



## Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

9 June 2016\*

(References for a preliminary ruling — Protection of plant health — Directive 2000/29/EC — Protection against the introduction into and spread within the European Union of organisms harmful to plants or plant products — Implementing Decision (EU) 2015/789 — Measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells and Raju) — Article 6(2)(a) — Obligation to remove host plants immediately, regardless of their health status, within a radius of 100 meters around the infected plants — Validity — Article 16(3) of Directive 2000/29 — Principle of proportionality — Precautionary principle — Obligation to state reasons — Right to compensation)

In Joined Cases C-78/16 and C-79/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), made by decisions of 16 December 2015, received at the Court on 10 February 2016, in the proceedings

**Giovanni Pesce and Others** (C-78/16),

**Cesare Serinelli and Others** (C-79/16)

v

**Presidenza del Consiglio dei Ministri** (C-79/16),

**Presidenza del Consiglio dei Ministri — Dipartimento della Protezione Civile,**

**Commissario Delegato Per Fronteggiare il Rischio Fitosanitario Connesso alla Diffusione della *Xylella* nel Territorio della Regione Puglia,**

**Ministero delle Politiche Agricole Alimentari e Forestali,**

**Regione Puglia,**

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, A. Arabadjiev, C.G. Fernlund, S. Rodin and E. Regan (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: L. Carrasco Marco, Administrator,

\* Language of the case: Italian.

having regard to the decision of the President of the Court of 13 April 2016 to apply the accelerated procedure to these cases pursuant to Article 23a of the Statute of the Court of Justice of the European Union and Article 105(1) of the Rules of Procedure of the Court,

having regard to the written procedure and further to the hearing on 4 May 2016,

after considering the observations submitted on behalf of:

- Mr Pesce and Others, by G. Pesce, avvocato,
- Mr Serinelli and Others, by M. Alterio and M. Tagliaferro, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Fiorentino and G. Caselli, avvocati dello Stato,
- the Greek Government, by E. Leftheriotou, A. Vassilopoulou and G. Kanellopoulos, acting as Agents,
- the European Commission, by F. Moro, I. Galindo Martín, D. Bianchi and A. Sauka, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 May 2016,

gives the following

### Judgment

- 1 These requests for a preliminary ruling concern the validity of Article 6(2) to (4) of 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).
- 2 The references have been made in proceedings between several owners of agricultural holdings situated in the province of Brindisi, in the Puglia Region (Italy), used for growing olive trees of the plant species *Olea europaea* L., and the Presidenza del Consiglio dei Ministri (Office of the Italian Prime Minister) (Case C-79/16), the Presidenza del Consiglio dei Ministri — Dipartimento della Protezione Civile (Office of the Italian Prime Minister — Department of Civil Protection (Italy)), the Commissario Delegato Per Fronteggiare il Rischio Fitosanitario Connesso alla Diffusione della *Xylella* nel Territorio della Regione Puglia (Commissioner for addressing the phytosanitary risk connected with the spread of *Xylella* in the territory of the Puglia Region (Italy)) ('the Commissioner'), the Ministero delle Politiche Agricole Alimentari e Forestali (Ministry of Agriculture, Food and Forestry (Italy)) and the Regione Puglia (Puglia Region (Italy)) concerning the measures taken by those authorities in order to eradicate the bacterium *Xylella fastidiosa* (Wells and Raju) ('*Xylella*') from that region and to prevent its spread.

## Legal context

### *EU law*

#### Directive 2000/29

- 3 Under Article 16 of 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), as amended by Council Directive 2002/89/EC of 28 November 2002 (OJ 2002 L 355, p. 45) ('Directive 2000/29'):

'1. Each Member State shall immediately notify in writing the Commission and the other Member States of the presence in its territory of any of the harmful organisms listed in Annex I, Part A, Section I ...

It shall take all necessary measures to eradicate, or if that is impossible, inhibit the spread of the harmful organisms concerned. It shall inform the Commission and the other Member States of the measures taken.

2. Each Member State shall immediately notify in writing the Commission and the other Member States of the actual or suspected appearance of any harmful organisms not listed in Annex I or in Annex II whose presence was previously unknown in its territory. ...

...

3. In cases referred to in paragraphs 1 and 2, the Commission shall examine the situation as soon as possible within the Standing Committee on Plant Health. On-site investigations may be made under the authority of the Commission and in accordance with the relevant provisions of Article 21. The necessary measures based on a pest risk analysis or a preliminary pest risk analysis in cases referred to in paragraph 2 may be adopted, including those whereby it may be decided whether measures taken by the Member States should be rescinded or amended, under the procedure laid down in Article 18(2). The Commission shall follow the development of the situation and, under the same procedure, shall amend or repeal, as that development requires, the said measures. Until a measure has been adopted under the aforesaid procedure, the Member State may maintain the measures that it has employed.

...

5. If the Commission has not been informed of measures taken under paragraphs 1 or 2, or if it considers the measures taken to be inadequate, it may, pending the meeting of the Standing Committee on Plant Health, take interim protective measures based on a preliminary pest risk analysis to eradicate, or if that is not possible, inhibit the spread of the harmful organism concerned. ...'

- 4 Annex I, Part A, of Directive 2000/29 lists, as appears from its heading, 'harmful organisms whose introduction into, and spread within, all Member States shall be banned'. Under the heading 'harmful organisms not known to occur in any part of the Community and relevant for the entire Community', Section I(b) of that part, headed 'Bacteria', contains paragraph 1, worded as follows: '*Xylella* ...'.

