

Action brought on 4 August 2015 — Amrita and Others v Commission**(Case T-439/15)**

(2015/C 328/23)

*Language of the case: Italian***Parties**

Applicants: Soc. coop. Amrita arl (Scorrano, Italy), Cesi Marta (Alliste, Italy), Comune Agricola Lunella — Soc. Mutua Coop Agricola (Galatone, Italy), Mustich Loredana Faustina (Lequile, Italy), Rollo Olga (Lecce, Italy), Borrello Claudia (Salve, Italy), Società agricola Merico Maria Rosa di Consiglia, Marta e Vito Lisi (Miggiano, Italy), Marzo Luigi (Specchia, Italy), Azienda Agricola Piccapane di Pellegrino Giuseppe (Castrignano del Capo, Italy), Azienda Agricola Le Lame di Russo Antonello e Russo Gianluigi Ss (Cutrofiano, Italy), Lanzieri Ivana (Ugento, Italy), Stendardo Giovanni (Presicce, Italy), Stasi Anna Maria (Castrignano del Capo, Italy), Azienda Agricola Crie di Miggiano Gianluigi (Muro Leccese, Italy), Castriota Maria Grazia (Galatone, Italy), Gabrieli Tommasi Emanuele (Calimera, Italy), Azienda Agricola di Canioni Fiorella (Melendugno, Italy), Azienda Agricola Spirdo Ss agricola (Ruffano, Italy), Coppola Silvia (Guagnano, Italy), Fondazione le Costantine (Uggiano la Chiesa, Italy), Impresa Agricola Stefania Stamerra (Lecce, Italy), Azienda Agricola Clemente Pezzuto di Pezzuto Francesco (Trepuzzi, Italy), Cooperativa Sociale Terrarossa (Tricase, Italy), Vaglio Irene (Tricase, Italy), Simone Cosimo Antonio (Morciano di Leuca, Italy), Azienda Agrituristica 'Gli Ulivi' di Baglivo Cesaria (Tricase, Italy), Preite Osvaldo (Taurisano, Italy), Masseria Alti Pareti Società Agricola arl (Maglie, Italy), Società Agricola Li Matonni Sas di Sammarco Ascanio & C. (Erchie, Italy) (represented by: L. Paccione and V. Stamerra, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should annul Commission Implementing Decision No 789 of 18 May 2015, published in the Official Journal of the European Union No 125/36 of 21 May 2015, entitled '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* (Well and Raju)', if necessary after disapplying Council Directive No 29 of 8 May 2000 published in the Official Journal of the European Union No 169 of 10 July 2000, with all the legal consequences thus arising as to costs and jurisdiction.

Pleas in law and main arguments

The decision contested in the present proceedings is the same as that contested in Cases T-436/15, *Consorzio Vivaisti viticoli pugliesi and Negro v Commission*, and T-437/15, *Eden Green Vivai Piante di Verdesca Giuseppe and Others v Commission*.

In support of the action, the applicants rely on sixteen pleas in law.

1. First plea in law, alleging (i) that Directive 2000/29 is unlawful in so far as it infringes Article 48 TEU in connection with Article 3 TFEU and Article 5 TEU, (ii) lack of competence and (iii) breach of the principle of cooperation in good faith.
 - In that respect, the applicants claim that the Directive confers on the Union exclusive powers which are not recognised by the Treaties.
2. Second plea in law, alleging that Directive 2000/29 is unlawful on the grounds of lack of competence and infringement of Article 5 TEU in relation to the principles of cooperation in good faith and subsidiarity.
 - The applicants maintain in that regard that the Directive confers on the Commission the power, which is not recognised by the Treaties, to repeal measures adopted by the Member State concerning the regulation of plant health requirements.

