OPINION OF ADVOCATE GENERAL POIARES MADURO delivered on 19 January 2006 [1]

1. The questions referred by the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands) relate to various aspects of the interpretation of Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease, [2] as amended by Council Directive 90/423/EEC of 26 June 1990 [3] ('the directive'). The referring court seeks to ascertain the consequences to be attached to the fact that the laboratory which carried out the analyses on the basis of which the animals on the holdings of Mr Dokter, Mr Boekhout and Maatschap Van den Top were slaughtered is not the laboratory listed in Annex B to the directive.

I — Facts, legal background and the questions submitted for a preliminary ruling

2. The dispute in the main proceedings is between, on the one hand, Mr Dokter, Mr Boekhout and Maatschap Van den Top and, on the other, the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality). The applicants in the main proceedings challenge the decisions to slaughter their animals taken by the Director of the Rijksdienst voor de keuring van Vee en Vlees (National Cattle and Meat Inspection Service, 'the RVV') on 29 March 2001 under the Gezondheids- en welzijnswet voor dieren (Law on animal health and welfare) of 24 September 1992 (Stbl. 1992, No 585) and the Besluit verdachte dieren (Decree on suspect animals) of 24 September 1992 (Stbl. 1992, No 585) ('the contested decisions').

3. Numerous measures have been adopted by the Community to combat foot-and-mouth disease. The purpose of the directive, as set out in Article 1, is to define the 'Community control measures to be applied in the event of outbreaks of foot-and-mouth disease'.

1 — Original language: Portuguese

2 — OJ 1985 L 315, p. 11.

3 — OJ 1990 L 224, p. 13.

4. Under the second paragraph of Article 2 of the directive:

'...

(c) "infected animal" means any animal of a susceptible species:

— in which clinical symptoms or post-mortem lesions which may arise from foot-and-mouth disease have been ascertained,

or

— in which the presence of foot-and-mouth disease has been officially ascertained following a laboratory examination;

(d) "animal suspected of being infected" means any animal of a susceptible species showing clinical symptoms or post-mortem lesions which are such that the presence of foot-and-mouth disease may reasonably be suspected;

(e) "animal suspected of being contaminated" means any animal of a susceptible species which may — according to the epizootio-logical information collected — have been directly or indirectly exposed to the foot-and-mouth virus'.

5. The measures to be taken where a holding contains one or more animals suspected of being infected or contaminated are set out in Article 4 of the directive. [4] As soon as it has been ascertained that a contaminated animal is on a holding, under Article 5(1) of the directive 'adequate samples [are] taken for examination by the laboratory referred to in Annex I, where these samples and examinations have not been taken or carried out during the period of suspicion'. Paragraph 2 of that article provides for the slaughter and destruction of the animals on the holding. In addition, under paragraph 4 of that article, 'the competent authority may extend the measures provided for in paragraph 1 to adjoining holdings should their location, their configuration, or contacts with animals from the holding where the disease has been recorded give reason to suspect possible contamination'.

4 — That article provides, in particular, that:
'1. Member States shall ensure that ... official means of investigation to confirm or rule out the presence of the disease are set in motion immediately and, in particular, that the official veterinarian takes the necessary samples, or has them taken, for laboratory examination.
As soon as the suspected infection is notified, the competent authority shall have the holding placed under official surveillance and shall in particular order that:
...
all animals of susceptible species on the holding be kept in their living quarters or some other place where they can be isolated ...'.

6. The role of the approved laboratories listed in Annexes A and B to the directive is set out in Articles 11 and 13 of the directive. Under the first indent of Article 11(1):

'Member States shall ensure that:

— laboratory testing to detect the presence of foot-and-mouth disease are carried out by a national laboratory indicated in Annex B, which may be amended or supplemented in accordance with the procedure laid down in Article 17. This laboratory testing should, if necessary and especially on the first appearance of the disease, show the type, sub-type or, where appropriate, the variant of the relevant virus which may be confirmed, if necessary, by a reference laboratory designated by the Community'.

7. Article 13(1) provides that:

'1. Member States shall ensure that:

...

