



Presse and Information

Court of Justice of the European Union

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Luxembourg, 5 September 2019

Judgment in Case C-443/18,
Commission v Italy (*Xylella fastidiosa* bacterium)

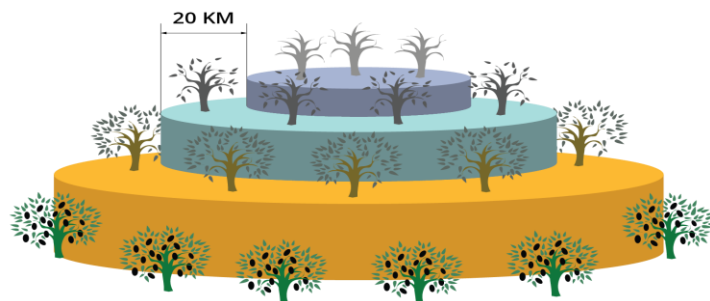
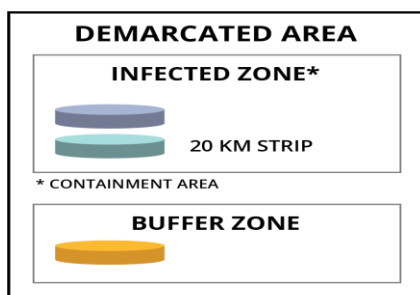
Italy has failed to comply with its obligation to implement measures to prevent the spread of the *Xylella fastidiosa* bacterium, which can cause the death of a large number of plants, in particular olive trees

Xylella fastidiosa ('*Xylella*') is a bacterium which affects a large number of plants and can cause their death by desiccation. The bacterium was observed for the first time in Europe in 2013 in olive trees (*Olea europaea* L.) situated in the region of Apulia (Italy). Scientific data indicated that the spread of *Xylella* depends essentially on certain insects which can cover distances of almost 100 metres in only 12 days, thus acting as vectors of the bacterium.

In 2015, the Commission adopted a decision¹ which required, inter alia, that Member States take measures to eradicate *Xylella*, consisting in the immediate removal not only of the infected plants (in particular olive trees), but also of all host plants – even in the absence of any symptoms of infection – situated within a radius of 100 metres of those infected, not only in the infected zone but also in the adjacent zone, referred to as the 'buffer zone'.

In 2016, the Court of Justice, seized of a reference for a preliminary ruling,² declared that those eradication measures were valid under EU law.

In that year, since *Xylella* had been established in certain parts of Apulia for more than two years, its eradication was no longer possible. The Commission therefore amended its decision and provided, exceptionally, as regards areas showing stable infection levels, for containment measures instead of eradication measures. Those containment measures to prevent the spread of *Xylella* include the monitoring of the area concerned and the immediate felling of only the infected plants situated, in particular, in a strip of the infected zone having a width of 20 kilometres measured from the external 'border' of that zone to the border of the buffer zone (see figure below), crossing the provinces of Brindisi and Taranto from east to west.



¹ 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), amended by Commission Implementing Decision (EU) 2016/764 of 12 May 2016 (OJ 2016 L 126, p. 77).

² Judgment of the Court of 9 June 2016, Giovanni Pesce and Others (Joined Cases C-78/16 and Others, see press release 61/16).

In 2018, the Commission brought the present action for failure to fulfil obligations before the Court, submitting that Italy had not complied with its request to take immediate steps to prevent the spread of *Xylella* and that, as a result of the persistent failure to fulfil obligations, that bacterium had spread significantly in Apulia.³

In today's judgment, the Court declares that, upon expiry, on 14 September 2017, of the period given to it by the Commission, Italy had failed to fulfil two of its obligations under the Commission decision.

The Court finds, in the first place, that Italy had not immediately removed, in the containment area, at least all the infected plants in the 20-kilometre strip of the infected zone bordering the buffer zone.

The Court points out that it is not disputed that, on 14 September 2017, of a total of 886 infected plants identified, 191 (that is, almost 22%) in the 20-kilometre strip had not yet been removed. Nor is it disputed that, where the infected plants in that 20-kilometre strip had been removed, this was done only several months after those plants had been found to be infected. The Court notes that the word 'immediately' in the Commission decision cannot be reconciled with a period of several weeks, let alone several months. In the light of the various practical, administrative and legal obstacles put forward by Italy as justification, the Court observes that the domestic situation of a Member State does not justify failure to comply with obligations and time-limits imposed by EU law. Italy should have therefore adopted national measures providing for faster procedures as a matter of urgency in order to overcome such obstacles.

In the second place, the Court finds that Italy failed to ensure, in the containment area, that the presence of *Xylella* is monitored by conducting annual surveys at appropriate times of the year.

The Court points out that Italy conducted its survey for 2016 between the months of August 2016 and May 2017. However, even assuming, as Italy submits, that the presence of *Xylella* can be detected throughout the year – which the Commission contests since, in winter, deciduous trees do not have leaves that can show symptoms of infection – the fact remains that **Italy had not completed the annual survey before the start of spring, the flight season of the vector insect of *Xylella***, in order to allow the timely removal of the infected plants.

On the other hand, the Court rejects the Commission's application seeking a declaration that Italy has persistently and generally failed to fulfil the obligation to prevent the spread of *Xylella*. The Commission submits that Italy has failed to fulfil that obligation because it has not achieved the result sought by the Commission decision, which was to prevent that spread. According to the Commission, it follows that Italy has repeatedly infringed not only its obligations in the containment area, but also the obligations, which are the subject of the reference for a preliminary ruling referred to above, concerning the eradication of the bacterium in the demarcated area, including the infected zone and the buffer zone (see figure above). The Court points out that the Commission has not established infringement of those specific obligations. For that purpose, the mere finding of the spread of *Xylella* is insufficient. The Court therefore considers that the Commission has also failed to establish that Italy infringed the obligation, laid down in Directive 2000/29,⁴ to adopt all necessary measures to prevent the spread of the bacterium and the obligation of sincere cooperation as set out in Article 4 of the Treaty on European Union.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member

³ The *Xylella* bacteria spread from the province of Lecce to the entire territory of the neighbouring provinces of Brindisi and Taranto. (67)

⁴ 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).

State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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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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