

**Case C-393/24 [Vottolo]<sup>i</sup>****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

5 June 2024

**Referring court:**

Tribunale di Udine (Italy)

**Date of the decision to refer:**

7 May 2024

**Applicant:**

PH, in his own name and as owner of the ‘In Trois’ farm

**Respondent:**

Ministero dell’Agricoltura, della Sovranità Alimentare e delle Foreste

**Subject matter of the main proceedings**

The applicant appealed an order for payment of 19 June 2023 requiring him to pay EUR 50 000 by way of an administrative fine imposed by the Ministero dell’Agricoltura, della Sovranità Alimentare e delle Foreste [Italian Ministry of Agriculture, Food Sovereignty and Forestry]. The Ministry found that the applicant had infringed the prohibition on the cultivation in Italy of Genetically Modified Organisms (‘GMOs’), since he had sown on his land GMO maize of the MON810 variety, the cultivation of which is not permitted in Italy.

**Subject matter and legal basis of the reference for a preliminary ruling**

By its reference for a preliminary ruling pursuant to Article 267 TFEU, the Tribunale di Udine (District Court, Udine, Italy), the referring court, asks, first, whether Directive (EU) 2015/412 and Implementing Decision (EU) 2016/321

<sup>i</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

comply with certain founding principles of the TEU and the TFEU (in particular, the principle of non-discrimination between national and non-national products and the principle of proportionality) and with certain articles of the Charter of Fundamental Rights of the European Union. Second, the referring court also requests the interpretation of Implementing Decision (EU) 2016/321 in the light of Article 26b and 26c of Directive 2001/18/EC, as amended by Directive 2015/412/EC.

## Questions referred

### § I Questions on validity

1. Are the provisions of Directive 2015/412/EC, which insert Articles 26b and 26c into Directive 2001/18/EC, to include the possibility for Member States to ‘(...) demand that the geographical scope of the written consent or authorisation be adjusted to the effect that all or part of the territory of that Member State is to be excluded from cultivation (...)’, and the ensuing Commission Decision No 321 of 3 March 2016 consistent with the **principle of non-discrimination** between national and non-national products, **with the principle of proportionality** and with Articles **34, 36 and 216(2) TFEU**?

2. Are the provisions of Directive 2015/412/EC, which insert Articles 26b and 26c into Directive 2001/18/EC, to include the possibility for Member States to ‘(...) demand that the geographical scope of the written consent or authorisation be adjusted to the effect that all or part of the territory of that Member State is to be excluded from cultivation (...)’, and the ensuing Commission Decision No 321 of 3 March 2016 consistent with Articles **16 and 52 of the Charter of Fundamental Rights of the European Union**?

3. Are the provisions of Directive 2015/412/EC, which insert Articles 26b and 26c into Directive 2001/18/EC, to include the possibility for Member States to ‘(...) demand that the geographical scope of the written consent or authorisation be adjusted to the effect that all or part of the territory of that Member State is to be excluded from cultivation (...)’, and the ensuing Commission Decision No 321 of 3 March 2016, consistent with **Article 18 TFEU and Article 21 of the Nice Charter**, given that the principle of non-discrimination is a pillar of the European Union?

If so:

**§ II Question on interpretation** of Commission Decision No 321 of 3 March 2016

4. Must Commission Decision No 321 of 3 March 2016 be interpreted as meaning that applications for restrictions of the right to cultivate MON810 GMO maize seeds are permitted by, and are in accordance with, the TEU and the TFEU only on the grounds set out in Article 26b(3)(a) to (g) of Directive 2001/18/EC, or have

they been permitted under the transitional rules laid down in Article 26c of Directive 2001/18/EC, as well as on other grounds, including economic grounds, which may differ from State to State?

On the basis of the answer to the latter question of interpretation, the Court of Justice is asked the following:

**§ III. Question on validity** of Commission Decision No 321 of 3 March 2016:

5. Is Commission Decision No 321 of 3 March 2016 therefore valid, in the light of the whole body of rules governing GMOs in the single European market, and does it not preclude national rules sanctioning the prohibition contained therein?