— the manipulation of foot-and-mouth virus for research, diagnosis and/or manufacture of vaccines shall be carried out only in approved establishments and laboratories listed in Annexes A and B,

— ...

— [these] establishments and laboratories ... shall be approved only if they fulfil the minimum standards recommended by the FAO for laboratories working on foot-and-mouth viruses in vitro and in vivo.'

8. The checks that the Commission of the European Communities may carry out at these laboratories are described in Article 13(2):

'Veterinary experts from the Commission, in collaboration with the competent authorities of the Member States, shall carry out spot-checks to ascertain whether the security systems applied in the establishments and laboratories referred to in Annexes A and B comply with the FAO's minimum standards.

The Commission shall carry out these checks at least once a year ... . The list of establishments and laboratories in Annexes A and B may be reviewed in the light of these checks by the Commission, in accordance with the procedure referred to in Article 17, by 31 December 1991. The list will be regularly updated in accordance with the same procedure.

In accordance with the same procedure, a decision may be taken to adopt a uniform code of good conduct for the security systems applied in the establishments and laboratories listed in Annexes A and B.'

9. Annex B to the directive designates 'Centraal Diergeneeskundig Instituut, Lelystad' as a public establishment. On 2 July 1992 the Commission adopted a decision amending the list of establishments and laboratories authorised to manipulate foot-and-mouth disease virus as laid down in the directive, [5] where, in Annex B to the directive under the heading 'National laboratories authorised to handle live foot-and-mouth disease virus', the 'Centraal Diergeneeskundig Instituut, Lelystad', still appears. Finally, after the events in the case, on 10 January 2003 the Commission adopted a decision amending Directive 85/511 as regards the lists of laboratories authorised to handle live foot-and-mouth disease virus. [6] Annex A lists the commercial laboratories authorised to handle live foot-and-mouth disease virus for vaccine production and Annex B the national laboratories authorised to handle live foot-and-mouth disease virus. The 'CIDC-Lelystad, Central Institute for Animal Disease Control, Lelystad' is named in both annexes. Annex XI to Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511 [7] lists, in Part A, the national laboratories authorised to handle live foot-and-mouth disease virus and, in Part B, the laboratories authorised to handle live foot-and-mouth virus for vaccine production. The same laboratory 'CIDC-Lelystad, Central Institute for Animal Disease Control, Lelystad' appears in both parts of that annex.

10. Finally, reference must also be made to Commission Decision 2001/246/EC of 27 March 2001 laying down the conditions for the control and eradication of foot-and-mouth disease in the Netherlands in application of Article 13 of Directive 85/511, [8] Article 2 of which authorises that Member State to resort to suppressive vaccination under the conditions set out in the Annex to that decision, which provide in particular that 'the vaccination zone shall be an area of up to 2 km radius around a holding placed

5 — Decision 92/380/EEC (OJ 1992 L 198, p. 54).

6 — Decision 2003/11/EC (OJ 2003 L 7, p. 82).

7 — OJ 2003 L 306, p. 1.

8 — OJ 2001 L 88, p. 21.

under the restrictions laid down in Articles 4 or 5 of Directive 85/511/EEC'.

11. The Director of the RVV based the contested decisions on inspections carried out on 20, 22 and 25 March 2001 by a team of specialists from the RVV at the Teunissen holding, which is less than two kilometres from the holdings of the applicants in the main proceedings. The samples taken during these inspections were sent to the ID-Lelystad BV laboratory ('ID-Lelystad') for analysis. On 27 March 2001 the Teunissen holding was depopulated. On 28 March the above-mentioned laboratory sent the RVV the positive result of the analyses. Thereupon the Director of the RVV declared the Teunissen holding to be contaminated and, by a decision of 29 March 2001, declared that the biungulate animals on the holdings of the applicants in the main proceedings should be regarded as suspected of being contaminated with foot-and-mouth disease because they were close to a holding on which there were contaminated animals. In order to control the virus, the Director ordered the vaccination and then the slaughter of the applicants' animals.

