

Action brought on 4 August 2015 — Eden Green Vivai Piante di Verdesca Giuseppe and Others v Commission

(Case T-437/15)

(2015/C 328/22)

Language of the case: Italian

Parties

Applicants: Eden Green Vivai Piante di Verdesca Giuseppe (Copertino, Italy), Azienda Agricola Cairo & Doucher di Cairo Uzi & C. Ss (Copertino, Italy), Ss Agricola Cairo Vito & Strafella Maria Rosa (Copertino, Italy), Vivai Del Salento Di Castrignano' Carmelo Antonio (Sanarica, Italy), Società Agricola Castrignano' Vivai Srl (Muro Leccese, Italy), Piante In Di Cipressa Carmine (Copertino, Italy), D'Elia Simone (Leverano, Italy), De Laurenzis Giuseppe (Copertino, Italy), Verde Giuranna Di Giuranna Alessio Mauro (Parabita, Italy), Maiorano Maurizio (Copertino, Italy), Vivai Mazzotta Di Mazzotta Carmine (Copertino, Italy), Società Agricola Mello Vivai di Mello Antonio Snc (Veglie, Italy), Mello Alessandro (Leverano, Italy), Mello Lucio (Carmiano, Italy), Romano Alessio Luigi (Giurdignano, Italy), Sansone Antonio (Copertino, Italy), Vivai Tarantino Ss (Cavallino, Italy), Verdesca Paolo (Copertino, Italy), Verdesca Giuseppe (Copertino, Italy), Hobby Flora di Miggiano Luigi (Poggiardo, Italy), Mauro Stefano (Muro Leccese, Italy), Miggiano Emanuele (Montesano Salentino, Italy), Miggiano Garden Center Sas di Miggiano Gianluigi & C. (San Cassiano, Italy), Miggiano Claudio (Maglie, Italy), Vivai Piante Rizzo Carmelo (Lecce, Italy), Cairo Antonio (Nardo', Italy), Floricoltura Marti di Marti Sandro (Porto Cesareo, Italy), Azienda Agricola Mariani Fabrizio (Alliste, Italy), Giannotta Giuseppe (Leverano, Italy), Ligetta & Solida Srl (Alezio, Italy), Vivai Caputo Sas di Carbone R. & F. Ss (San Donaci, Italy), Perrone Cosimo (Leverano, Italy), Durante Giuseppina (Leverano, Italy), Società Agricola CO.VI.SER Srl (Arnesano, Italy), Miggiano Antonio (Sanarica, Italy), Castrignano' Antonio (Sanarica, Italy), Stincone Giorgio (Sanarica, Italy), Zecca Fabio (Leverano, Italy), Società Agricola Florsilva Srl (Copertino, Italy) (represented by: G. Manelli, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should annul Implementing Decision No 2015/789/EU of 18 May 2015, published in the OJEU on 21 May 2015.

Pleas in law and main arguments

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

1. Infringement of essential procedural requirements, complete failure to give reasons, clear irrationality and infringement of the principle of proportionality.

The applicants claim that:

- The European Commission, despite acknowledging a series of studies carried out in Europe, has not taken into account their results and therefore does not allow for assessment of the suitability of the measures applied. Nor has the Commission explained why it decided to adopt a list of more than 180 specified plants which, though capable in the abstract of hosting *Xylella fastidiosa*, are not found in the province of Lecce. Furthermore, the Commission has not explained why it decided to list in Annex 1 over 180 species, including plants susceptible to 'non-European' isolates, which are clearly of no relevance to the territory in question.

- The European Commission has not made clear why it considered it necessary to apply an indiscriminate ban on movement of the plants referred to in Annex 1 and remove at EU level the option of using alternative measures which could address the risk of spreading.
 - The European Commission has not expressly indicated what EU provision might justify the adoption of the implementing decision. Nor has it explained why it has deviated from the principle of subsidiarity, in a situation where the Member State not only has competence but has used its powers in that respect. It has not explained why the decision should be considered proportionate to the objective pursued, nor has it made a comparison or expressly weighed up the interests at stake.
2. Infringement of essential procedural requirements from another perspective, complete failure to give reasons, clear irrationality and infringement of the principle of proportionality
- According to the applicants, it is not clear what scientific assumptions serve as the basis for the prohibition on moving specified plants once they have been declared pathogen-free following the appropriate scientific analysis. Nor is it clear why a plant which has spent part of its growth cycle outside screen-house systems may not be introduced into other systems to complete its life cycle, in order that it may subsequently be offered for sale.
3. Infringement of Articles 5(3) and (4) of the Treaty and the legal rules governing its application, infringement of the principle of subsidiarity and infringement of the principle of proportionality.

According to the applicants:

- The EU decision is unlawful with specific reference to Article 6, entitled 'Eradication measures'. The provision is incongruous and disproportionate since it applies to healthy plants or only to plants suspected of infection within a hundred metre radius of the site of the infected plant. That restriction makes no sense from a scientific point of view and, in particular, is disproportionate to the intended objective.
- The EU decision is also unlawful with specific reference to Article 9, entitled 'Movement of specified plants within the Union', since it imposes an indiscriminate and unjustified ban on movement irrespective of the plant's health status. This is all the more serious in view of the fact that the ban in question applies both outside the demarcated area and inside it.
- The contested decision infringes the principles of proportionality and subsidiarity.
- The EU decision is also unlawful with specific reference to Article 9(2)(d)(f) and (h) since, by way of derogation from paragraph 1, it requires a 200 m buffer zone around the site where the plants are grown and lays down a series of requirements for that zone. That derogation is clearly impracticable since the buffer zone around the growing site may be outside the control of nurseries, in all cases where that zone forms part of the property of third parties.