it is clear from those provisions that the repeated finding of the presence of such traces suffices to demonstrate that the obligation to adopt those adequate procedures has been infringed.

55 In the third place, as is clear from the Court's case-law, the interpretation of the provisions of Annex II to Regulation No 852/2004 must take into account, in particular, Article 5 of that regulation (see, to that effect, judgments of 6 October 2011, *Astrid Preissl*, C-381/10, EU:C:2011:638, paragraph 26, and *Albrecht and Others*, C-382/10, EU:C:2011:639, paragraph 18).

56 Under Article 5(1) of Regulation No 852/2004, read in the light of recital 12 thereof, food business operators are required to put in place, implement and maintain a permanent procedure or procedures based on the HACCP principles, including that which appears in Article 5(2)(a) of the regulation, according to which those operators must identify any hazards that must be prevented, eliminated or reduced to acceptable levels. Article 1(1)(d) of that regulation states in that regard that the general implementation of procedures based on the HACCP principles, together with the application of good hygiene practices, should reinforce food business operators' responsibility.

57 It follows that the implementation of the HACCP principles, in accordance with Article 5 of Regulation No 852/2004, cannot relieve a food business operator of its responsibility resulting from an infringement of provisions of Annex II to that regulation, read in conjunction with Article 4(2) of that regulation.

58 In that regard, it cannot be held that the 'flexibility of the implementation in certain food businesses', referred to in the Commission notice cited in paragraph 20 of the present judgment, would make it possible for a food business operator to be relieved of its obligations under the combined provisions of Article 4(2) of, and of Annex II to, Regulation No 852/2004. As recital 16 of that regulation states, that 'flexibility', which is intended to enable the continued use of traditional methods, cannot have the effect of compromising food hygiene objectives.

59 As the French Government and the European Commission submitted, in essence, in their written observations, the obligations laid down in Article 4(2) and Article 5 of Regulation No 852/2004 are complementary in respect of the aim of reinforcing food business operators' responsibility.

60 In the present case, according to the information provided by the referring court, repeated checks carried out at intervals of several months in several subsidiaries of the food business concerned revealed contamination by traces of pests in, on and in the immediate vicinity of food, most of which was already at the stage of being placed on the market, that is to say, accessible to consumers.

61 Lastly, to the extent that the request for a preliminary ruling does not indicate that, in the main proceedings, the food business operator concerned alleged a case of *force majeure*, external cause or unavoidable mistake, there is no need to examine that aspect of the question referred.

62 In the light of all the foregoing considerations, the answer to the question referred is that:

– the provisions of Annex II, Chapter V, paragraph 1(a), and Chapter IX, paragraphs 2 and 3, to Regulation No 852/2004, read in conjunction with Article 4(2) and Article 5(1) and (2) of that regulation, must be interpreted as meaning that a finding, by the competent authority, of traces and droppings of pests in the shops and warehouses of a food business suffices to establish that there is an infringement of the obligations imposed on the food business operator which controls that business, pursuant to those provisions, without it being necessary also to prove that that operator has failed to take all available measures to prevent the presence of those pests;

– the provisions of Annex II, Chapter IX, paragraph 4, to Regulation No 852/2004, read in conjunction with Article 4(2) and Article 5(1) and (2) of that regulation, must be interpreted as meaning that the repeated finding, by the competent authority, of the presence of such traces and droppings of pests suffices to establish that that operator has not put in place adequate procedures for the control of those pests;

– the provisions of Annex II, Chapter I, paragraph 2(c), to Regulation No 852/2004, read in conjunction with Article 4(2) and Article 5(1) and (2) of that regulation, must be interpreted as meaning that the finding of an infringement of those provisions requires it to be established that the characteristics of the premises of a food business do not make it possible to implement good hygiene practices.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

– **The provisions of Annex II, Chapter V, paragraph 1(a), and Chapter IX, paragraphs 2 and 3, to Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, read in conjunction with Article 4(2) and Article 5(1) and (2) of that regulation,**

must be interpreted as meaning that a finding, by the competent authority, of traces and droppings of pests in the shops and warehouses of a food business suffices to establish that there is an infringement of the obligations imposed on the food business operator which controls that business, pursuant to those provisions, without it being necessary also to prove that that operator has failed to take all available measures to prevent the presence of those pests.

– **The provisions of Annex II, Chapter IX, paragraph 4, to Regulation No 852/2004, read in conjunction with Article 4(2) and Article 5(1) and (2) of that regulation,**

must be interpreted as meaning that the repeated finding, by the competent authority, of the presence of such traces and droppings of pests suffices to establish that that operator has not put in place adequate procedures for the control of those pests.

– **The provisions of Annex II, Chapter I, paragraph 2(c), to Regulation No 852/2004, read in conjunction with Article 4(2) and Article 5(1) and (2) of that regulation,**

must be interpreted as meaning that the finding of an infringement of those provisions requires it to be established that the characteristics of the premises of a food business do not make it possible to implement good hygiene practices.

[Signatures]