### **Provisions of EU law and case-law relied on**

Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed; Articles 7, 19 and 34

Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC; Articles 26b and 26c, as introduced by Directive (EU) 2015/412;

Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory; Article 1

Commission Implementing Decision (EU) 2016/321 of 3 March 2016 adjusting the geographical scope of the authorisation for cultivation of genetically modified maize (*Zea mays* L.) MON 810 (MON-ØØ81Ø-6); Article 1 and Annex 8

Commission Decision 2003/653/EC of 2 September 2003 relating to national provisions on banning the use of genetically modified organisms in the region of Upper Austria notified by the Republic of Austria pursuant to Article 95(5) of the EC Treaty

Commission Decision 98/294/EC of 22 April 1998 concerning the placing on the market of genetically modified maize (*Zea mays* L. line MON 810), pursuant to Council Directive 90/220/EEC

Treaty on European Union (TEU)

Treaty on the Functioning of the European Union (TFEU); Articles 18, 34, 36, 114 and 216 (2)

Charter of Fundamental Rights of the European Union; Articles 16, 21 and 52

Judgements of the Court of 13 September 2017, C-111/16; of 8 September 2011, C-58/10 – C-68/10, *Monsanto SAS and Others*; of 13 September 2007, *Land Oberösterreich and Austria v Commission*, C-439/05 P and C-454/05 P.

### **Provisions of national law relied on**

Article 35 bis of Legislative Decree No 224 of 8 July 2003, '*Attuazione della direttiva 2001/18/CE concernente l'emissione deliberata nell'ambiente di organismi geneticamente modificati*' [Implementation of Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms]', as introduced by Legislative Decree No 227 of 14 November 2016, '*Attuazione della direttiva (UE) 2015/412, che modifica la direttiva 2001/18/CE per quanto concerne la possibilità per gli Stati membri di limitare o vietare la coltivazione di organismi geneticamente modificati (OGM) sul loro territorio*' [Implementation of Directive (EU) 2015/412 amending Directive 2001/18/EC as regards the possibility for Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) on their territory]':

'Penalties relating to Title III-bis:

Unless the acts constitute a criminal offence, an administrative fine of between EUR 25 000 and EUR 75 000 shall be imposed on any person who infringes:

a) prohibitions on cultivation introduced by adjusting the geographical scope established, in the cases provided for, by one of the following measures:

1) authorisation granted by the European Commission in accordance with Articles 7 and 19 of Regulation (EC) No 1829/2003;

2) authorisation granted by the competent national authority of a Member State in accordance with Articles 15, 17 and 18 of Directive 2001/18/EC;

3) authorisation granted by the competent national authority referred to in Article 2, paragraph 1 in accordance with Article 18 paragraph 1 and, if the conditions are met, the decision taken by that authority in accordance with Article 18, paragraph 3;

b) prohibitions on cultivation adopted pursuant to Article 26-quater, paragraph 6;

c) the temporary prohibitions on cultivation on planting the GMO(s) concerned provided for in Article 26-quater, paragraph 5, letter b) and Article 26-sexies, paragraph 3.

2. The offender shall be subject to an order setting an ancillary administrative penalty imposing the suspension, for up to six months, of the authorisation to cultivate GMOs conferred by placing on the market provisions.

3. Any person who infringes the prohibitions laid down in paragraph 1 shall be required to destroy the crops of unlawfully planted GMOs and restore the premises to their previous state at his or her own expense, jointly and severally with the owner and the holders of real or personal rights to use the area to whom the infringement is attributable either because of intent or negligence, on the basis of findings made by the entities responsible for checks in the course of an adversarial process with the persons concerned. The Authority referred to in paragraph 4 shall order the operations necessary for that purpose and the period within which they are to take place, after which it shall enforce the execution to the detriment of the obligated parties and the recovery of prepaid sums. (...)’.

### **Succinct presentation of the facts and the proceedings**

- 1 By application lodged on 18 July 2023, the applicant appealed the order for payment of 19 June 2023 issued by the Italian Ministry of Agriculture, Food Sovereignty and Forestry imposing on him an administrative fine of EUR 50 000.00.
- 2 The order for payment was issued pursuant to Article 35 bis, paragraph 1, letter a) of Legislative Decree No 224 of 8 July 2003, on the ground that the applicant had infringed the prohibition on the cultivation in Italy of GMOs, laid down in Commission Implementing Decision (EU) 2016/321, directly applicable in Italy under Regulation (EC) No 1829/2003, by having sown genetically modified maize of the MON810 variety on his land.