Implementing Decisions 2014/87/EU and 2014/497/EU

- 5 Commission Implementing Decision 2014/87/EU of 13 February 2014 as regards measures to prevent the spread within the Union of (*Xylella*) (OJ 2014 L 45, p. 29), which was adopted on the basis of Directive 2000/29 and, in particular, of the fourth sentence of Article 16(3) thereof, sets out the following in recitals 2, 3 and 7:
- ‘(2) On 21 October 2013 Italy informed the other Member States and the Commission of the presence of [*Xylella* (‘the specified organism’)] in its territory, in two separate areas of the province of Lecce, in the Region Puglia. Subsequently two further separate outbreaks have been identified in the same province. The presence of the specified organism was confirmed in respect of several plants species, including *Olea europaea L.*, ..., showing leaf scorching and rapid decline symptoms. ...
- (3) On 29 October 2013 the Region Puglia took emergency measures for the prevention and eradication of the specified organism ... in accordance with Article 16(1) of Directive 2000/29 ...
- ...
- (7) In view of the nature of the specified organism, it is likely to spread rapidly and widely. In order to ensure that the specified organism does not spread to the rest of the Union, it is necessary to take measures immediately. Until more specific information becomes available concerning host range, vectors, pathways and risk reduction options, it is appropriate to prohibit movement [of plants for planting] out of areas possibly containing infected plants ...’
- 6 Under that initial implementing decision, the Commission therefore prohibited ‘the movement, out of the province of Lecce, Region Puglia, Italy, of plants for planting’ (Article 1), provided for official annual surveys to be conducted with a view to detecting the presence of the bacterium *Xylella* (Article 2) and required the Member States to ensure that where anyone becomes aware of the presence of that bacterium or has reason to suspect such a presence, that person is to notify the competent authority within ten days (Article 3).
- 7 That decision was repealed by Commission Implementing Decision 2014/497/EU of 23 July 2014 as regards measures to prevent the spread within the Union of *Xylella* ... (OJ 2014 L 219, p. 56).
- 8 Under that second implementing decision, which has the same legal basis as the first, the Commission restricted the movement of plants which are host plants of the bacterium *Xylella* and established various conditions for their introduction into the Union where they originate from third countries where that bacterium is known to be present (Articles 2 and 3). In addition, in order to eradicate the bacterium *Xylella* and to prevent its spread, the Commission imposed on the Member States, where necessary, ‘demarcated areas’ consisting of an ‘infected zone’ and a ‘buffer zone’, in which the Member States were, inter alia, to remove all plants infected by the bacterium *Xylella*, as well as all plants showing symptoms indicating possible infection by that bacterium and all plants which have been identified as likely to be infected (Article 7 and Annex III, Section 2(a)).

### Implementing Decision 2015/789

- 9 Implementing Decision 2014/497 was repealed by Implementing Decision 2015/789, which, adopted under the same legal basis as the first two implementing decisions, includes the following relevant recitals:

(1) In view of the audits carried out by the Commission and notifications of new outbreaks by the Italian authorities the measures provided for in Commission Implementing Decision [2014/87] should be strengthened.

(2) The European Food Safety Authority (EFSA ...) published on 6 January 2015 a Scientific Opinion on the risk to plant health posed by *Xylella* ... in the EU territory, with the identification and evaluation of risk reduction options ... In addition, on 20 March 2015, [EFSA] published a scientific report on the categorisation of those plants for planting, excluding seeds, according to the risk of introduction of the specified organism. The report categorises the plant species which have been so far confirmed to be susceptible to the European and non-European isolates of the specified organism by natural infection, experimental infection via vector transmission, or unknown type of infection (hereinafter “specified plants”). That list is longer than the list set out in Implementing Decision [2014/497]. Therefore, it is appropriate that this Decision applies to a longer list of species than [that] decision. However, in order to ensure proportionality some measures should only apply to plant species susceptible to the European isolates of the specified organism (hereinafter “host plants”). In this regard, while the EFSA opinion of 6 January 2015 points to the uncertainty as regards the range of plant species since research is still ongoing, the results of the investigations carried out by the Italian authorities have confirmed the capacity of certain specified plants to be host plants.

...

(4) In order to eradicate the specified organism and prevent its further spread in the rest of the Union, Member States should establish demarcated areas consisting of an infected zone and a buffer zone, and apply eradication measures. ...

...

(7) In the province of Lecce, the specified organism is already widely established. Where evidence shows that in certain parts of that area the specified organism has been present for more than 2 years and it is no longer possible to eradicate it, the responsible official body should have the possibility to apply containment measures, instead of eradication measures, to protect at least production sites, plants with particular cultural, social or scientific value, as well as the border with the rest of the Union territory. The containment measures should aim to minimise the amount of bacterial inoculum in that area and keep the vector population at the lowest level possible.

(8) In order to ensure effective protection of the rest of the Union territory from the specified organism, taking into account the possible spread of the specified organism by natural and human assisted means other than the movement of the specified plants for planting, it is appropriate to establish a surveillance zone immediately outside the buffer zone surrounding the infected zone of the province of Lecce.

...

(17) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed.’

10 Under Article 1 of Implementing Decision 2015/789, headed ‘Definitions’:

‘For the purposes of this Decision, the following definitions shall apply:

- (a) “specified organism” means European and non-European isolates of [*Xylella*];
  - (b) “specified plants” means all plants for planting, other than seeds, belonging to the genera or species listed in Annex I;
  - (c) “host plants” means all specified plants belonging to the genera or species listed in Annex II;
- ...’

11 Article 4 of that decision, headed ‘Establishment of demarcated areas’, provides:

‘1. Where the presence of the specified organism is confirmed, the Member State concerned shall without delay demarcate an area in accordance with paragraph 2, hereinafter “demarcated area”.

2. The demarcated area shall consist of an infected zone and a buffer zone.

...’

12 Under Article 6 of the decision, headed ‘Eradication measures’:

‘1. The Member State having established the demarcated area referred to in Article 4 shall take in that area the measures as set out in paragraphs 2 to 11.

