

Parties to the main proceedings

Applicant: Interedil Srl, in liquidation

Defendant: Fallimento Interedil Srl, Intesa Gestione Crediti SpA

Re:

Reference for a preliminary ruling — Tribunale ordinario di Bari — Interpretation of Article 3 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) — The centre of a debtor's main interests — Presumption as to the place of a company's registered office — Establishment in another Member State — Community or national concepts

Operative part of the judgment

1. European Union law precludes a national court from being bound by a national procedural rule under which that court is bound by the rulings of a higher national court, where it is apparent that the rulings of the higher court are at variance with European Union law, as interpreted by the Court of Justice.
2. The term 'centre of a debtor's main interests' in Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted by reference to European Union law.
3. For the purposes of determining a debtor company's main centre of interests, the second sentence of Article 3(1) of Regulation No 1346/2000 must be interpreted as follows:

— a debtor company's main centre of interests must be determined by attaching greater importance to the place of the company's central administration, as may be established by objective factors which are ascertainable by third parties. Where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions of the company are taken, in a manner that is ascertainable by third parties, in that place, the presumption in that provision cannot be rebutted. Where a company's central administration is not in the same place as its registered office, the presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the presumption unless a comprehensive assessment of all the relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State;

— where a debtor company's registered office is transferred before a request to open insolvency proceedings is lodged, the company's centre of main activities is presumed to be the place of its new registered office.

4. The term 'establishment' within the meaning of Article 3(2) of Regulation No 1346/2000 must be interpreted as requiring the presence of a structure consisting of a minimum level of organisation and a degree of stability necessary for the purpose of pursuing an economic activity. The presence alone of goods in isolation or bank accounts does not, in principle, meet that definition.

(¹) OJ C 312, 19.12.2009.

Judgment of the Court (Grand Chamber) of 18 October 2011 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Realchemie Nederland BV v Bayer CropScience AG

(Case C-406/09) (¹)

(Regulation (EC) No 44/2001 — Jurisdiction and recognition and enforcement of judgments — Definition of 'civil and commercial matters' — Recognition and enforcement of an order imposing a fine — Directive 2004/48/EC — Intellectual property rights — Infringement of those rights — Measures, procedures and remedies — Sentence — Exequatur procedure — Related legal costs)

(2011/C 362/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Realchemie Nederland BV

Defendant: Bayer CropScience AG

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and of Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Concept of civil and commercial matters — Breach of the injunction issued by a German court against importing certain pesticides into Germany or marketing them there — Fine — Enforcement of the order imposing that fine — Enforcement proceedings relating to costs orders made abroad in respect of penalties or fines for breach of an injunction against infringement of an intellectual property right

Operative part of the judgment

1. The concept of 'civil and commercial matters' in Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that regulation applies to the recognition and enforcement of a decision of a court or tribunal that contains an order to pay a fine in order to ensure compliance with a judgment given in a civil and commercial matter;
2. The costs relating to an exequatur procedure brought in a Member State, in the course of which the recognition and enforcement is sought of a judgment given in another Member State in proceedings seeking to enforce an intellectual property right, fall within Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

(¹) OJ C 312, 19.12.2009.

Judgment of the Court (Sixth Chamber) of 20 October 2011 — European Commission v French Republic

(Case C-549/09) (¹)

(Failure to fulfil obligations — State aid — Aid granted to fish farmers and fishermen — Decision declaring that aid incompatible with the common market — Obligation to recover immediately the aid declared unlawful and incompatible and to inform the Commission — Non-compliance — Absolute impossibility of compliance)

(2011/C 362/06)

Language of the case: French

Parties

Applicant: European Commission (represented by: É. Gippini Fournier and K. Walkerová, acting as Agent(s))

Defendant: French Republic (represented by: G. de Bergues and J. Gstalter, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to take the measures necessary to comply with Commission Decision 2005/239/EC of 14 July 2004 concerning certain aid measures applied by France to assist fish farmers and fishermen (OJ 2005, L 74, p. 49) — Obligation to recover immediately the aid declared unlawful and incompatible and to inform the Commission.

Operative part of the judgment

The Court:

1. Declares that, by failing to comply, within the prescribed time-limits, with Commission Decision 2005/239/EC of 14 July 2004 concerning certain aid measures applied by France to assist fish farmers and fishermen, by recovering from the recipients of the aid declared unlawful and incompatible with the common market by Articles 2 and 3 of that decision, the French Republic has failed to fulfil its obligations under the fourth paragraph of Article 288 TFEU and Article 4 of that decision.
2. Orders the French Republic to pay the costs

(¹) OJ C 80, 27.3.2010.

Judgment of the Court (Grand Chamber) of 18 October 2011 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Oliver Brüstle v Greenpeace e.V.

(Case C-34/10) (¹)

(Directive 98/44/EC — Article 6(2)(c) — Legal protection of biotechnological inventions — Extraction of precursor cells from human embryonic stem cells — Patentability — Exclusion of 'uses of human embryos for industrial or commercial purposes' — Concepts of 'human embryo' and 'use for industrial or commercial purposes')

(2011/C 362/07)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Oliver Brüstle

Defendant: Greenpeace e.V.

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 6(1) and (2)(c) of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13) — Extraction, for the purposes of scientific research, of precursor cells from human embryonic stem cells taken from a blastocyst, which is no longer capable of developing into a human being — Exclusion from patentability of that process as 'use of human embryos for industrial or commercial purposes'? — Concept of 'human embryos' and 'uses for industrial or commercial purposes'