

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy)
lodged on 10 February 2016 — Giovanni Pesce and Others v Presidenza del Consiglio dei Ministri —
Dipartimento della Protezione Civile and Others**

(Case C-78/16)

(2016/C 156/34)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Giovanni Pesce, Cosima Tomaselli, Angela Tomaselli

Defendants: Presidenza del Consiglio dei Ministri — Dipartimento della Protezione Civile, Commissario delegato OCDPC No 225/2015, Ministero delle Politiche Agricole e Forestali, Regione Puglia

Questions referred

1. Do Directive 2000/29/EC, ⁽¹⁾ as subsequently supplemented and amended, in particular Articles 11(3), 13c(7), and 16(1), (2), (3) and (5) thereof, and the principles of proportionality, logic and reasonableness preclude the application of Article 6(2) and (4) of European Commission Implementing Decision 2015/789/EU, ⁽²⁾ as implemented in the Italian legal order by Article 8(2) and (4) of the Decree of the Ministero delle politiche agricole alimentari e forestali (Ministry of Agriculture, Food and Forestry), in so far as it requires that host plants, regardless of their health status, be immediately removed within a radius of 100 metres around the plants which have been tested and found to be infected by the specified organism, and at the same time provides that the Member State is to carry out appropriate phytosanitary treatments prior to the removal of plants referred to in paragraph 2 against the vectors of the specified organism and plants that may host those vectors and that those treatments may include, as appropriate, removal of plants?
2. Does Directive 2000/29/EC, as subsequently supplemented and amended, in particular Article 16(1) thereof, preclude, by use of the phrase 'necessary measures to eradicate, or if that is impossible, inhibit the spread of the harmful organisms concerned', the application of Article 6(2) of European Commission Decision 2015/789/EU, as implemented in the Italian legal order by Article 8(2) of the Decree of the Ministero delle politiche agricole alimentari e forestali, in so far as it provides for the immediate removal of host plants, regardless of their health status, within a radius of 100 metres around the plants which have been tested and found to be infected?
3. Do Articles 16(1), (2), (3) and (5) of Directive 2000/29/EC and the principles of proportionality and logic and the right to due process preclude an interpretation of Article 6(2) and (4) of European Commission Implementing Decision 2015/789/EU — as implemented in the Italian legal order by Article 8(2) and (4) of the Decree of the Ministero delle politiche agricole alimentari e forestali — to the effect that the eradication measure referred to in Article 6(2) can be imposed before and independently of the preventive measures provided for in Articles 6(3) and (4)?
4. Do the precautionary principle and the principles of adequacy and proportionality preclude the application of Article 6(2), (3) and (4) of European Commission Implementing Decision 2015/789/EU, as implemented in the Italian legal order by Article 8(2) and (4) of the Decree of the Ministero delle politiche agricole alimentari e forestali, in so far as it imposes measures to eradicate host plants within a radius of 100 metres around the plants which have been found to be infected by the organism 'Xylella fastidiosa (Wells et al.)', without adequate scientific evidence to demonstrate with certainty the causal relationship between the presence of the organism and the desiccation of the plants deemed to be infected?

5. Do the second paragraph of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union preclude the application of Article 6(2) and (4) of European Commission Implementing Decision 2015/789/UE, in so far as it provides for the immediate removal of the hosts plants, regardless of their health status, within a radius of 100 metres around the plants which have been tested and found to be infected, since it fails to provide an adequate statement of reasons?
6. Do the principles of adequacy and proportionality preclude the application of European Commission Implementing Decision 2015/789/EU — as implemented in the Italian legal order by the Decree of the Ministero delle politiche agricole alimentari e forestali — which provides measures for the removal of host plants, regardless of their health status, of plants known to be infected by the specified organism, and of plants showing symptoms indicating possible infection by the organism 'Xylella fastidiosa (Wells et al.)', or suspected of being infected by that organism, without providing for any form of compensation for the owners not responsible for the spread of the organism in question?

⁽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).

⁽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* (Wells et al.) (OJ 2015 L 125, p. 36).

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Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Cesare Serinelli, Cosimo Antonio Palma, Maria Monico, Cosimo Miglietta, Mariano Luigi Mariano, Elena Russo, Galeana Miglietta, Pasqualina Cretì, Francesco D'Arpe, Antonietta Spalluto, Francesca Leo, Giovanna Malatesta, Vincenzo Conte, Luigi Ampolo, Raffaele Fasiello, Maria Miccoli, Anna Leone, Oronzo Maiorano, Antonio Rampino, Raffaele Tommasi, Fernando Elia

Defendants: Presidenza del Consiglio dei Ministri, Presidenza del Consiglio dei Ministri — Dipartimento della Protezione Civile, Commissario Delegato OCDPC No 225/2015, Ministero delle politiche agricole alimentari e forestali, Regione Puglia

Questions referred

1. Do Directive 2000/29/EC, ⁽¹⁾ as subsequently supplemented and amended, in particular Articles 11(3), 13c(7), and 16 (1), (2), (3) and (5) thereof, and the principles of proportionality, logic and reasonableness preclude the application of Article 6(2) and (4) of European Commission Implementing Decision 2015/789/EU, ⁽²⁾ as implemented in the Italian legal order by Article 8(2) and (4) of the Decree of the Ministero delle politiche agricole alimentari e forestali (Ministry of Agriculture, Food and Forestry), in so far as it requires that host plants, regardless of their health status, be immediately removed within a radius of 100 metres around the plants which have been tested and found to be infected by the specified organism, and at the same time provides that the Member State is to carry out appropriate phytosanitary treatments prior to the removal of plants referred to in paragraph 2 against the vectors of the specified organism and plants that may host those vectors and that those treatments may include, as appropriate, removal of plants?