3. Third plea in law, alleging that Commission Decision 2015/789 is unlawful on the ground that Directive 2000/29, on which it is based is unlawful, as referred to in the above paragraphs 1 and 2.
4. Fourth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Article 6 TEU in connection with the principle of effective judicial protection, which has already been granted to the applicants by the Italian administrative courts.
5. Fifth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Article 5 TEU in connection with the principles of cooperation in good faith and subsidiarity in the absence of any justification whatsoever concerning the key point regarding potentially inadequate action to combat the bacterium *Xylella fastidiosa* by the Member State.
6. Sixth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Article 5 TEU, in relation to the principle of proportionality and the precautionary principle.
 - It is submitted in this connection that the prescriptive content of the contested decision appears excessive in relation to the stated objectives.
7. Seventh plea in law, alleging that Commission Decision 2015/789 is unlawful in its own right in so far as it infringes ISPM No 9 in connection with Article 5 TEU and Protocol (No 2) TFEU concerning the application of the principle of proportionality and the precautionary principle.
8. Eighth plea in law, alleging that Commission Decision 2015/789 is unlawful in its own right to the extent that it infringes Article 5 TEU and the principle of proportionality laid down therein by referring to the entire province of Lecce as an 'infected zone' and an area approximately 10 km north of that province as a 'buffer zone'. The contested measure also infringes essential procedural requirements of decisions on the grounds of failure to investigate and to give reasons. It is also vitiated by incorrect and unjustified assumptions.
9. Ninth plea in law, alleging that Decision 2015/789 is unlawful in its own right 2015/789 in so far as it infringes Article 5 TUE and on the grounds of lack of competence, given that it was for the Italian state alone to identify and determine the extent of any infected zone.
10. Tenth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Article 5 TUE and on the grounds of lack of competence in so far as it imposes a prohibition on planting host plants in the 'infected zone', and breach of Article 1 of the Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms in so far as it turns the contested measure into an uncodified restriction of the applicants' rights in rem over agricultural land in their possession.
11. Eleventh plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Articles 11 and 191 TFEU, the precautionary principle and Article 5 TEU in connection with Directive 2001/42, since the measure concerning the uprooting of infected and healthy plants within a 100 m radius and the requirement for compulsory plant-health treatments to eradicate the insect vector, involves environmental harm and changes to the landscape of Salento in the absence of a Strategic Environmental Assessment and an assessment of risks to the environment and human health.
12. Twelfth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Article 11 TFEU, Article 191 TFEU and Directive No 43/1992, since the measures adopted do not include evaluation of the risks that uprooting, eradication and plant-protection products may entail in parts of the territory enjoying special protection under EU law since they have been identified as Special Protection Areas, natural parks and Sites of Community Interest.

13. Thirteenth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes the European Landscape Convention signed in Florence on 20 October 2000 and Articles 191 and 11 TFEU, in connection with Directive No 43/1992.
 - The applicants maintain in that regard that the EU measure requires olive trees to be uprooted indiscriminately and the administration of chemical pesticides which are strictly banned in organic farming, with the de facto result of destroying the businesses of the applicants, who have been practising organic olive cultivation for years.
14. Fourteenth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 and Articles 11 and 191 TFEU, including in connection with Directive 2009/128/EC, and on the ground of infringement of the principle of proportionality and essential procedural requirements.
 - The applicants submit in that connection that the EU decision requires them to administer chemical substances which are not authorised in organic farming and also to uproot plants which are only suspected of infection. It is argued that those measures are at odds with the scientific opinion of the European Food Safety Agency and are based on an assumption that there is a causal link between rapid desiccation of olive trees and the bacterium *Xylella*, which to date has not been established.
15. Fifteenth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as the European Commission, instead of adopting provisional risk management measures to ensure a high level of health protection, took a purely hypothetical approach to the risk, which the Court of Justice has expressly ruled out.
16. Sixteenth plea in law, alleging that Decision 2015/789 is unlawful in its own right in so far as it infringes Article 5 TEU with regard to infringement of essential procedural requirements and the principle of proportionality.
 - The applicants maintain in that regard that the use of pesticides and the eradication measure, which were deemed by EFSA to be ineffective and impractical, are not necessary for the purpose laid down by EU law in Directive 2000/29/CE, thereby infringing the principle of proportionality.

Action brought on 31 July 2015 — European Dynamics Luxembourg and Others v European Medicines Agency

(Case T-441/15)

(2015/C 328/24)

Language of the case: Greek

Parties

Applicants: European Dynamics Luxembourg SA (Luxembourg, Luxembourg), Evropaiki Dinamiki — Proigmena Sistimata Tilepikinonion Pliroforikis kai Tilematikis AE (Athens, Greece), European Dynamics Belgium SA (Brussels, Belgium) (represented by: I. Ambazis and M. Sfyri, lawyers)

Defendant: European Medicines Agency