JUDGMENT OF THE COURT (Fifth Chamber)

10 April 2003 *

In Case C-305/00,

REFERENCE to the Court under Article 234 EC by the Oberlandesgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court between

Christian Schulin

and

Saatgut-Treuhandverwaltungsgesellschaft mbH,

on the interpretation of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1), and Article 8 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 (OJ 1995 L 173, p. 14),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, S. von Bahr (Rapporteur) and A. Rosas, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Schulin, by H. Lessing and G. Scheller, Rechtsanwälte,

— Saatgut-Treuhandverwaltungsgesellschaft mbH, by E. Krieger, Rechtsanwalt,

— the Commission of the European Communities, by G. Braun and K. Fitch, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Schulin, represented by M. Miersch, Rechtsanwalt, and R. Wilhelms, Patentanwalt, of Saatgut-Treuhandverwaltungsgesellschaft mbH, represented by E. Krieger and K. von Gierke, Rechtsanwalt, and of the Commission, represented by G. Braun, at the hearing on 21 February 2002,

after hearing the Opinion of the Advocate General at the sitting on 21 March 2002,

gives the following

Judgment

1 By order of 1 August 2000, received at the Court on 11 August 2000, the Oberlandesgericht (Higher Regional Court) Frankfurt am Main referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1) and Article 8 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 (OJ 1995 L 173, p. 14).

2 That question was raised in proceedings between Saatgut-Treuhandverwaltungsgesellschaft mbH ('STV'), a German seed company engaged in trust management

and Mr Schulin on the subject of the latter's obligation, as a farmer, to indicate, on request, to STV whether and, as the case may be, to what extent he has grown various plant varieties, some of which are protected under Regulation No 2100/94.

Legal background

Community legislation

3 Article 1 of Regulation No 2100/94 establishes a system of Community plant variety rights as the sole and exclusive form of Community industrial property rights for plant varieties.

4 Under Article 11(1) of Regulation No 2100/94, the person, described as 'the breeder', who is entitled to the Community plant variety right is the one who 'bred, or discovered and developed the variety, or his successor in title'.

5 Under Article 13(1) and (2) of Regulation No 2100/94:

'1. A Community plant variety right shall have the effect that the holder or holders of the Community plant variety right, hereinafter referred to as "the holder", shall be entitled to effect the acts set out in paragraph 2.

2. Without prejudice to the provisions of Articles 15 and 16, the following acts in respect of variety constituents, or harvested material of the protected variety, both referred to hereinafter as "material", shall require the authorisation of the holder:

(a) production or reproduction (multiplication);

(b) conditioning for the purpose of propagation;

(c) offering for sale;

(d) selling or other marketing;

(e) exporting from the Community;

(f) importing to the Community;

(g) stocking for any of the purposes mentioned in (a) to (f).

The holder may make his authorisation subject to conditions and limitations.'

6 However, Article 14(1) of Regulation No 2100/94 provides:

'Notwithstanding Article 13(2), and for the purposes of safeguarding agricultural production, farmers are authorised to use for propagating purposes in the field, on their own holding the product of the harvest which they have obtained by planting, on their own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant variety right.'

7 Article 14(2) of Regulation No 2100/94 specifies that such authorisation, known as the 'agricultural exemption', applies only to the agricultural plant species listed there. Those species are divided into four categories, namely fodder plants, cereals, potatoes and oil and fibre plants.

8 Under Article 14(3) of Regulation No 2100/94 '[c]onditions to give effect to the derogation provided for in paragraph 1 and to safeguard the legitimate interests of the breeder and of the farmer, shall be established, before the entry into force of this Regulation, in implementing rules pursuant to Article 114'. That paragraph states the criteria on the basis of which those conditions must be established, which include the principles that there should be no quantitative restriction of the level of the farmer's holding, that the product of the harvest may be processed for planting, either by the farmer himself or through services

supplied to him, that farmers, apart from small farmers, are to be required to pay an equitable remuneration to the holder, which is to be sensibly lower than the amount charged for the licensed production of propagating material of the same variety in the same area, and that holders should be exclusively responsible for monitoring compliance with Article 14.

9 The sixth indent of Article 14(3) of Regulation No 2100/94 also provides, among those criteria, for an obligation to provide information incumbent on farmers:

'[R]elevant information shall be provided to the holders on their request, by farmers and by suppliers of processing services; relevant information may equally be provided by official bodies involved in the monitoring of agricultural production, if such information has been obtained through ordinary performance of their tasks, without additional burden or costs. These provisions are without prejudice, in respect of personal data, to Community and national legislation on the protection of individuals with regard to the processing and free movement of personal data.'

10 According to the 17th and 18th recitals of the preamble to Regulation No 2100/94 'the exercise of Community plant variety rights must be subjected to restrictions laid down in provisions adopted in the public interest', 'this includes safeguarding agricultural production', and 'that purpose requires an authorisation for farmers to use the product of the harvest for propagation under certain conditions'.

11 According to Article 1 of Regulation No 1768/95 that regulation establishes the implementing rules on the conditions to give effect to the derogation provided for in Article 14(1) of Regulation No 2100/94.