12. The applicants in the main proceedings brought complaints against the contested decisions, but these were rejected by the Director of the RVV. They then brought three separate actions before the College van Beroep voor het bedrijfsleven, which stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Does the obligation on Member States under the first indent of Article 11(1) of [Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease], read in conjunction with the second indent of Article 13(1) of Directive 85/511, to ensure that laboratory testing to detect the presence of [foot-and-mouth disease] is carried out by a laboratory listed in Annex B to Directive 85/511 have direct effect?

2. (a) Must Article 11(1) of Directive 85/511 be interpreted as meaning that legal consequences must be attached to the fact that the presence of foot-and-mouth disease is found by a laboratory which is not listed in Annex B to Directive 85/511?

(b) If the answer to Question 2(a) is in the affirmative:

Is the purpose of Article 11(1) of Directive 85/511 to protect the interests of individuals, such as the appellants in the main proceedings?

If not, can individuals such as the appellants in the main proceedings plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?

(c) If the answer to Question 2(b) means that individuals can rely on Article 11(1) of Directive 85/511:

What legal consequences must be attached to a finding of the presence of [foot-and-mouth disease] by a laboratory which is not listed in Annex B to Directive 85/511?

3. Must Annex B to Directive 85/511 be interpreted, having regard to Articles 11 and 13 thereof, as meaning that the mention in Annex B to Directive 85/511 of "Centraal Diergeneeskundig Instituut, Lelystad" can or must refer also to ID-Lelystad BV?

4. If it follows from the answers to the above questions that the presence of [foot-and-mouth disease] can be found by a laboratory which is not listed in Annex B to Directive 85/511 or that Annex B to Directive 85/511 must be interpreted as meaning that the mention of the "Centraal Diergeneeskundig Instituut, Lelystad" can or must refer also to ID-Lelystad BV:

Must Directive 85/511 be interpreted as providing that the national administrative authority authorised to adopt decisions is bound by the outcome of an examination by a laboratory which is listed in Annex B to Directive 85/511 or — if the answer to Question 2(a) means that the administrative authority may base its foot-and-mouth disease control measures also on results obtained by a laboratory which is not listed in Annex B to Directive 85/511 — by the results of the latter laboratory, or does the determination of final authority in that regard fall within the procedural autonomy of the Member State and must the court before which the main proceedings are pending examine whether the rules in that respect apply irrespective of whether the laboratory examination is carried out by virtue of a Community or national legal obligation and of whether or not the application of the provisions of national procedural law renders the implementation of the Community rules extremely difficult or practically impossible?

5. If the answer to Question 4 means that the issue of whether national authorities are bound by the laboratory result is governed by Directive 85/511:

Are the national authorities bound unconditionally by the result of a foot-

and-mouth disease examination carried out by a laboratory? If not, what margin of discretion does Directive 85/511 leave these national authorities?'

13. A hearing was held on 8 December 2005, at which the representatives of Mr Dokter, the Netherlands Government and the Commission expressed their views.

II — Assessment

14. It should be stated from the outset that the contested decisions taken by the Netherlands authorities to control foot-and-mouth disease were adopted in accordance with national law, the provisions of which may be more stringent than those set out in the directive, as was established by the judgment in *Tempelman and van Schaijk*.[9] The first three questions can be dealt with together, since they relate to the consequences of the designation of reference laboratories under the directive. The purpose of the fourth and fifth questions is to establish whether under Community law it must be held that the national authority is bound by the results provided by the laboratory that carried out the tests. In order to clarify the context in which this reference was made, it must be stated that the objective of all the arguments put forward by Mr Dokter is to question the lawfulness of the final decision of the Netherlands authorities to slaughter the animals of the applicants in the main proceedings. Two lines of argument are presented with the aim of establishing, first, that the court should examine compliance with Articles 11 and 13 of the directive and, second, that the national authorities could, in exceptional circumstances, disregard the result provided by a testing laboratory.

A — *The consequences of the designation of a laboratory in Annex B to the directive*

15. It is common ground that ID-Lelystad, the laboratory that carried out the tests on the Teunissen holding from 20 to 27 March 2001, is not the one listed in Annex B to the directive, that is to say Centraal Diergeneeskundig Instituut, Lelystad. The question referred to the Court by the national court and the subject of argument by the parties concerns the consequences that flow from that difference.