2. The Member State concerned shall, within a radius of 100 m around the plants which have been tested and found to be infected by the specified organism, immediately remove:

- (a) host plants, regardless of their health status;
- (b) plants known to be infected by the specified organism;
- (c) plants showing symptoms indicating possible infection by that organism or suspected to be infected by that organism.

3. The Member State concerned shall sample and test the specified plants within a radius of 100 m around each of the infected plants, in accordance with the International Standard for Phytosanitary Measures ISPM No 31 ...

4. The Member State concerned shall 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. Those treatments may include, as appropriate, removal of plants.

5. The Member State concerned shall, in situ or in a nearby location designated for this purpose within the infected zone, destroy the plants and parts of plants referred to in paragraph 2, in a manner ensuring that the specified organism is not spread.

...’



- 13 Article 7 of Implementing Decision 2015/789, headed ‘Containment measures’, provides:
- ‘1. By way of derogation from Article 6, only in the province of Lecce, the responsible official body of the Member State concerned may decide to apply containment measures, as set out in paragraphs 2 to 6 ...
2. The Member State concerned shall immediately remove at least all plants which have been found to be infected by the specified organism if they are situated in any of the following locations:
- ...’
- 14 Article 8(1) of that decision, headed ‘Establishment of a surveillance zone in Italy’ provides that the Member States are to establish a surveillance zone with a width of at least 30 km adjacent to the demarcated area covering the infected zone of the province of Lecce.
- 15 Annexes I and II to Implementing Decision 2015/789, which contain, under their respective headings, the ‘list of plants known to be susceptible to the European and non-European isolates of the specified organism (“specified plants”)’ and the ‘list of plants known to be susceptible to the European isolates of the specified organism (“host plants”)', refer to *Olea europaea L.*

#### *Italian law*

- 16 The decreto del Ministero delle Politiche Agricole Alimentari e Forestali n. 2180 con cui sono state disposte nuove misure di emergenza per la prevenzione, il controllo e l'eradicazione di *Xylella fastidiosa* (Decree of the Ministry of Agriculture, Food and Forestry No 2180 laying down new emergency measures for the prevention, control and eradication of *Xylella fastidiosa*) of 19 June 2015 (‘Decree of 19 June 2015’) implemented Implementing Decision 2015/789. Articles 8 and 9 of that decree correspond, in essence, to Articles 6 and 7 of that decision.
- 17 On 30 September 2015, the Commissioner adopted an intervention plan also laying down the measures provided for in that decree.

#### **The actions in the main proceedings and the questions referred for a preliminary ruling**

- 18 In a number of decisions notified in July and October 2015, the Servizio Agricoltura della Regione Puglia (Puglia Region Department for Agriculture) ordered the applicants in the main proceedings to cut down the olive trees on the agricultural holdings they owned which were deemed to be infected by the bacterium *Xylella* and all the host plants within a radius of 100 metres of the infected plants. Those decisions also provided that, in the event of failure to comply, the applicants in the main proceedings would be charged the costs of eradicating that bacterium as carried out by the competent authorities, independently of the imposition of an administrative fine.
- 19 The applicants in the main proceedings brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) for the annulment of those decisions and of the administrative acts adopted by the competent public authorities of the Puglia Region and the Commissioner for the purposes of curbing the spread of the bacterium *Xylella* in the territory of that region, including, inter alia, the Decree of 19 June 2015 and the intervention plan of 30 September 2015.
- 20 According to the applicants, those various national measures are unlawful, since Implementing Decision 2015/789, on which they are based, is itself inconsistent with the principle of proportionality and the precautionary principle and since that decision is vitiated by a failure to state reasons.

21 Harbours doubts as to the validity of Implementing Decision 2015/789, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio), having suspended the implementation of the national measures at issue in so far as they order the uprooting of all host plants within a radius of 100 metres of the infected plants, decided to stay the proceedings and to refer the following questions for a preliminary ruling:

- '(1) Do Directive 2000/29/EC ..., in particular [Article] 11(3) [to Article] 13c(7), and [Article] 16(1) [to] (3) and (5) thereof, and the principles of proportionality, logic and reasonableness preclude the application of Article 6(2) and (4) of Implementing Decision [2015/789], as implemented in the Italian legal order by Article 8(2) and (4) of the Decree of [19 June 2015], 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 ..., in particular Article 16(1) thereof, preclude, in particular 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 Decision [2015/789], as implemented in the Italian legal order by Article 8(2) of the Decree of [19 June 2015], 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) [to] (3) and (5) of Directive 2000/29 ... and the principles of proportionality and logic and the right to due process preclude an interpretation of Article 6(2) and (4) of Implementing Decision [2015/789] — as implemented in the Italian legal order by Article 8(2) and (4) of the Decree of [19 June 2015] — to the effect that the eradication measure referred to in Article 6(2) can be imposed [prior to the application of] the preventive measures provided for in Articles 6(3) and (4) and independently of their application?
- (4) Do the precautionary principle and the principles of adequacy and proportionality preclude the application of Article 6(2) [to] (4) of Implementing Decision [2015/789], as implemented in the Italian legal order by Article 8(2) and (4) of the Decree of [19 June 2015], 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*], 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 ['the Charter'] preclude the application of Article 6(2) and (4) of Implementing Decision [2015/789], 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 Implementing Decision [2015/789] — as implemented in the Italian legal order by the Decree of [19 June 2015] — 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*], 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?'



22 By order of 13 April 2016 in *Pesce and Others* (C-78/16 and C-79/16, EU:C:2016:251), the President of the Court granted the request of the referring court for application to the present cases of the accelerated procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 105(1) of the Rules of Procedure of the Court.

