

Questions referred

1. Do organisms obtained by mutagenesis constitute genetically modified organisms within the meaning of Article 2 of Directive [2001/18/EC] of 12 March 2001,⁽¹⁾ although they are exempt under Article 3 of and Annex IB to the directive from the obligations laid down for release and placing on the market of genetically modified organisms? In particular, may mutagenesis techniques, in particular new directed mutagenesis techniques implementing genetic engineering processes, be regarded as techniques listed in Annex IA, to which Article 2 refers? Consequently, must Articles 2 and 3 of and Annexes IA and IB to Directive 2001/18 of 12 March 2001 be interpreted as meaning that they exempt from precautionary, impact assessment and traceability measures all organisms and seeds obtained by mutagenesis, or only organisms obtained by conventional random mutagenesis methods by ionising radiation or exposure to mutagenic chemical agents existing before those measures were adopted?
2. Do varieties obtained by mutagenesis constitute genetically modified varieties within the meaning of Article 4 of Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species,⁽²⁾ which would not be exempt from the obligations laid down in that directive? Or, on the contrary, is the scope of that directive the same as that which under Articles 2 and 3 of and Annex IB to the Directive of 12 March 2001, and does it also exempt varieties obtained by mutagenesis from the obligations laid down for the inclusion of genetically modified varieties in the common catalogue of agricultural plant species by the Directive of 13 June 2002?
3. Do Articles 2 and 3 of and Annex IB to Directive 2001/18/EC of 12 March 2001 on the deliberate release into the environment of genetically modified organisms constitute, insofar as they exclude mutagenesis from the scope of the obligations laid down in the directive, a full harmonisation measure prohibiting Member States from subjecting organisms obtained by mutagenesis to all or some of the obligations laid down in the directive or to any other obligation, or do the Member States, when transposing those provisions, have a discretion to define the regime to be applied to organisms obtained by mutagenesis?
4. May the validity of Articles 2 and 3 of and Annexes IA and IB to Directive 2001/18/EC of 12 March 2001 with regard to the precautionary principle guaranteed by Article 191(2) of the Treaty on the Functioning of the European Union, in that those provisions do not subject genetically modified organisms obtained by mutagenesis to precautionary, impact assessment and traceability measures, be called in question, taking account of the development of genetic engineering processes, the appearance of new plant varieties obtained by means of those techniques and the current scientific uncertainty as to their impacts and the potential risks they represent for the environment and human and animal health?

⁽¹⁾ Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC — Commission Declaration (OJ 2001 L 106, p. 1).

⁽²⁾ Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ 2002 L 193, p. 1).

Action brought on 18 October 2016 — European Commission v Republic of Poland**(Case C-530/16)**

(2017/C 014/30)

*Language of the case: Polish***Parties***Applicant:* European Commission (represented by: W. Mölls and J. Hottiaux, acting as Agents)*Defendant:* Republic of Poland

Form of order sought

The Commission claims that the Court should:

— declare that:

- by failing to adopt the measures necessary to ensure that the safety authority is independent of railway undertakings, rail infrastructure operators, applicants and procurement entities, and
- by failing to adopt the measures necessary to ensure that the investigating body is independent of railway undertakings and rail infrastructure operators,⁽¹⁾

the Republic of Poland has failed to fulfil its obligations under Articles 16(1) and 21(1) of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The Commission criticises the Republic of Poland on the ground that it has failed correctly to transpose within the Polish legal system the principle that the investigating body (that is to say, the Państwowa Komisja Badania Wypadków Kolejowych (National Commission for the investigation of railway accidents) (PKBWK)) must be independent in its organisation, legal structure and decision-making, as required by Article 21(1) of Directive 2004/49/EC. The status conferred on the PKBWK does not guarantee its independence. The Commission criticises the fact that the PKBWK is an integral part of the ministry of transport and that there is no safeguard whatsoever to ensure that it is independent of the ministry and the rail infrastructure operator. Furthermore, the PKBWK does not act in its own name: the minister for transport appoints and dismisses the director of the PKBWK and his deputy, as well as the secretary and the permanent and *ad hoc* members of the PKBWK. In addition, the minister for transport has not, by way of an appropriate arrangement, made available to the PKBWK the financial means necessary to enable it to carry out its tasks.

The Commission also criticises the Republic of Poland for failing correctly to implement Article 16(1) of Directive 2004/49/EC on the ground that the safety authority (that is to say, the Prezes Urzędu Transportu Kolejowego (board of the rail authority)) is not independent in its organisation, legal structure and decision-making vis-à-vis railway undertakings, rail infrastructure operators, applicants and procurement entities.

⁽¹⁾ OJ 2004 L 164, p. 44.

**Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 26 October 2016 —
Länsförsäkringar Sak Försäkringsaktiebolag and Others v Dödsboet efter Ingvar Mattsson,
Länsförsäkringar Sak Försäkringsaktiebolag**

(Case C-542/16)

(2017/C 014/31)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Länsförsäkringar Sak Försäkringsaktiebolag, Jan-Herik Strobel, Mona Strobel, Margareta Nilsson, Per Nilsson, Kent Danås, Dödsboet efter Tommy Jönsson, Stefan Pramryd, Stefan Ingemansson, Lars Persson, Magnus Persson, Anne-Charlotte Wickström, Peter Nilsson, Ingela Landau, Thomas Landau, Britt-Inger Ruth Romare, Gertrud Andersson, Eva Andersson, Rolf Andersson, Lisa Bergström, Bo Sörensson, Christina Sörensson, Kaj Wirenkook, Lena Bergquist Johansson, Agneta Danås, Hans Eriksson, Christina Forsberg, Christina Danielsson, Per-Olof Danielsson, Ann-Christin Jönsson, Åke Jönsson, Stefan Lindgren, Daniel Röme, Ulla Nilsson, Dödsboet efter Leif Göran Erik Nilsson