

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/EU, 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).

**Request for a preliminary ruling from the Juzgado de Primera Instancia No 1 de Fuenlabrada (Spain)
lodged on 15 February 2016 — Bankia, S.A. v Henry-Rodolfo Rengifo Jiménez and Sheyla-Jeanneth
Felix Caiza**

(Case C-92/16)

(2016/C 156/36)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 1 de Fuenlabrada

Parties to the main proceedings

Applicant: Bankia, S.A.

Defendants: Henry-Rodolfo Rengifo Jiménez and Sheyla-Jeanneth Felix Caiza

Questions referred

1. Must Article 6(1) of Council Directive 93/13/EEC⁽¹⁾ of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that a contract may not subsist without the unfair term if the remaining contract imposes unreasonable hardship on the seller or supplier?
2. If a contract imposing unreasonable hardship on the seller or supplier cannot continue in existence, would the national court be entitled to save the contract, in the interests of protecting the consumer, by applying a provision of supplementary law, or would it have to remedy the contract with a rule that is minimally tolerable for the seller or supplier?
3. Does the fact that an early repayment clause is invalid because unfair allow the remaining contract to continue in existence within the meaning of Article 6(1) of Directive 93/13?
4. May the consumer waive the protection regime provided for in Directive 93/13 before the court hearing the proceedings?
5. Is a national procedural law, which makes the substantive rights and advantages enjoyed by a consumer subject to the condition that the latter submit to a specially expedited procedure but does not recognise such rights or advantages in other procedures, consistent with the principle of effectiveness laid down in Directive 93/13 and the Charter of Fundamental Rights of the European Union?⁽²⁾

⁽¹⁾ OJ 1993 L 95, p. 29.

⁽²⁾ OJ 2000, C 364, p. 1.

**Request for a preliminary ruling from the Audiencia Provincial de Alicante, Sección octava (Spain)
lodged on 15 February 2016 — The Irish Dairy Board Co-operative Limited v Tindale & Stanton Ltd
España, S.L.**

(Case C-93/16)

(2016/C 156/37)

Language of the case: Spanish

Referring court

Audiencia Provincial de Alicante, Sección octava

Parties to the main proceedings

Appellant: The Irish Dairy Board Co-operative Limited

Respondent: Tindale & Stanton Ltd España, S.L.

Questions referred

1. In so far as Article 9(1)(b) of the Community Trade Mark Regulation⁽¹⁾ requires that, in order for the proprietor of a Community trade mark to prevent a third party not having his consent from using a sign in the course of trade in the cases set out in that provision, there should exist a likelihood of confusion, can this provision be interpreted as meaning that there is no likelihood of confusion where the earlier Community trade mark has, owing to the acquiescence of the proprietor, peacefully coexisted for some years with similar national trade marks in two Member States of the European Union, so that the absence of a likelihood of confusion in those two Member States is extended to other Member States, or to the European Union as a whole, regard being had to the unitary treatment that the Community trade mark requires?
2. In the situation set out in the previous paragraph, can the geographical, demographic, economic or other circumstances of the States in which the coexistence has occurred be taken into consideration for the purpose of assessing the likelihood of confusion, so that the absence of a likelihood of confusion in those Member States can be extended to a third Member State, or to the European Union as a whole?