

Anonymised version

Translation

C-24/21 – 1

Case C-24/21

Request for a preliminary ruling

Date lodged:

14 January 2021

Referring court:

Tribunale ordinario di Pordenone (District Court, Pordenone, Italy)

Date of the decision to refer:

4 January 2021

Applicant:

PH

Defendants:

Regione Autonoma Friuli Venezia Giulia

Direzione centrale risorse agroalimentari, forestali e ittiche –
Servizio foreste e corpo forestale della Regione Autonoma Friuli
Venezia Giulia

[...]

TRIBUNALE DI PORDENONE

Civil Division

The court [...] has issued the following

ORDER

in the civil proceedings [...]

between

PH [...]

- applicant -

and

REGIONE AUTONOMA FRIULIE VENEZIA GIULIA [...];

Direzione centrale risorse agroalimentari, forestali e ittiche – Servizio foreste e corpo forestale della Regione Autonoma Friuli Venezia Giulia [...];

- defendants -

Subject matter: Opposition to administrative order imposing a fine [...].

GROUNDINGS FOR THE DECISION

By application served on Regione Friuli Venezia Giulia (Region of Friuli Venezia Giulia, Italy) and, following the order of 8 May 2020, on the Direzione centrale risorse agroalimentari, forestali e ittiche – Servizio foreste e corpo forestale della Regione Autonoma Friuli Venezia Giulia (Central Directorate for Agricultural, Food, Forestry and Fisheries Resources – Forestry Service and Forestry Corps of the Autonomous Region of Friuli Venezia Giulia, Italy), Mr PH, acting on his own behalf and as the owner and legal representative of the sole trader *In Trois*, challenged administrative order No 070440/2019 (issued following the investigation of 11 August 2015) requiring him to pay a fine of EUR 5 000.00 for infringing Article 2.1 of Legge Regionale FVG n. 5/2011 (Regional Law FVG No 5/2011).

The Region of Friuli Venezia Giulia and, subsequently, the Central Directorate for Agricultural, Food, Forestry and Fisheries Resources brought proceedings [...] calling into question the merits of the action.

[...] this Court [**Or.2**] considered it necessary, prior to examining the substance of the case, to reserve the right to refer the matter to the Court of Justice of the European Union for a preliminary ruling.

[...] [*preliminary objections relevant only in the context of the national proceedings*]

As regards the reference for a preliminary ruling to the Court of Justice, the following points are made.

The reference for a preliminary ruling pursuant to Article 267 TFEU allows the national court to raise a question before the Court of Justice of the European Union ('the Court of Justice') concerning the interpretation or validity of EU law. It is a fundamental mechanism to ensure uniform interpretation and application of EU law in all the Member States.

The decision to refer a question to the Court of Justice for a preliminary ruling lies with the national court (see judgments of 16 December 2008, *Cartesio*, C-210/06, and of 21 July 2011, *Kelly*, C-104/10). The parties may only raise a question before the court seeking its intervention (see order of 3 July 2014, *Talasca*, C-19/14).

The national court, unless it is a court of last instance, is free to refer to the Court of Justice for a preliminary ruling, at whatever stage of the proceedings, any question that it considers necessary to enable it to give judgment (see judgment of 11 September 2014, *A v B and Others*, C-112/13).

This is confirmed by paragraph 12 of the ‘Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings’ (2019/C 380/01) [...] [**Or.3**] [...] [*text of the provision cited*].

In the present case, Mr PH was issued with a penalty by the administrative authority pursuant to Article 2.1, entitled ‘Specific measures to prevent the unintended presence of GMOs in conventional and organic maize crops’, of Regional Law No 5/2011 (introduced by Article 2(26)(a) of Legge Regionale 15/2014 (Regional Law No 15/2014)), which provides that: ‘In order to avoid the unintended presence of GMOs in conventional and organic maize crops in the territory of Friuli Venezia Giulia, characterised by production models and farm structures that influence the degree of admixture between transgenic and non-transgenic crops, the cultivation of genetically modified maize shall be excluded in accordance with the possibility recognised in paragraph 2.4 of Commission Recommendation 2010/C 200/01 of 13 July 2010 on guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops. The cultivation of genetically modified maize shall incur a financial administrative penalty of EUR 5 000 to EUR 50 000 issued by the competent regional Forestry Corps.’

Paragraph 2.4 of Commission Recommendation 2010/C 200/01 of 13 July 2010, entitled ‘Measures to exclude GMO cultivation from large areas (“GM-free areas”)', reads: ‘Differences in regional aspects, such as climatic conditions (that influence the activity of pollinators and the transport of airborne pollen), topography, cropping patterns and crop rotation systems or farm structures (including surrounding structures, such as hedges, forests, uncultivated areas and the spatial arrangement of fields) may influence the degree of admixture between GM and conventional and organic crops and the measures necessary to avoid unintended presence of GMOs in other crops. Under certain economic and natural conditions, Member States should consider the possibility to exclude GMO cultivation from large areas of their territory to avoid the unintended presence of GMOs in conventional and organic crops. Such exclusion should rest on the demonstration by Member States that, for those areas, other measures are not enough to achieve sufficient levels of purity. Moreover, the restriction measures should be proportionate to the objective pursued (i.e. protection of particular needs of conventional and/or organic farming).’