12 Article 2 of Regulation No 1768/95 provides:

'1. The conditions referred to in Article 1 shall be implemented both by the holder, representing the breeder, and by the farmer in such a way as to safeguard the legitimate interests of each other.

2. The legitimate interests shall not be considered to be safeguarded if one or more of these interests are adversely affected without account being taken of the need to maintain a reasonable balance between all of them, or of the need for proportionality between the purpose of the relevant condition and the actual effect of the implementation thereof.'

13 Article 8 of Regulation No 1768/95 provides:

'1. The details of the relevant information to be provided by the farmer to the holder pursuant to Article 14(3), sixth indent, of [Regulation No 2100/94] may form the object of a contract between the holder and the farmer concerned.

2. Where such contract has not been concluded or does not apply, the farmer shall, without prejudice to information requirements under other Community legislation or under legislation of Member States, on request of the holder, be required to provide a statement of relevant information to the holder. The following items shall be considered to be relevant:

(a) the name of the farmer, the place of his domicile and the address of his holding,

(b) the fact whether the farmer has made use of the product of the harvest belonging to one or more varieties of the holder for planting in the field or fields of his holding,

(c) if the farmer has made such use, the amount of the product of the harvest belonging to the variety or varieties concerned, which has been used by the farmer in accordance with Article 14(1) of... Regulation [No 2100/94],

(d) under the same condition, the name and address of the person or persons who have supplied a service of processing the relevant product of the harvest for him for planting,

(e) if the information obtained under (b), (c) or (d) cannot be confirmed in accordance with the provisions of Article 14, the amount of licensed propagating material of the varieties concerned used as well as the name and address of the supplier or suppliers thereof,

...

3. The information under paragraph 2(b), (c), (d) and (e) shall refer to the current marketing year, and to one or more of the three preceding marketing years for which the farmer had not previously provided relevant information on request made by the holder in accordance with the provisions of paragraphs 4 or 5.

However, the first marketing year to which the information refers, shall be not earlier than the one in which the first of such requests for information was made in respect of the variety or varieties and the farmer concerned, or, alternatively, in which the farmer acquired propagating material of the variety or varieties concerned, if this was accompanied by information at least on the filing of the application for the grant of a Community plant variety right or on the grant of such right as well as on possible conditions relating to the use of that propagating material.

...

4. In his request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information, as well as the reference or references to the relevant Community plant variety right or rights. If required by the farmer, the request shall be made in writing, and evidence for holdership shall be provided. Without prejudice to the provisions of paragraph 5, the request shall be made directly to the farmer concerned.

5. A request which has not been made directly to the farmer concerned, shall be considered to comply with the provisions of paragraph 4, third sentence, if it is

sent to farmers through the following bodies or persons, with their prior agreement respectively:

— organisations of farmers or cooperatives, concerning all farmers who are members of such organisation or cooperative, or,

— processors, concerning all farmers to whom they have supplied a service of processing the relevant product of the harvest for planting, in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 3, or,

— suppliers of licensed propagating material of varieties of the holder, concerning all farmers to whom they have supplied such propagating material in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 3.

6. For a request made in accordance with the provisions of paragraph 5, the specification of individual farmers is not required. The organisations, cooperatives, processors or suppliers may be authorised by the farmers concerned to forward the required information to the holder.'

The national legislation

14 Paragraph 10a(6) of the Sortenschutzgesetz 1985 (1985 Law on the Protection of Plant Varieties) (in the version of 25 July 1997, BGBl. 1997 I, p. 3165), which lays down an obligation to provide information concerning plant varieties protected under German law, provides:

'Farmers who make use of the possibility of subsequent planting and suppliers of processing services acting under their instructions are required to inform breeders of the extent of the planting.'

The main proceedings and the question referred

15 It is clear from the order for reference that STV has been empowered by a large number of breeders and holders of plant variety protection rights to enforce, in its own name, the rights to remuneration *inter alia* which they derive from the cultivation of protected plant varieties.

16 STV asked Mr Schulin to inform it whether and, if appropriate, to what extent he, as a farmer, had sowed a total of 525 plant varieties, of which 180 were varieties protected by Regulation No 2100/94, in the 1997/98 cropping season. STV argued that it could demand that information from Mr Schulin without

being required specifically to establish that he has grown a particular variety. That obligation to provide information derives, so far as the varieties protected under Regulation No 2100/94 are concerned, from the sixth indent of Article 14(3) of that regulation and from Article 8(2) of Regulation (EC) No 1768/95

17 Mr Schulin disputed those claims, contending *inter alia* that farmers are obliged merely to indicate the actual extent of subsequent planting where STV has become aware of it.

18 The referring court observes that, according to its own submissions, STV has no evidence to indicate that Mr Schulin has carried out one of the acts listed in Article 13(2) of Regulation No 2100/94, by using the plant varieties indicated in the application and protected under that regulation, or that he has, at the very least, otherwise used the varieties at issue in the main proceedings on his holding.