### **Application to reopen the oral procedure**

23 Following the delivery of the Advocate General's Opinion, Mr Pesce and Others, by document lodged at the Court Registry on 13 May 2016, applied for the oral part of the procedure to be reopened. In support of that application, Mr Pesce and Others claim, in essence, that the Advocate General advances erroneous arguments in his Opinion as well as new elements which have not been the subject of debate between the parties.

24 It should be noted that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union to submit observations in response to the Advocate General's Opinion (see, inter alia, judgment of 4 September 2014 in *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 30).

25 Under the second paragraph of Article 252 TFEU, it is the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (judgment of 3 December 2015, *Banif Plus Bank*, C-312/14, EU:C:2015:794, paragraph 33).

26 Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he examines in his Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (see, to that effect, judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 26).

27 Nevertheless, pursuant to Article 83 of its Rules of Procedure, the Court may, at any time after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated between the interested parties (see, to that effect, judgment of 7 April 2016, *Marchon Germany*, C-315/14, EU:C:2016:211, paragraph 19).

28 That does not apply to the present case. The applicants in the main proceedings, the Italian and Greek Governments and the Commission presented, in the course of the written part of the procedure and, apart from the Greek Government, during the oral part of the procedure, all their arguments of fact and law concerning the validity of Implementing Decision 2015/789. Therefore, the Court considers, after hearing the Advocate General, that it has all the necessary information to give judgment and that that information has been the subject of debate before it.

29 In the light of the foregoing, the Court considers that there is no need to reopen the oral part of the procedure.

### **The questions referred for a preliminary ruling**

30 By its questions, which overlap in part, the referring court asks, in essence, whether the obligation, imposed on the Member State concerned, by Article 6(2)(a) of Implementing Decision 2015/789, to remove host plants immediately, regardless of their health status, within a radius of 100 metres around the plants which have been tested and found to be infected by the specified organism, in the

present case the bacterium *Xylella*, without that obligation being accompanied by a compensation scheme, is invalid on the ground of inconsistency with EU law, and, inter alia, with Directive 2000/29 (the first three questions and the sixth question), read in the light of the precautionary principle (fourth question) and the principle of proportionality (the first, third, fourth and sixth questions), and with the requirements deriving from the obligation to state reasons laid down in Article 296 TFEU and Article 41 of the Charter (fifth question).

- 31 In that context, the referring court also has doubts as to the internal consistency of the provisions contained in Article 6(2) to (4) of the decision in so far as they simultaneously impose, first, the obligation to remove ‘immediately’ host plants within the radius referred to and, second, to take samples and to apply phytosanitary treatments capable of including ‘as appropriate’ the removal of plants (first and third questions).
- 32 In order to answer the questions concerning the validity of Article 6(2)(a) of Implementing Decision 2015/789, it is appropriate to examine that last line of reasoning as a preliminary matter since it concerns the precise scope of the various obligations laid down in that article.

*The scope of the obligations laid down in Article 6(2) to (4) of Implementing Decision 2015/789*

- 33 Mr Pesce and Others claim that Article 6 of Implementing Decision 2015/789 is vitiated by an internal contradiction. Whereas it is apparent from Article 6(2)(a) that the Member States must remove all the host plants situated near the infested plants ‘immediately’, regardless of their health status, Article 6(3) and (4) appears to require the States concerned to undertake action prior to that removal. In those circumstances, it is appropriate to interpret Article 6(2)(a) of that decision requiring host plants to be removed only after ascertaining their health status and the application of the appropriate phytosanitary measures.
- 34 It should be noted that, under Article 6(2)(a) of Implementing Decision 2015/789, the Member State concerned has the obligation to remove host plants immediately, regardless of their health status, within a radius of 100 metres around the plants infected by the bacterium *Xylella*, which belongs, under Annex I, Part A, Section I(b) of Directive 2000/29, to the harmful organisms not known in any part of the European Union whose introduction and circulation must be prohibited in all Member States.
- 35 The Court finds, as did the Commission, that that obligation is not in any way inconsistent with the obligations laid down in Article 6(3) and (4). As is clear from the heading of Article 6(4), the Member State concerned must, ‘prior’ to the removal of the host plants referred to in Article 6(2)(a), apply an appropriate phytosanitary treatment which, contrary to the assumption of the applicants in the main proceedings, is not intended for the plants themselves but to the ‘vectors’ of the bacterium, namely the infectious insects, in order to control those vectors by eradicating them or, ‘as appropriate’, by removing the plants that host those vectors.
- 36 As stated by EFSA in its opinion of 6 January 2015, entitled ‘Scientific Opinion on the risk to plant health posed by *Xylella* ... in the EU territory, with the identification and evaluation of risk reduction options’ (‘the EFSA opinion of 6 January 2015’), to which the Commission refers in recital 2 of Implementing Decision 2015/789, that preliminary measure is necessary in so far as the insect vectors may move from infected plants to other plants (p. 109). As the Commission explained in its written observations, that measure therefore allows for the risk of those vectors and, consequently, of the bacterium itself spreading to be limited, on the removal, pursuant to Article 6(2)(a) of that decision, of host plants capable of hosting those vectors.

37 Moreover, under Article 6(3) the Member State concerned must, without further direction as to timing, sample and test the ‘specified plants’ within a radius of 100 metres around each of the infected plants, which includes, not only the ‘host’ plants referred to in Article 6(2)(a), namely those which are susceptible to the European isolates of the bacterium *Xylella*, but also the plants which are susceptible to the non-European isolates of that bacterium.