9 — Joined Cases C-96/03 and C-97/03 [2005] ECR I-1895. Moreover, Article 1(2) of Directive 2003/85 provides that 'Member States shall remain free to take more stringent action in the field covered by this Directive'.

16. According to Mr Dokter, Articles 11 and 13 of the directive [10] have direct effect because they are sufficiently clear and precise. Moreover, as part of their purpose is to protect farmers, he contends that it is for the court to determine whether the change in the designation of the laboratory corresponds to a substantial material alteration in that laboratory as regards the staff it employs, the place where it operates and the methods it applies.

17. The Netherlands Government sets out a more nuanced position. While acknowledging that Articles 11 and 13 of the directive have direct effect and that they are intended to protect the interests of farmers, in the present case it considers that the directive has not been infringed, because the directive is to be interpreted as not requiring amendment of the list of laboratories in Annex B if the changes that have occurred in the reference laboratories are not material.

18. Lastly, the Commission recognises that Articles 11 and 13 of the directive have direct effect, but maintains that these articles cannot be relied upon for an objective other than that which they pursue. In this instance, according to the Commission, the main objective of the designation of reference laboratories in the directive is to limit the risk of contamination with foot-and-mouth disease. The quality of testing is the responsibility of the Member States. Since the factual situation of the laboratory formally designated in Annex B was not substantially altered, the directive did not require the annex to be amended.

19. In the light of the observations submitted, it appears to me that the question of the direct effect of Articles 11 and 13 of the directive is not central. The crucial point is the objective pursued by the designation of reference laboratories in Annex B to the directive.

20. As the Court has consistently held, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the State has failed to implement the directive in domestic law within the period prescribed or where it has failed to implement the directive correctly. [11]

21. The provisions in question, that is to say Articles 11 and 13 of the directive, appear to

10 — Cited in points 6 to 8 above.

11 — Judgments in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 11, Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 25, and Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 103.

be sufficiently precise and unconditional. They could be recognised as having direct effect. However, the consequences that should be attached to these provisions in the context of the dispute in the main proceedings depend on their content and objectives.

22. What objective is pursued by the designation of testing laboratories in Annex B to the directive? According to the Commission, the establishment of a list is important to ensure coordination of the standards and method of diagnosis applied by the various national laboratories. Secondly, the Commission considers that the list makes it possible to guarantee the safety of the laboratories, since they must meet the minimum standards recommended by the FAO in order to be entered on that list. [12] Finally, the list in Annex B facilitates checks on the laboratories by the Commission. [13]

23. In order to clarify the consequences to be attached to the designation of a testing laboratory in Annex B to the directive, it must be noted that the overall aim of the directive is to control foot-and-mouth disease virus for the purpose of protecting health. The system which it establishes entails the taking of preventive measures as soon as a risk of infection appears. Within this framework, the specific objective of including a precise list of laboratories in Annex B would be to bring about essential coordination between Member States, overseen by the Commission, in the battle against the foot-and-mouth disease virus. It is evident from Article 13 of the directive [14] that the existence of this list of laboratories should enable the Commission to ensure that they comply with minimum safety standards. Article 11 of the directive supports this interpretation, as it provides for the results from these laboratories to be confirmed by a reference laboratory designated by the Community. All of these measures are aimed at identifying and then combating the risk of spreading the foot-and-mouth disease virus.

24. The question of the rights that individuals may derive from the list in Annex B to the directive is easy to answer. The list is not intended to offer a procedural guarantee to the owners of holdings on which tests are carried out, but rather is designed to be a measure of organisation of a network of laboratories within the Community. Hence it does not appear that individuals could rely

12 — Third recital of Decision 92/380: '... Article 13 of Directive 85/511/EEC required the Commission to carry out spot-checks to ensure that the approved laboratories listed in Annexes A and B to the said Directive comply with the minimum standards laid down by the FAO, and to review the list of laboratories in the light of the results of the inspections ...'.

13 — Third recital of Directive 90/423: '... it has been concluded that a risk exists in the manipulation of virus in laboratories due to the possibility of escape to local susceptible animals and in the use of vaccine if inactivation procedures do not ensure its safety'.