Article 26a of Directive 2001/18 provides that: ‘1. Member States may take appropriate measures to avoid the unintended presence of GMOs in other products. 2. The Commission shall gather and coordinate information based on studies at Community and national level, observe the developments regarding coexistence in the Member States and, on the basis of the information and observations, develop guidelines on the coexistence of genetically modified, **[Or.4]** conventional and organic crops.’

Article 16(1) of Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species, as amended by Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, provides that: ‘Member States shall ensure that, with effect from the publication referred to in Article 17, seed of varieties accepted in accordance with this Directive or in accordance with principles corresponding to those of this Directive is not subject to any marketing restrictions relating to variety.’ Article 17 of that directive provides that: ‘The Commission shall, on the basis of the information supplied by the Member States and as this is received, publish in the C series of the *Official Journal of the European Communities* under the title “Common Catalogue of Varieties of Agricultural Plant Species” a list of all varieties of which the seed and propagating material, under Article 16, are not subject to any marketing restrictions as regards variety ...’

The Region of Friuli Venezia Giulia confirms that it adopted Regional Law No 5/2011 with a view to implementing the principle enshrined in Article 26a of Directive 2001/18/EC and the Recommendation of 13 July 2010, pointing out that Article 2.1, which establishes coexistence measures in maize crops, was introduced by Article 2(26)(a) of Regional Law No 15/2014, following the judgment of the Court of Justice of 6 September 2012, as well as the order of the Court of Justice of 8 May 2013 and the EU Pilot procedure initiated against Italy following a positive assessment by the EU.

It should be noted at this point that the parties to the case do not dispute the fact that MON 810 may be freely marketed within the EU, but that – under Regional Law No 5/2011 – it may not be grown anywhere in the territory of the Region of Friuli Venezia Giulia.

By order of 8 May 2013 in Case C-542/12, relating to a different point of law, the Court of Justice ruled that ‘... the questions raised must be answered by declaring that EU law must be interpreted as meaning that the cultivation of GMOs such as maize varieties MON 810 cannot be made subject to a national authorisation procedure, where the use and marketing of those varieties are authorised under Article 20 of Regulation No 1829/2003 and where those varieties have been entered in the common catalogue provided for in Directive 2002/53. Article 26a of Directive 2001/18 must be interpreted as precluding a Member State from opposing the cultivation on its territory of such GMOs on the ground that

obtaining a national authorisation would constitute a coexistence measure to avoid the unintended presence of GMOs in other [Or.5] crops' (paragraph 33).

For the sake of completeness, it must be acknowledged that by Commission [Implementing] Decision of 3 March 2016, the ban on the cultivation of genetically modified maize MON 810 throughout Italy was decided (Article 1: 'The cultivation of genetically modified maize (*Zea mays* L.) MON 810 shall be prohibited in the territories listed in the Annex to this Decision'. Italy is included on that list in Annex 1, point 8). However, that decision is subsequent to the date of the infringement alleged against Mr PH and the subject of these proceedings, since the investigation report dates back to 11 August 2015.

Given the above, in the light of the *petitum* [annulment of the contested measure] and the *causa petendi* [infringement of various provisions of EU and national law] of the action brought by Mr PH, the question arises as to whether the ban imposed by Article 2.1 of Regional Law No 5/2011, which introduces coexistence measures that amount to a ban on cultivating maize variety MON 810 in the territory of the Region of Friuli Venezia Giulia, is consistent with or contrary to the overall scheme of Directive 2001/18, particularly in the light of Regulation (EC) No 1829/2003 and Recommendation [2010]/C 200/01.

The question also arises as to whether the ban on the cultivation of genetically modified maize MON 810, the marketing of which within the EU still seems to be permitted, could constitute a measure having equivalent effect, understood as 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade' (judgment of 11 July 1974, *Dassonville*, 8/74), thus contrary to Articles 34, 35 and 36 TFEU.

It therefore appears necessary to refer to the Court of Justice of the European Union for a preliminary ruling the questions set out in the operative part of this order, for the specific reasons given above.

These proceedings shall be stayed pending the decision of the Court of Justice.

FOR THESE REASONS

Having regard to Article 267 TFEU,

The following questions are referred to the Court of Justice of the European Union for a preliminary ruling:

1. Is the ban imposed by Article 2.1 of Legge Regionale Friuli Venezia Giulia n. 5/2011, which introduces coexistence measures that amount to a ban on cultivating maize variety MON 810 in the territory of the region of Friuli Venezia Giulia (Italy), consistent with or contrary to the overall scheme of Directive 2001/18, particularly in the light of Regulation (EC) No 1829/2003 and Recommendation [2010]C 200/01?

2. Does that ban also constitute a measure having equivalent effect and is it thus contrary to Articles 34, 35 and 36 TFEU?

[...] **[Or.6]** [...]

Pordenone, 4 January 2021

[...]

WORKING DOCUMENT