

Question referred

Must Article 63(1) TFEU, read in conjunction with Article 65 TFEU, be interpreted as precluding legislation of a Member State which provides that, for the calculation of gift tax, the allowance to be set against the taxable value in the case of a gift of real property situated in that Member State is lower in the case where the donor and the recipient had their place of residence in another Member State on the date of execution of the gift than the allowance which would have been applicable if at least one of them had had his or her place of residence in the former Member State on that date, even if other legislation of the Member State provides that, on the application of the recipient of the gift, the higher allowance is to be applied, on condition that account is taken of all assets transferred gratuitously by the donor ten years prior to and within ten years following the date of execution of the gift?

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 30 October 2014 — Jørn Hansson v Jungpflanzen Grünewald GmbH

(Case C-481/14)

(2015/C 034/04)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Jørn Hansson

Defendant: Jungpflanzen Grünewald GmbH

Questions referred

1. In the determination of the 'reasonable compensation' which an infringer must pay to the holder of a Community plant variety right pursuant to Article 94(1)(a) of [Regulation (EC) No 2100/94] ⁽¹⁾ because he has effected the acts set out in Article 13(2) of that regulation without being entitled to do so, must, in addition to the normal market fee charged in the same sector for a licence to effect the acts specified in Article 13(2) of that regulation, a specific 'infringer supplement' also be applied on a flat-rate basis in every case? Does this follow from the second sentence of Article 13(1) of [Directive 2004/48/EC] ⁽²⁾?
2. In the determination of the 'reasonable compensation' which an infringer must pay to the holder of a Community plant variety right pursuant to Article 94(1)(a) of Regulation (EC) No 2100/94 because he has effected the acts set out in Article 13(2) of that regulation without being entitled to do so, must, in addition to the normal market fee charged in the same sector for a licence to effect the acts specified in Article 13(2) of that regulation, account also be taken in an individual case of the following considerations or circumstances as factors that increase the compensation payable:
 - (a) In the determination of the market licence fee by reference to licence agreements concluded and accounts settled for the variety in relation to which rights were infringed, the fact that, in the relevant period, as a result of special characteristics, the variety in question had a unique market position?

If consideration may be given to this factor in an individual case:

May the compensation be increased only if the characteristics giving rise to the variety's unique position are included the description of the variety for the purposes of the plant variety right?

- (b) In the determination of the market licence fee by reference to licence agreements concluded and accounts settled for the variety in relation to which rights were infringed, the fact that, at the time when the infringing variety was introduced, the variety in relation to which rights were infringed had been very successfully marketed and, as a result, the infringer saved on the costs of introducing itself the infringing variety on to the market?
 - (c) The fact that, in terms of time and having regard to the number of plants sold, the magnitude of the rights infringement in relation to the applicant's variety was greater than average?
 - (d) The consideration that the infringer, unlike a licensee, does not face the risk of having to pay a licence fee (that cannot be returned) in relation to the variety in question although the plant variety right for such variety is subject to legal challenge and may subsequently be declared null and void?
 - (e) The fact that the infringer, unlike the usual situation in the case of licensees, was not required to account for sales on a quarterly basis?
 - (f) The consideration that the holder of the plant variety right bears the risk in relation to inflation, which is of significance because of the significant period involved in pursuing legal action?
 - (g) The consideration that, as a result of having to pursue legal action, the holder of the plant variety right, unlike the situation in which he obtains income through the granting of licences in relation to the variety in question, cannot plan the income to be obtained through this variety?
 - (h) The consideration that, where rights relating to the variety in issue are infringed, the holder of those rights bears both the general risks associated with litigation and, ultimately, the risk that judgment may not be enforceable against the infringer?
 - (i) The consideration that, in the case of an infringement of plant variety rights resulting from the unauthorised actions of the infringer, the holder of those rights is deprived of the freedom to determine whether the infringer may be allowed to use the variety in respect of which the holder holds the rights?
3. In the determination of the 'reasonable compensation' which an infringer must pay to the holder of a Community plant variety right pursuant to Article 94(1)(a) of Regulation (EC) No 2100/94 because he has effected the acts set out in Article 13(2) of that regulation without being entitled to do so, must account also be taken of interest payable at a usual rate of default interest on the annual compensation amount if it is to be presumed that contracting parties acting reasonably would have provided for the payment of interest of that kind?
4. In the calculation of 'further damage resulting from the act in question' for which an infringer must compensate the holder of a Community plant variety right pursuant to the first sentence of Article 94(2) of Regulation (EC) No 2100/94 because he has effected the acts set out in Article 13(2) of that regulation without being entitled to do so, must the market licence fee normally charged in the same sector for the acts specified in Article 13(2) of that regulation be taken as the basis for that calculation?
5. If Question 4 is answered in the affirmative:
- (a) In the calculation of the 'further damage' pursuant to the first sentence of Article 94(2) of Regulation (EC) No 2100/94 on the basis of a market licence, must account be taken in an individual case of the considerations and circumstances set out in Question 2(a) to (i) and/or of the fact that, by reason of having to pursue legal action, the holder of the plant variety right is required personally to spend a commensurate amount of time in identifying the infringement and dealing with the matter and to carry out investigations regarding the infringement of the plant variety right to the extent to which this is usual in infringement cases of this kind such as to justify a premium over and above the market licence fee?

- (b) In the calculation of 'further damage' pursuant to the first sentence of Article 94(2) of Regulation (EC) No 2100/94 on the basis of a market licence, must a specific 'infringer supplement' be applied on a flat-rate basis in every case? Does this follow from the second sentence of Article 13(1) of Directive 2004/48?
- (c) In the calculation of 'further damage' pursuant to the first sentence of Article 94(2) of Regulation (EC) No 2100/94 on the basis of a market licence, must account be taken of interest payable at a usual rate of default interest on the annual compensation amount if it is to be presumed that contracting parties acting reasonably would have provided for the payment of interest of that kind?
6. Must the first sentence of Article 94(2) of Regulation (EC) No 2100/94 be interpreted to mean that the infringer's profit constitutes 'further damage' within the meaning of that provision which can be claimed in addition to reasonable compensation pursuant to Article 94(1) of that regulation or, in the event that the wrongdoing was intentional or negligent, can the infringer's profit be claimed under the first sentence of Article 94(2) only as an alternative to reasonable compensation pursuant to Article 94(1)?
7. Is the right to compensation for damage specified in Article 94(2) of Regulation (EC) No 2100/94 precluded by national legislation according to which the holder of the plant variety right ordered by decision having the force of law to pay the costs of interlocutory proceedings in which a temporary injunction was sought on the basis of an infringement of plant variety rights cannot claim reimbursement of those costs on the basis of arguments of substantive law even if, in the main proceedings relating to the same plant variety right infringement, his action is successful?
8. Is the right to compensation for damage specified in Article 94(2) of Regulation (EC) No 2100/94 precluded by national legislation according to which an injured party, outside of the strict framework of an action for costs, cannot claim for his own time spent in the extra-judicial and judicial pursuit of a compensation claim if the time spent does not exceed what is normal in the circumstances?

⁽¹⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ 1994 L 227, p. 1.

⁽²⁾ 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.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 6 November 2014 — Freistaat Bayern v Verlag Esterbauer GmbH

(Case C-490/14)

(2015/C 034/05)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Freistaat Bayern

Defendant: Verlag Esterbauer GmbH