14 — Cited in points 7 and 8 above.

on the list in order to dismiss, as the applicants in the main proceedings attempt to do, the positive results provided by a laboratory that reveal a risk of infection with the foot-and-mouth disease virus on a holding.

25. The list of laboratories in Annex B to the directive creates a minimum guarantee, in that it precludes the rejection of positive results obtained by these laboratories. It does not prevent Member States from taking more stringent preventive measures and, a fortiori, from taking account of positive results provided by laboratories not on that list in order to detect even more accurately the existence of a risk of contamination with the foot-and-mouth disease virus. [15] By contrast, the risk can be ruled out only on the basis of a negative result from the laboratories on the list.

26. If one were to follow the reasoning suggested by the applicants in the main proceedings, one could arrive at the absurd situation in which, if the company name of a laboratory listed in Annex B to the directive changed, no laboratory could be recognised as being authorised to carry out tests proving the presence of the foot-and-mouth disease virus until the annex had been amended in accordance with Article 17 of the directive.

15 — *Tempelman and van Schaijk.*

27. The analogy proposed by the applicants in the main proceedings with the judgments in *CIA Security International* [16] and *Lemmens* [17] obviously has to be dismissed, because these judgments relate to the very specific context of the application of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, [18] as amended by Council Directive 88/182/EEC of 22 March 1988, [19] which lays down a mandatory procedure for notifying technical regulations to the Commission and the purpose of which is to protect the free movement of goods by means of preventive control. [20] The notification of technical regulations by the Member States is the central mechanism established by that directive, and its absence paralyses application of the directive. By contrast, the procedure for amending the list of laboratories in Annex B to the directive is only one of the means of achieving the directive's main objective of protecting health, and failure to comply with it cannot call that objective into question.

28. Finally, it is clear from the fact that the overriding objective of the directive is to protect health that the health risk demonstrated by the positive result of the test must be taken into account and that it is not possible to dismiss it solely because the laboratory which carried out the test is not the one mentioned in Annex B to that

16 — Case C-194/94 *CIA Security International* [1996] ECR I-2201.

17 — Case C-226/97 *Lemmens* [1998] ECR I-3711.

18 — OJ 1983 L 109, p. 8.

19 — OJ 1988 L 81, p. 75.

20 — *Lemmens*, paragraph 32.

directive. Hence, as soon as a laboratory test shows that animals are contaminated, the necessary consequences must be drawn, whether in application of the directive or of more stringent national measures. [21] Consequently, Articles 11 and 13 of the directive must be interpreted as not precluding the basing of slaughtering measures on the results of analyses carried out by a laboratory whose name does not match that indicated in the list in Annex B to the directive.

29. In the light of this interpretation, it is unnecessary to reply to the question whether changes in the laboratory in question are material or not. Only the Commission could rely on this fact in an action against the Kingdom of the Netherlands for failure to fulfil obligations, if it considered that the latter had failed to fulfil its obligations under Articles 11 and 13 of the directive.

30. In reply to the first three questions from the referring court, I therefore suggest that the Court rule that an individual may not rely on the direct effect of Articles 11 and 13 of the directive to challenge a preventive slaughtering measure adopted after a risk of contamination with foot-and-mouth disease has been demonstrated by the positive results of analyses of samples taken on a holding, even if the company name of the laboratory which carried out the analyses does not match that mentioned in Annex B to the directive.

B — *The power of the national health authorities to differ from test results provided by a laboratory*

31. In its fourth and fifth questions, the referring court asks essentially whether the national authorities are bound by the results provided by a testing laboratory or whether they may differ from them. This raises the question of defining how the results provided by experts relate to the consequent decisions taken by the competent national health authority.

