

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.

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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'

Operative part of the judgment

1. Article 6(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 must be interpreted as meaning that:

— any human ovum after fertilisation, any non-fertilised human ovum into which the cell nucleus from a mature human cell has been transplanted, and any non-fertilised human ovum whose division and further development have been stimulated by parthenogenesis constitute a 'human embryo';

— it is for the referring court to ascertain, in the light of scientific developments, whether a stem cell obtained from a human embryo at the blastocyst stage constitutes a 'human embryo' within the meaning of Article 6(2)(c) of Directive 98/44.

2. The exclusion from patentability concerning the use of human embryos for industrial or commercial purposes set out in Article 6(2)(c) of Directive 98/44 also covers the use of human embryos for purposes of scientific research, only use for therapeutic or diagnostic purposes which is applied to the human embryo and is useful to it being patentable.

3. Article 6(2)(c) of Directive 98/44 excludes an invention from patentability where the technical teaching which is the subject-matter of the patent application requires the prior destruction of human embryos or their use as base material, whatever the stage at which that takes place and even if the description of the technical teaching claimed does not refer to the use of human embryos.

⁽¹⁾ OJ C 100, 17.4.2010.

Judgment of the Court (First Chamber) of 20 October 2011 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Danfoss A/S, Sauer-Danfoss ApS v Skatteministeriet

(Case C-94/10) ⁽¹⁾

(Indirect taxes — Excise duties on mineral oils — Incompatibility with European Union law — Non-repayment of excise duty to purchasers of goods to whom the excise duty has been passed on)

(2011/C 362/08)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicants: Danfoss A/S, Sauer-Danfoss ApS

Defendant: Skatteministeriet

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of European Union law on recovery of sums unduly paid and the conditions for compensation for losses caused to individuals — Excise duties levied contrary to the system of harmonised excise duties put in place by Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) and Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duty on mineral oils (OJ 1992 L 316, p. 12) — Unlawful excise duty paid to the State by oil companies which sold oils subject to excise duty whilst incorporating the excise duty into the price of the goods — Failure by the State to repay the excise duty to purchasers of the oils on the ground that they had not paid it to the State — Refusal to compensate for the losses caused to the purchasers of the oils by the unlawful excise duty due to the lack of immediate loss and direct causal link between the infringement of the State's obligation and the loss suffered

Operative part of the judgment

The rules of European Union law must be construed as meaning that:

1. a Member State may oppose a claim for reimbursement of a duty unduly paid, brought by the purchaser to whom that duty has been passed on, on the ground that it is not the purchaser who has paid the duty to the tax authorities, provided that the purchaser is able, on the basis of national law, to bring a civil action against the taxable person for recovery of the sum unduly paid and provided that the reimbursement, by that taxable person, of the duty unduly paid is not virtually impossible or excessively difficult;

2. a Member State may reject a claim for damages brought by a purchaser to whom a duty unduly paid has been passed on by the taxable person, on the ground that there is no direct causal link between the levying of that duty and the damage suffered, provided that the purchaser is able, on the basis of national law, to bring that claim against the taxable person and provided that the compensation, by that taxable person, of the damage suffered by the purchaser is not virtually impossible or excessively difficult.

⁽¹⁾ OJ C 100, 17.4.2010.