38 It follows that the obligations laid down in Article 6(2) to (4) of Implementing Decision 2015/789 do not provide for autonomous obligations which are mutually exclusive but for a collection of intrinsically-linked measures differing in nature and in scope, which, as regards those provided for in Article 6(2)(a) and (4), must be applied in succession. The obligations laid down in Article 6(3) and (4) cannot therefore be understood as affecting the mandatory nature of the obligation to remove host plants within the radius concerned around the infected plants ‘immediately’.

39 It is in the light of those preliminary clarifications that the validity of Article 6(2)(a) of Implementing Decision 2015/789 must be examined.

*The validity of Article 6(2)(a) of Implementing Decision 2015/789 as regards Directive 2000/29, read in the light of the precautionary principle and the principle of proportionality*

40 It should be noted that most of the provisions of Directive 2000/29 referred to by the referring court in its first question are not relevant in assessing the validity of Article 6(2)(a) of Implementing Decision 2015/789.

41 First of all, Article 11(3) and Article 13c(7) of Directive 2000/29 do not concern the situation referred to in Article 6(2)(a) in so far as those provisions concern, respectively, the movement of the plants between the Member States and imports of plants originating from third countries into the European Union.

42 Next, Article 16(1) and (2) of that directive, taken individually, concerns measures to be taken, not by the Commission, but by the Member States, since Article 16(2) refers, in addition, to harmful organisms which do not appear, unlike bacterium *Xylella*, in the annexes to that directive.

43 Finally, the purpose of Article 16(5) is to allow the Commission to adopt protective measures to eradicate, or if that is not possible, inhibit the spread of the harmful organism concerned based on a preliminary pest risk analysis ‘pending the meeting of the Standing Committee on Plant Health’. In the present case, it is common ground that Implementing Decision 2015/789, as appears from recital 17 thereof, was preceded by a favourable opinion of the relevant Standing Committee on Plant Health.

44 However, it should be noted that Article 6(2)(a) of Implementing Decision 2015/789 was adopted on the basis of the fourth sentence of Article 16(3) of Directive 2000/29, which empowers the Commission, as the development of the situation in terms of plant-health risk requires, to amend or repeal the ‘necessary measures’ taken by the Member States, inter alia, under Article 16(1) in order to eradicate the harmful organism concerned.

45 Accordingly, it is in the light of Article 16(3) of Directive 2000/29 that the validity of Article 6(2)(a) of Implementing Decision 2015/789 must be assessed.

46 In that regard, it is settled case-law that, within the framework of the Commission’s implementing power, the limits of which must be determined by reference amongst other things to the essential general aims of the legislative act in question, the Commission is authorised to adopt all the measures which are necessary or appropriate for the implementation of that act, provided that they are not contrary to it. Furthermore, it follows from the first paragraph of Article 290 TFEU in conjunction

with the second paragraph of Article 291 TFEU that in exercising an implementing power, the Commission may neither amend nor supplement the legislative act, even as to its non-essential elements (judgment of 15 October 2014, *Parliament v Commission*, C-65/13, EU:C:2014:2289, paragraphs 44 and 45).

- 47 Furthermore, it should be noted that the EU legislature must take account of the precautionary principle, according to which, where there is uncertainty as to the existence or extent of risks to human health, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent. Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the likelihood of real harm to public health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures (see, *inter alia*, judgment of 17 December 2015, *Neptune Distribution*, C-157/14, EU:C:2015:823, paragraphs 81 and 82).
- 48 That principle must, in addition, be applied having regard to the principle of proportionality, which requires that measures adopted by EU institutions should not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question, and where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, *inter alia*, judgment of 17 October 2013, *Schaible*, C-101/12, EU:C:2013:661, paragraph 29).
- 49 As regards the judicial review of respect for those principles, the Court has previously held that it must be acknowledged that the Commission has a wide discretion when it adopts risk management measures. That procedure entails political choices on its part and complex assessments. The validity of a measure adopted in that area can be affected only if the measure is manifestly inappropriate (see, *inter alia*, judgment of 22 December 2010, *Gowan Comércio Internacional e Serviços*, C-77/09, EU:C:2010:803, paragraph 82).
- 50 In that regard, it should also be recalled that the validity of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when that measure was adopted and cannot therefore depend on retrospective assessments of its efficacy. Where the EU legislature is obliged to assess the future effects of rules to be adopted and those effects cannot be accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question (see, *inter alia*, judgment of 17 October 2013, *Schaible*, C-101/12, EU:C:2013:661, paragraph 50 and the case-law cited).
- 51 That said, according to case-law, when new elements change the perception of a risk or show that that risk can be contained by less restrictive measures than the existing measures, it is for the institutions and in particular the Commission, which has the power of legislative initiative, to bring about an amendment to the rules in the light of the new information (judgment of 12 January 2006, *Agrarproduktion Staebelow*, C-504/04, EU:C:2006:30, paragraph 40). Accordingly, in the present case, it is for the Commission, under Article 16(3) of Directive 2000/29, to assess periodically, as has already been stated in paragraph 44 above, whether the measures taken in order to address the particular risk to plant health must be amended or repealed.
- 52 It is in the light of those provisions and of those principles that it is appropriate to consider the validity of the obligation, laid down in Article 6(2)(a) of Implementing Decision 2015/789, to remove immediately, within a radius of 100 metres around the infected plants, host plants, regardless of their health status (the first four questions), before evaluating the impact in that regard of the lack of a compensation scheme in that decision (the sixth question).



