

Operative part of the judgment

1. Article 4 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted as not precluding national evidentiary rules such as those at issue in the main proceedings under which, when a court ruling on the merits of an action involving the liability of the producer of a vaccine due to an alleged defect in that vaccine, in the exercise of its exclusive jurisdiction to appraise the facts, may consider that, notwithstanding the finding that medical research neither establishes nor rules out the existence of a link between the administering of the vaccine and the occurrence of the victim's disease, certain factual evidence relied on by the applicant constitutes serious, specific and consistent evidence enabling it to conclude that there is a defect in the vaccine and that there is a causal link between that defect and that disease. National courts must, however, ensure that their specific application of those evidentiary rules does not result in the burden of proof introduced by Article 4 being disregarded or the effectiveness of the system of liability introduced by that directive being undermined.
2. Article 4 of Directive 85/374 must be interpreted as precluding evidentiary rules based on presumptions according to which, where medical research neither establishes nor rules out the existence of a link between the administering of the vaccine and the occurrence of the victim's disease, the existence of a causal link between the defect attributed to the vaccine and the damage suffered by the victim will always be considered to be established when certain predetermined causation-related factual evidence is presented.

⁽¹⁾ OJ C 48, 8.2.2016.

Judgment of the Court (Fourth Chamber) of 14 June 2017 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Mohammad Zadeh Khorassani v Kathrin Pflanz

(Case C-678/15) ⁽¹⁾

(Reference for a preliminary ruling — Directive 2004/39/EC — Markets in financial instruments — Article 4(1)(2) — Definition of ‘investment services’ — point 1 of Section A of Annex I — Reception and transmission of orders in relation to one or more financial instruments — Potential inclusion of brokering with a view to concluding a portfolio management contract)

(2017/C 277/11)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Mohammad Zadeh Khorassani

Defendant: Kathrin Pflanz

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Article 4(1)(2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, read in conjunction with point 1 of Section A of Annex I to that directive, must be interpreted as meaning that the investment service consisting in the reception and transmission of orders in relation to one or more financial instruments does not include brokering with a view to concluding a contract covering portfolio management services.

⁽¹⁾ OJ C 106, 21.3.2016.