

**Judgment of the Court (Third Chamber), 13 September 2017**

**Case C-111/16**

**Criminal proceedings**

**against**

**Giorgio Fidenato and Others**

(Request for a preliminary ruling from the Tribunale di Udine)

(Reference for a preliminary ruling — Agriculture — Genetically modified food and feed — Emergency measures — National measure seeking to prohibit the cultivation of genetically modified maize MON 810 — Maintenance or renewal of the measure — Regulation (EC) No 1829/2003 — Article 34 — Regulation (EC) No 178/2002 — Articles 53 and 54 — Conditions of application — Precautionary principle)

1. Approximation of laws — Genetically modified foodstuffs and animal feed — Regulation No 1829/2003 — Emergency measures which may be adopted in order to confront a serious risk to human health, animal health or the environment — Member State having officially informed the Commission of the need to take such measures — Not evident that a product authorised by or in accordance with that regulation is likely to constitute a serious risk to human health, animal health or the environment — No obligation on the part of the Commission to adopt such measures

(European Parliament and Council Regulations No 178/2002, Arts 53 and 54(1) and No 1829/2003, Art. 34)

2. Approximation of laws — Genetically modified foodstuffs and animal feed — Regulation No 1829/2003 — Treatment of a serious risk to human health, animal health or the environment — Assessment and management coming under the responsibility of the Commission and the Council, subject to review by the Union judicature — Adoption and implementation by the Member States of emergency measures in the absence of a decision at Union level — Jurisdiction of the national courts to assess the lawfulness of those measures, having regard to the substantive conditions provided for in Article 34 of Regulation No 1829/2003 and the procedural conditions laid down in Article 54 of Regulation No 178/2002 — Adoption of a decision at Union level — Binding nature of the factual and legal assessments contained

in that decision on all bodies of the Member State which is the addressee of that decision, including national courts

(Arts 267, second para. and third para., TFEU and 288 TFEU; European Parliament and Council Regulations No 178/2002, Arts 54 and 58, and No 1829/2003, Art. 34)

3. Approximation of laws — Genetically modified foodstuffs and animal feed — Regulation No 1829/2003 — Emergency measures which may be adopted in order to confront a serious risk to human health, animal health or the environment — Member State having officially informed the Commission of the need to take such measures — Commission not having taken such measures — Possibility for the Member State to take such measures at the national level — Possibility for the Member State to maintain or renew those measures in the absence of a Commission decision requiring their extension, amendment or abrogation

(European Parliament and Council Regulations No 178/2002, Arts 53 and 54, and No 1829/2003, Art. 34)

4. Approximation of laws — Genetically modified foodstuffs and animal feed — Regulation No 1829/2003 — Emergency measures which may be adopted in order to confront a serious risk to human health, animal health or the environment — No possibility for Member States to adopt such measures solely on the basis of the precautionary principle, without satisfying the substantive conditions set out in Article 34 of the regulation

(European Parliament and Council Regulations No 178/2002, Arts 7, 53 and 54, and No 1829/2003, Art. 34)

1. Article 34 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, read in conjunction with Article 53 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, must be interpreted as meaning that the European Commission is not required to adopt emergency measures within the meaning of Article 53 of Regulation No 178/2002 when a Member State officially informs the Commission, in accordance with Article 54(1) of that regulation, of the need to take such measures, as long as it is not evident that products authorised by Regulation No 1829/2003 or in accordance with that regulation are likely to constitute a serious risk to human health, animal health or the environment.

(see para. 30, operative part 1)

2. See the text of the decision.

(see paras 37-41)

3. Article 34 of Regulation No 1829/2003, read in conjunction with Article 54 of Regulation No 178/2002, must be interpreted as meaning that a Member State may, after officially informing the European Commission of the need to resort to emergency measures, and where the Commission has not acted in accordance with Article 53 of Regulation No 178/2002, first, adopt such measures at the national level and, second, maintain or renew such measures, so long as the Commission has not adopted, in accordance with Article 54(2) of that regulation, a decision requiring their extension, amendment or abrogation.

(see para. 42, operative part 2)

4. Article 34 of Regulation No 1829/2003, read in conjunction with the precautionary principle as set out in Article 7 of Regulation No 178/2002, must be interpreted as not giving Member States the option of adopting, in accordance with Article 54 of Regulation No 178/2002, interim emergency measures solely on the basis of that principle, without the conditions set out in Article 34 of Regulation No 1829/2003 being satisfied.

Although, as the Advocate General noted in point 78 of his Opinion, the precautionary principle, as set out in Article 7 of Directive 178/2002, is a general principle of food law, the EU legislature established, in Article 34 of Regulation No 1829/2003, a precise rule for the adoption of emergency measures in accordance with the procedures set out in Articles 53 and 54 of Regulation No 178/2002. Admittedly, as the Court pointed out in paragraph 71 of the judgment of 8 September 2011, *Monsanto and Others* (C-58/10 to C-68/10, EU:C:2011:553), the conditions set out in Article 54(1) of Regulation No 178/2002, to which the adoption of emergency measures is subject, must be interpreted in the light of, *inter alia*, the precautionary principle, in order to ensure a high level of protection of human life and health, whilst taking care to ensure the free movement of safe and wholesome food and feed, which is an essential aspect of the internal market. Nevertheless, that principle cannot be interpreted as meaning that the provisions set out in Article 34 of Regulation No 1829/2003 may be disregarded or altered, in particular by relaxing them.

Furthermore, it should be stated that, as the Advocate General noted, in essence, in point 68 of his Opinion, provisional risk management measures which may be adopted on the basis of the precautionary principle and the emergency measures taken pursuant to Article 34 of Regulation No 1829/2003 do not operate according to the same system. It is clear from Article 7 of Regulation No 178/2002 that the adoption of those provisional

measures is subject to the condition that, following an assessment of available information, the possibility of harmful effects on health is identified but that scientific uncertainty persists. By contrast, Article 34 of Regulation No 1829/2003 permits the use of emergency measures when it is 'evident' that products authorised by that regulation are likely to constitute a 'serious' risk to human health, animal health or the environment.