32. The referring court, the applicants in the main proceedings and the Netherlands Government all acknowledge that the directive is silent on this point. Against that background, it is necessary to define the limits placed by Community law on the

21 — *Tempelman and van Schaijk.*

power of the national administrative authority, the content of which is established by national law. [22]

33. In this regard, the Commission considers that the directive lays down that the national authorities must be guided by the objective of avoiding the spread of foot-and-mouth disease, so that their actions cannot depend on obtaining results from a testing laboratory. They may take preventive measures even before receiving such results if clinical symptoms leading them to suspect that animals on a holding are infected with the foot-and-mouth disease virus have been detected. [23]

34. The Commission's comments are relevant for replying to the national court's question in that they confirm that Community law, and in particular the directive, does not prevent the national authorities from being allowed a considerable margin of discretion when adopting measures to protect human health. In my opinion, and as the Commission also points out in its observations, it follows from the national authorities' wide discretion to adopt preventive measures that the decisions they take in that context can be annulled only if they have committed a manifest error of assessment. [24] Consequently, review by the national court will be all the more restricted if the national authorities have based their decisions on the result of an analysis carried out by a laboratory. Similarly, it must be an exception for these analyses to be called into question, even if the precise scope of the obligation on the national health authorities to check such analyses is governed by national law. The only limitation imposed by the directive in this regard is that the obligation to review the results of an analysis cannot prevent the national authority from reacting rapidly if a risk of contamination is demonstrated by the positive results provided by a laboratory. [25]

35. The applicants in the main proceedings nevertheless maintain that the national authority failed in its duty to check the test results submitted to it, infringing the principle of observance of the rights of the defence, as recognised in Community law. They base their argument on judgments

22 — See point 46 of my Opinion in *Tempelman and van Schaijk*.

23 — Point (c) of the second paragraph of Article 2 of the directive.

24 — By analogy with review of the powers of the Commission by the Community courts, see Case C-189/01 *Jippes and Others* [2001] ECR I-5689.

25 — The question may be clear-cut if the test result is negative. Whereas a positive result confirms that there is a risk of contamination, it cannot be deduced automatically from a negative result that a holding is clean, since tests are only carried out on certain animals. For that reason, in such a case, it is not precluded that the national authorities may legitimately adopt preventive slaughtering measures if clinical symptoms of infection have been ascertained on a holding.

relating to competition law [26] and on Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. They say that it follows from that principle that the applicants in the main proceedings must be in a position to challenge the accuracy of the results on which the administrative decision to carry out preventive slaughter was based. In order to exercise their right to bring proceedings, they must in addition be furnished with the file from the laboratory, which was allegedly denied them in the present case.

36. It is settled case-law that national measures falling within the scope of Community law must be compatible with the general principles of that law, such as the principle of observance of the rights of the defence. It is for the national court to make that assessment. [27]

37. Against that background, and subject to the national court's final assessment on this point, it must be noted that, contrary to their assertions, the applicants in the main proceedings have not been denied the opportunity to contest the decision to order preventive slaughtering, which is the subject of the present action. Nevertheless, the danger to health due to contamination with foot-and-mouth disease makes it necessary to prevent the challenging of a preventive measure from having suspensive effect. Hence, although the principle of observance of the rights of the defence is applicable in both cases, it has different consequences, depending on whether it is applied to a decision taken by the Commission to punish undertakings guilty of infringements of competition law or to the adoption of a decision by a national health authority aimed at protecting human health.

38. In the light of these remarks, it must be suggested that the Court reply to the fourth and fifth questions from the national court that Community law does not prevent the national authorities from being allowed a wide discretion to adopt preventive measures without delay to control the foot-and-mouth disease virus once a risk of contamination has been demonstrated by positive test results provided by a laboratory.

26 — In particular, Case C-32/95 P *Lisrestal and Others* [1996] ECR I-5373.

27 — *Tempelman and van Schaijk*, paragraph 49.

III — Conclusion

39. In the light of the foregoing considerations, I suggest that the Court reply as follows to the questions from the College van Beroep voor het bedrijfsleven:

(1) An individual may not rely on the direct effect of Articles 11 and 13 of Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease, as amended by Council Directive 90/423/EEC of 26 June 1990, to challenge a preventive slaughtering measure adopted after a risk of contamination with foot-and-mouth disease has been demonstrated by the positive results of analyses of samples taken on a holding, even if the company name of the laboratory which carried out the analyses does not match that listed in Annex B to the directive.

(2) Community law does not prevent the national authorities from being allowed a wide discretion to adopt preventive measures without delay to control the foot-and-mouth disease virus once a risk of contamination has been demonstrated by positive test results provided by a laboratory.