



Court of Justice of the European Union

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Judgment in Joined Cases C-78/16

Giovanni Pesce and Others v Presidenza del Consiglio dei Ministri and Others, and C-79/16 Cesare Serinelli and Others v Presidenza del Consiglio dei Ministri – Dipartimento della Protezione Civile and Others

Press and Information

The Commission may require Member States to remove all plants capable of being infected by the *Xylella fastidiosa* bacterium, even when there are no symptoms of infection, when such plants are in the vicinity of plants already affected by that bacterium

That measure is proportionate to the objective of protecting plant health in the European Union and is justified by the precautionary principle, taking into consideration the scientific evidence available to the Commission when the measure was adopted

The objective of Directive 2000/29¹ is to ensure a high level of protection of plant health against the introduction of harmful organisms into the EU, one such organism being *Xylella fastidiosa* ('*Xylella*'). That bacterial plant pathogen, which affects a number of plants and can cause their death by desiccation, was observed for the first time in Europe in 2013 in olive trees (*Olea europaea* L.) in the region of Apulia (Italy).

In 2015 the Commission adopted a decision², whereby it imposed on Member States the obligation to remove immediately plants capable of hosting the *Xylella* bacterium, regardless of their health status, within a radius of 100 metres around plants found to be infected by that bacterium. That decision does not itself make any provision for a compensation scheme.

In accordance with that decision, the Servizio Agricoltura della Regione Puglia (the department responsible for agriculture in the region of Apulia) ordered a number of olive grove proprietors in the province of Brindisi to cut down olive trees infected by the *Xylella* bacterium and all host plants – even plants showing no symptoms of infection by the bacterium – within a radius of 100 meters around the infected olive trees.

Legal proceedings having been brought before the Tribunale amministrativo regionale per il Lazio (the Regional Administrative Court of Lazio, Italy), that court suspended the order to remove plants in the vicinity of infected olive trees and referred questions to the Court of Justice on the validity of the Commission's decision with regard to EU law.

By today's judgment, delivered as part of an expedited procedure,³ the Court confirms the validity of the Commission's decision with respect to the directive, read in the light of the precautionary principle⁴ and the principle of proportionality.⁵

¹ Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ 2000 L 169, p. 1), as amended by Council Directive 2002/89/EC of 28 November 2002 (OJ 2002 L 355, p. 45).

² Commission Implementing Decision (EU) 2015/789 of 18 May 2015, as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (OJ 2015 L 125, p. 36).

³ An expedited procedure is provided for in Article 23a of the Statute of the the Court of Justice of the European Union and Article 105(1) of the Court's Rules of Procedure.

⁴ Where there is uncertainty as to the existence or the extent of risks to human health, but where the likelihood of real harm to public health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures.

⁵ The principle of proportionality requires that, where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.

The Court states, first, that the obligation to remove 'immediately' all host plants within a radius of 100 metres around infected plants is not inconsistent with the obligation to apply appropriate phytosanitary treatments that may include, 'as appropriate', removal of plants. That prior treatment relates not to the plants themselves, but to the infectious insects that are 'vectors' of the bacteria and is intended to limit the risk of their spreading when a plant is removed.

Second, the Court states that, notwithstanding that scientific opinion⁶ has not demonstrated that there is a definite causal link between the *Xylella* bacterium and the rapid desiccation of olive trees, it is apparent from that opinion that nonetheless there is a significant correlation between that bacterium and the pathology displayed by the olive trees. The precautionary principle can therefore justify the adoption of protective measures such as the removal of infected plants, even where there is scientific uncertainty on the subject.

Scientific data indicates, moreover, that the dissemination of *Xylella* depends essentially on certain cicadas whose flight range is limited to, on average, a hundred or so metres, and that recently contaminated plants may be asymptomatic. Taking into consideration that scientific data, the obligation to remove host plants within a radius of 100 metres around an infected plant appears to be a measure that is appropriate and necessary to prevent the spread of the bacterium.

Likewise, the Court considers that the removal of host plants in the vicinity of infected plants is strictly proportionate to the objective of plant health protection pursued. First, that measure follows the adoption by the Commission, in 2014, of less onerous measures that failed to prevent the spread of the bacterium in the north of the province of Lecce. Second, the Commission has waived the requirement to remove host plants in the vicinity of infected plants in some circumstances, such as when, as is the case in the province of Lecce, eradication of the *Xylella* bacterium is no longer possible. Further, the adoption of less onerous measures appears to be impossible, since there is currently no treatment that can restore to health infected plants in the field.

However, the Court states that, if the situation were to change in the sense that the eradication of the bacterium no longer required, on the basis of relevant new scientific data, the removal of host plants in the vicinity of infected plants, the Commission should adapt its decision in order to take account of that change.

Last, the Court states that the mere fact that neither the Directive nor the Commission Decision contains any scheme to provide compensation to the proprietors of olive trees cut down does not mean that such a right is ruled out. Respect for the Charter of Fundamental Rights of the European Union could, in certain circumstances, require the payment of 'fair compensation'. The Commission Decision cannot therefore be held to be invalid on that ground.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁶ Scientific Opinion of the European Food Safety Authority (EFSA) of 6 January 2015.