Assessment of the validity of the obligation laid down in Article 6(2)(a) of Implementing Decision 2015/789

- 53 It should be noted that Directive 2000/29 aims to ensure a high level of phytosanitary protection against the bringing into the European Union of harmful organisms in produce imported from non-member countries (see, to that effect, judgment of 30 September 2003, *Anastasiou and Others*, C-140/02, EU:C:2003:520, paragraph 45).
- 54 In the present case, in accordance with that objective, Article 6(2)(a) of Implementing Decision 2015/789 aims, as appears from recital 4 thereof, to eradicate the bacterium *Xylella* and to prevent its further spread beyond the Puglia Region, by strengthening the measures laid down in Implementing Decisions 2014/87 and 2014/497, following the notification by the Italian authorities of the presence of that bacterium in the province of Lecce.
- 55 It is common ground that health protection and the completion in the sector concerned of the agricultural internal market constitute legitimate objectives in the public interest pursued by EU legislation (see, inter alia, judgment of 17 October 2013, *Schaible*, C-101/12, EU:C:2013:661, paragraph 35 and the case-law cited).
- 56 In those circumstances, it is appropriate to examine whether the Commission was entitled to take the view, having regard to its wide margin of appreciation in the sector concerned on the basis of Article 16(3) of Directive 2000/29 and of the precautionary principle, that the obligation to remove host plants immediately, regardless of their health status, within a radius of 100 metres around the infected plants, laid down in Article 6(2)(a) of Implementing Decision 2015/789, was, in the light of the scientific data available at the date of the adoption of that decision and of the alternative measures conceivable at that date, appropriate and necessary in order to attain that objective and strictly proportional to it.
- 57 In the first place, and as a preliminary matter, the applicants in the main proceedings contest whether the destruction of the infected plants is in fact appropriate for eradicating the infection. In their view, the causal link between the bacterium *Xylella* and the rapid olive tree desiccation recorded in the Puglia Region has not been proven. It follows *a fortiori* that the destruction of all host plants located near the infected plants is also not appropriate for eradicating the infection.
- 58 In that regard, the Court finds that it is clear from the EFSA opinion of 6 January 2015, which has not been contested by the applicants in the main proceedings, that olive trees are, to the same degree as a relatively high number of other plants, host plants of the bacterium *Xylella*.
- 59 Although it is true that EFSA has not in its opinion proved the existence of a definite causal link between the bacterium *Xylella* and the rapid olive tree desiccation in the Puglia Region, that opinion nevertheless demonstrated (p. 3), as noted by the Advocate General in point 116 of his Opinion, a significant correlation between the bacterium and the occurrence of such a pathology.
- 60 In that regard, the Court notes that, contrary to what the applicants in the main proceedings submit, the precautionary principle, far from prohibiting the adoption of any measures in the absence of scientific certainty as to the existence or the extent of a health risk, may, in fact, justify, as was stated in paragraphs 46 and 47 above, the adoption by the EU legislature of protective measures even if scientific uncertainties remain in that regard.
- 61 Moreover, the Court points out that, although the applicants in the main proceedings contest the veracity of a causal link between the bacterium *Xylella* and the rapid olive tree desiccation in the Puglia Region, they do not advance any evidence capable of supporting their allegations.

- 62 The Court therefore finds that the Commission was entitled to take the view that the obligation to remove the infected plants immediately was an appropriate and necessary measure for preventing the spread of the bacterium *Xylella*. Furthermore, as regards the strict proportionality of that obligation, no less restrictive alternative measures have been mentioned as regards the infected plants which would be capable of attaining the same objective.
- 63 In those circumstances, it is appropriate to examine, in the second place, whether the obligation to remove the host plants which are located ‘within a radius of 100 metres’ around the infected plants immediately, ‘regardless of their health status’, constitutes an adequate measure, as regards the precautionary principle and the principle of proportionality, for attaining the objective sought.
- 64 As regards, first, the obligation to remove host plants ‘within a radius of 100 metres’ around the infected plants immediately, it is appropriate, with a view to determining whether that obligation is appropriate and necessary for attaining the objective sought, to assess the data available to the Commission at the time of the adoption of its decision as regards the risk of dispersal of the infection from infected plants.
- 65 In that regard, it should be noted that, having concluded in its opinion of 6 January 2015 that ‘infectious vectors may spread locally by flying or be passively transported longer distances by wind’ (p. 4), EFSA states, whilst conceding that ‘the contributions of human- and wind-mediated spread mechanisms are still uncertain [and that] there is a lack of data on how far the insect vectors can fly’ (p. 4), that ‘some data are available ... to suggest a scale of 100 metres is an appropriate mean dispersal distance’ (p. 62). Moreover, it is stated in that opinion that ‘dispersal is primarily limited to short-range leafhoppers, which fly, on average, 100 metres, but which can also be dispersed at longer distances by wind’ (p. 94).
- 66 It must be found that, in the light of that scientific data, the Commission was entitled to take the view, having regard to its wide margin of appreciation of the subject matter, that the obligation to remove host plants within a radius of 100 metres around the infected plants immediately was an appropriate and necessary measure for preventing the spread of the bacterium *Xylella* from those plants by the insect vectors of that bacterium.
- 67 As for the strict proportionality of that obligation, Mr Pesce and Others claim that, when the Commission adopted Decision 2015/789, a degree of scientific uncertainty was present concerning the way in which the bacterium *Xylella* is spread. In particular, it cannot be excluded that the vectors of its spread may extend the infection well beyond the radius of 100 metres around the infected plants.
- 68 Nevertheless, far from putting the proportionality of Article 6(2)(a) of Implementing Decision 2015/789 into question, the fact that the Commission limited the obligation to remove host plants at a radius of 100 metres, although the vectors are capable of spreading the bacterium beyond that distance, shows, on the contrary, that that obligation was limited to what is necessary for attaining the objective sought (see, by analogy, judgment of 12 July 2001, *Jippes and Others*, C-189/01, EU:C:2001:420, paragraph 120).
- 69 As regards, second, the obligation to remove host plants within the radius concerned immediately ‘regardless of their health status’, namely, even if they did not show any symptoms of infection by the bacterium *Xylella* and are not suspected of being infected by that bacterium, the applicants in the main proceedings claim, both in their written observations and at the hearing, that the concept of ‘eradicate’ referred to in Article 16 of Directive 2000/29 refers exclusively to the harmful organisms. The Commission is therefore exclusively empowered to order the plants infected by those organisms to be removed.