### **Main arguments of the parties to the main proceedings**

- 3 The applicant’s appeal seeks to obtain a stay of the national proceedings in order for the referring court to submit to the Court, questions of interpretation and validity relating to provisions of EU law applicable in the context of the national proceedings in which the applicant is involved.
- 4 The applicant challenges the validity of the prohibition on the cultivation of GMO MON810 maize. In support of his position he states that that maize was duly authorised to be grown in accordance with the procedures laid down by EU law, that it is freely marketable throughout the European Union in the form of seeds/animal feed, and that it is cultivated in Member States that did not request an adjustment of the geographical scope on which the prohibition in Italy is based (e.g. Czechia, Portugal, Romania, Slovakia and Spain).
- 5 Consequently, the applicant asks the referring court to disapply the national rule penalising any infringement of the prohibition on the cultivation of GMO MON810 introduced by the adjustment of the geographical scope.

**Succinct presentation of the reasons for the reference for a preliminary ruling**

- 6 The referring court points out, first of all, that Monsanto Europe SA's MON810 variety of GMO maize has already been authorised in Europe since 1998, under Directive 90/220/EEC, by Commission Decision 98/294/EC.
- 7 That court notes that the cultivation of GMOs within the European Union requires an authorisation, which must be granted by means of a centralised EU system (procedures provided for in Directive 2001/18/EC and Regulation (EC) No 1829/2003) and based on a scientific assessment of the safety of cultivated products carried out by the European Food Safety Agency (EFSA).
- 8 The possibility of prohibiting GMOs and approving new GMOs has given rise over the years to considerable debate and has led several Member States to request more flexibility in the decisions restricting cultivation.
- 9 In order to respond to these requests, Directive 2015/412/EC allowed Member States to adopt measures that may prohibit or restrict the cultivation of all GMOs or a specific GMO, even a previously authorised one, on all or part of their national territory (adjustment of the geographical scope of authorisation).
- 10 Italy decided to use that adjustment of the geographical scope of authorisation and, given that Monsanto did not raise an objection within the deadline laid down in Implementing Decision No 2016/321, the Commission changed the scope of authorisation of the cultivation of MON810 GMO maize, in line with the requests of the Italian Government, by prohibiting it throughout Italy, a prohibition which is currently in force.
- 11 In those circumstances and having regard to Legislative Decree No 224/2003 (which sets the penalties connected to the prohibitions on cultivation introduced by the adjustment of the geographical scope), the applicant undoubtedly infringed the prohibition on the cultivation of MON810 GMOs.
- 12 However, the referring court has doubts as to the validity of Directive 2015/412/EC and Implementing Decision No 2016/321 in the light of certain fundamental principles of the TEU and TFEU, such as the principle of non-discrimination between national and non-national products and the principle of proportionality.
- 13 Since GMOs that comply with the requirements of Article 22 of Directive 2001/18/EC cannot be prohibited, it follows, according to the referring court, that the prohibition on the use of authorised seeds could constitute a measure having an equivalent effect to a quantitative restriction, which is prohibited under Article 34 TFEU, or a restriction on the free movement of goods, which is prohibited under Article 36 TFEU.



- 14 The referring court also observes that the signing of agreements by the European Union, such as accession to the WTO and GATT, could be at odds with restrictions on the use of goods only in certain States, by jeopardising the internal market of approved products.
- 15 According to that court, the different choices made by the Member States in relation to the adjustment of the geographical area could result in discrimination between citizens-farmers in different Member States, and in competition among EU farmers being distorted.
- 16 In the event that the Court finds that the EU measure permitting the geographical adjustment of an already-granted authorisation is valid, the referring court seeks clarification as to the interpretation of the absolute prohibition on the cultivation of GMOs on Italian territory resulting from Implementing Decision No 2016/321, in particular as regards the grounds set out in Article 26b of Directive 2001/18/EC, as amended by Directive 2015/412/EC, and in the light of Article 26c of that Directive, which has been used as a means of obtaining the adjustment of the geographical area.
- 17 On the latter point, the referring court asks the Court to rule on the validity of Implementing Decision No 2016/321, which granted (along with the prohibition on cultivation) the application for territorial adjustment submitted by the Member States on economic grounds.
- 18 The decision on the validity of Directive 2015/412/EC (which amended Directive 2001/18/EC) and Implementing Decision No 2016/321, as well as resolving doubts as regards the interpretation set out, is relevant for the resolution of the national proceedings, as it would allow the referring court, as a 'European court', to apply Implementing Decision No 2016/321 on the basis of the correct interpretation given by the Court and consequently to disapply, if necessary, the Italian legislation.