- 70 However, as the Advocate General stated in point 92 of his Opinion, since Article 16 of Directive 2000/29 is couched in general terms, it does not permit the inference of such a limitation in the scope of the measures which may be taken by the Commission. Having regard to the precautionary principle, Article 16(3), read in conjunction with Article 16(1), must, on the contrary, be understood as authorising the Commission to adopt any necessary measure, in accordance with the case-law cited in paragraphs 46 and 47 above, to eradicate or contain the harmful organisms, so that if attainment of that objective requires that not only the infected plants but also nearby host plants be removed, even if they do not show any symptoms of infection by the bacterium *Xylella* and are not suspected of being infected by it, that institution is empowered to impose such a measure.
- 71 In the present case, in order to determine whether that measure is appropriate and necessary for attaining the objective sought, it is appropriate to ascertain whether corroborating data was available to the Commission at the time it adopted its decision which was capable of showing that, despite the removal of the infected plants, the nearby host plants, even if they did not show any symptoms of infection by the bacterium *Xylella* and are not suspected of being infected by that bacterium, are nevertheless capable of being carriers and of contributing to the spread of that bacterium.
- 72 In that regard, it must be found that, according to EFSA's opinion of 6 January 2015, 'asymptomatic hosts, asymptomatic infections or low infections can escape surveys based solely on visual inspection and even based on laboratory tests as early infections or heterogeneous distribution of the bacterium in the plant may lead to false-negative results' (p. 6). According to that opinion, it follows that the presence of the bacterium *Xylella* is difficult to detect on asymptomatic or recently contaminated plants (p. 97). The opinion therefore concludes that, 'as the disease is spread by insect vectors from plant to plant, and as there is a delay between the inoculation of the bacterium by the vector and the appearance of symptoms, and even the possibility of detecting the bacterium *in planta*, it is of key importance when eradicating known infected plants to also destroy all the other plants in their vicinity' (p. 100).
- 73 Having regard to that scientific data, it appears that the Commission was entitled to take the view, having regard to its wide margin of appreciation of the subject matter, that the obligation to remove all host plants located near the infected plants immediately was, contrary to the removal of only the plants infected or that of the plants presenting rapid desiccation, as envisaged by Mr Pesce and Others, an appropriate and necessary measure for preventing the spread of the bacterium *Xylella* from those plants by the insect vectors of that bacterium.
- 74 As regards the strict proportionality of that obligation, it should be noted that the EU legislature was obliged to reconcile the various interests at stake, namely, first, inter alia, the right to property of the owners of olive trees in the Puglia Region and the economic, social and environmental consequences for that region following the removal of the affected plants and, second, the importance of plant production in the European Union and the public interest in safeguarding effective protection of EU territory, including Italian territory beyond the province of Lecce, against the spread of the bacterium *Xylella* throughout the European Union.
- 75 In that regard, the Court notes, first of all, that the obligation to remove all host plants within the radius concerned immediately was imposed by the Commission due to the rapid spread of the bacterium in the north of the province of Lecce, after that institution confined itself, in Implementing Decision 2014/87, to prohibiting the movement of plants for planting out of that province, then, in Implementing Decision 2014/497, in imposing the removal of only the infected plants, thereby demonstrating a certain progression in the measures adopted.

- 76 Next, it should be noted that the Commission has not imposed the obligation to remove the host plants under all circumstances. By way of derogation from Article 6 of Implementing Decision 2015/789, only in the province of Lecce, when eradication is no longer possible, does Article 7 of that decision authorise the competent national authorities to adopt containment measures which do not entail the removal of all host plants situated in the vicinity of the infected plants.
- 77 At the hearing, the applicants in the main proceedings nevertheless submitted that that derogation demonstrates, on the contrary, the disproportionality of the obligation to remove those plants in so far as the obligation has not in fact been imposed in the geographical zone most contaminated by the bacterium.
- 78 It is, however, common ground that, as appears from recital 7 of Implementing Decision 2015/789, in the province of Lecce the Commission no longer seeks to eradicate the bacterium *Xylella*, that being no longer possible, but to contain the bacterium by allowing the Member States to order infected plants to be removed only in certain specified zones to protect at least production sites, plants with particular cultural, social or scientific value, as well as the border with the rest of the Union territory. To that end, Article 8 of the decision requires a surveillance zone to be put in place immediately outside the buffer zone surrounding the infected zone of the province of Lecce. As the Italian government stated at the hearing, those measures therefore have as their objective, in the light of the fact that that province is surrounded by the sea, to confine the bacterium *Xylella* as much as possible in that province in order to prevent its spread to zones located further north.
- 79 Nevertheless, beyond the province of Lecce, the Commission seeks, by way of the measures laid down in Article 6 of Implementing Decision 2015/789, to eradicate the bacterium *Xylella*, such eradication being still possible, in order to prevent its spread throughout the European Union. For the reasons already set out in paragraphs 69 to 73 above, the attainment of those objectives requires not only the infected plants but also all the host plants situated nearby to be removed.
- 80 Lastly, as regards the issue of whether the host plants concerned could not be subject to less restrictive measures, such as pruning or pollarding olive trees and the application of a pesticide treatment, namely measures proposed by Mr Pesce and Others, it should be noted that, not only do Mr Pesce and Others not base their allegations in that regard on any scientific data, but, furthermore, it appears from EFSA's opinion of 6 January 2015 that 'no treatment is currently available to cure diseased plants in the field and, most often, plants that are contaminated remain infected throughout their life or collapse quickly. Changes in cropping systems could have some impact on the disease (e.g. pruning, fertilisation and irrigation), but this is generally not enough to cure plants' (p. 97). Moreover, that opinion states that, 'in Puglia, severe pruning of infected olive trees resulted in the emission of new sprouts from the base of the tree, but, so far, this has not been shown to cure the plants and prevent them from dying' (p. 97).
- 81 In those circumstances, although it is true that, as Mr Pesce and Others state, the obligation to remove all the host plants situated near to the infected plants is capable of harming both their right to property and the environment in the Puglia Region, the Commission was justified, within the frame of its wide margin of appreciation in that regard and having reconciled the various interests at stake, to impose that obligation.
- 82 Nonetheless, it should be noted that, as has been stated in paragraph 51 above, if the situation were to change to the effect that the eradication of the bacterium *Xylella* no longer requires, on the basis of new relevant scientific data, all the host plants within a radius of 100 metres around the infected plants to be removed immediately, it would be for the Commission, pursuant to Article 16(3) of Directive 2000/29, to amend Implementing Decision 2015/789 or to adopt a new decision, in order to take account of that development, whilst taking account of the precautionary principle and the principle of proportionality.

The absence of a compensation scheme in Implementing Decision 2015/789

- 83 According to Mr Pesce and Others, in so far as Implementing Decision 2015/789 leads to a genuine expropriation of the agricultural holdings concerned by that decision from their owners, the Commission should have expressly provided in that decision for compensation in proportion to the actual value of the non-infected plants that it orders to be removed.
- 84 In that regard, the Court points out that it has previously held that the EU legislature may consider, in the context of its broad discretion in the field of agricultural policy, that full or partial compensation is appropriate for owners of farms on which animals have been destroyed and slaughtered. Nonetheless, the Court considered that the existence, in EU law, of a general principle requiring compensation to be paid in all circumstances cannot be inferred from that fact (see judgment of 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397, paragraph 85).
- 85 That said, it should be noted that Article 17(1) of the Charter, concerning the right to property, now provides, inter alia, that ‘no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss’ and that ‘the use of property may be regulated by law in so far as is necessary for the general interest’.
- 86 In so far as the right to compensation flows directly from Article 17 of the Charter, the mere fact that neither Directive 2000/29 nor Implementing Decision 2015/789 provides specifically for a compensation scheme or that they do not impose an explicit obligation to provide for such a scheme cannot be interpreted as precluding such a right. It follows that the decision cannot be deemed invalid on that ground.
- 87 It follows from all of the foregoing that Article 6(2)(a) of Implementing Decision 2015/789 is neither contrary to Directive 2000/29 nor the principle of proportionality and the precautionary principle.

*The validity of Article 6(2)(a) of Implementing Decision 2015/789 as regards the requirements flowing from observance of the obligation to state reasons*

- 88 It should be noted that, while the statement of reasons required by Article 296 TFEU must show clearly and unequivocally the reasoning of the EU authority which adopted the contested measure, so as to enable the persons concerned to ascertain the reasons for it and to enable the Court to exercise judicial review, it is not required to go into every relevant point of fact and law (see judgment of 18 June 2015 in *Estonia v Parliament and Council*, C-508/13, EU:C:2015:403, paragraph 58). This is *a fortiori* the case where the Member States have been closely associated with the process of drafting that measure and are thus aware of the reasons underlying it (see, inter alia, judgment of 9 September 2004, *Spain v Commission*, C-304/01, EU:C:2004:495, paragraph 50).
- 89 In addition, as regards measures of general application, the statement of reasons may be limited to indicating, first, the general situation which led to its adoption and, second, the general objectives which the measure at issue is intended to achieve (see, inter alia, judgment of 9 September 2004, *Spain v Commission*, C-304/01, EU:C:2004:495, paragraph 51).
- 90 Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution (see, inter alia, judgment of 18 June 2015, *Estonia v Parliament and Council*, C-508/13, EU:C:2015:403, paragraph 60).

- 91 In the present case, it must be found that recitals 1 to 4 of Implementing Decision 2015/789 set out clearly the reasons why the Commission decided to extend the eradication measures to all the host plants in the vicinity of the infected plants. It appears from those recitals that that extension measure aims to pursue the general objective of strengthening, following new outbreaks of the bacterium *Xylella*, the eradication measures previously taken and to prevent the spread of that bacterium to the whole of the European Union, having regard to the new scientific opinions of EFSA, which extended the list of plants susceptible to the bacterium, whilst limiting some of those measures solely to host plants ‘in order to ensure proportionality’. In addition, in accordance with recital 1 of that decision, the Italian authorities were involved in the adoption of the decision and thus should be aware both of the reasons leading to its adoption and of the measures envisaged by the Commission to eradicate the bacterium *Xylella*.
- 92 In those circumstances, the Commission was in no way bound to detail, in the recitals of its decision, the reasons justifying each of the specific measures imposed by it.
- 93 It therefore follows that Implementing Decision 2015/789 complies with the obligation to state reasons under Article 296 TFEU.
- 94 It follows from the foregoing considerations that the examination of the questions referred has not revealed any factors capable of affecting the validity of Article 6(2)(a) of Implementing Decision 2015/789 in relation to Directive 2000/29, read in the light of the precautionary principle and the principle of proportionality, and regard being had to the obligation to state reasons laid down in Article 296 TFEU and Article 41 of the Charter.

### Costs

- 95 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

**The examination of the questions referred has not revealed any factors capable of affecting the validity of Article 6(2)(a) of 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.), in relation to 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, as amended by Council Directive 2002/89/EC of 28 November 2002, read in the light of the precautionary principle and the principle of proportionality, and regard being had to the obligation to state reasons laid down in Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.**

[Signatures]