19 The Landgáericht (Regional Court) Frankfurt am Main (Germany) ordered Mr Schulin to provide the information requested. It expressed the view, in particular, that entitlement to obtain information under Article 14(3), sixth indent, of Regulation No 2100/94 is not conditional on production of a statement of reasons concerning the subsequent planting undertaken by the farmer concerned.

20 Mr Schulin appealed against that decision before the Oberlandesgericht Frankfurt am Main.

21 That court stated that, under the sixth indent of Article 14(3) of Regulation No 2100/94, the provision of relevant information is one of the conditions which a farmer must satisfy in order for subsequent planting of the product of the harvest to be authorised by way of exception under Article 14(1) of that regulation. Under the scheme of the provisions, that duty to provide information thus presupposes that the product of the harvest has actually been planted, which precludes a farmer who has not carried out subsequent planting from also being required to inform any holder at the latter's request, that he has not planted specified plant varieties.

22 The referring court added that, in the absence of a comprehensive entitlement to obtain information from any farmer, a holder of a plant variety protection right will find it difficult effectively to enforce his claim for payment of remuneration for planting pursuant to Article 14(3), fourth indent, of Regulation No 2100/94, since a plant cannot be examined in order to determine whether it has been grown by means of subsequent planting or by means of acquired seed. However, as a matter of principle, it would be odd to grant a holder an entitlement to information to allow him to determine whether the conditions for a right to payment obtain. It must in principle be a matter for the person relying on a right to obtain clarification, or at least specific evidence of any circumstances giving rise to such a right.

23 It is against that background that the Oberlandesgericht Frankfurt am Main decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Are the provisions of Article 14(3), sixth indent, of Council Regulation (EC) No 2100/94 of 27 July 1994, in conjunction with Article 8 of Commission Regulation (EC) No 1768/95 of 24 July 1995, to be construed as meaning that the owner of a plant variety which is protected under Regulation No 2100/94 can

require any farmer to provide the information specified in the above provisions irrespective of whether there is anything to suggest that the farmer has carried out any act, within the meaning of Article 13(2) of Regulation No 2100/94, using the variety in question or has at least — otherwise — used that variety on his holding?'

The question referred for a preliminary ruling

24 By its question the referring court seeks to know essentially whether the combined provisions of the sixth indent of Article 14(3) of Regulation No 2100/94 and Article 8 of Regulation No 1768/95 must be interpreted as giving a holder of a Community protected plant variety right the option of asking for the information provided for by those provisions from a farmer where the holder has no evidence that the farmer has used or will use for propagating purposes in the field on his own holding the product of the harvest obtained by planting, on his own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by that right, belonging to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94.

Observations submitted to the Court

25 As a preliminary point, Mr Schulin submits that STV's sole objective is the creation of a 'transparent farmer' so as to be able to control the feeding of the population from the moment of planting. The intention underlying the request

for information at issue in the main proceedings is to create for the first time an infrastructure which makes it possible to encourage German farmers to grow different plant varieties through precise knowledge of their planting behaviour.

26 Mr Schulin also submits that, under the German legislation on plant varieties, a farmer is subject to an obligation to provide information only where he has made use of the possibility of subsequent planting.

27 As regards Community law, he claims that Article 8(2) of Regulation No 1768/95 contains no clear wording providing for a general right to information. Reference is made in Article 8(2)(b) to the 'use of the product of the harvest', which demonstrates that there must be at least some indication that the farmer has, at the very least, used the variety in question on his farm. Similarly, as the whole of that regulation relates to the planting of the product of the harvest, the holder would have to rely on planting already undertaken in order to invoke the provisions concerned.

28 Furthermore, Mr Schulin submits that the protection of plant varieties, which is very much comparable to the protection conferred by patents, is an integral part of intellectual property law, under which the holder of rights must prove their infringement, and thus precludes a general demand for information. If a farmer did not meet his obligations to provide information and pay remuneration to the holder, the planting would be prohibited and he could be ordered to pay damages immediately. Thus, the holder of a Community protected plant variety right in fact has the same remedies at his disposal as are available to the holder of a patent, and there is no justification for more extensive rights than a patent holder has.

29 As regards the principle of effective judicial protection and STV's claim that only a right to information such as that it seeks in the main proceedings would allow the right of holders to be asserted, Mr Schulin points out that that principle cannot be applicable to third parties who, because they have not carried out subsequent planting, have no legal relationship with the holders. Moreover, he submits that it is for the holder of a right to take the measures required to safeguard it effectively.

30 Mr Schulin points out that the first purchase of a protected variety is an act which is always verifiable by both parties and which creates a legal relationship. On the basis of that purchase, the holder can argue that the farmer is using the plant variety on his farm. It is an indication which allows certain rights to be asserted, which can moreover be qualified by the two parties to the contract, even on the occasion of that first purchase.

31 STV contends that, for Mr Schulin to be obliged to indicate whether and, where appropriate, to what extent he has planted one or more plant varieties managed by STV and protected under Regulation No 2100/94, it is sufficient for him to be a farmer within the meaning of the provisions applicable to planting. That is clear, first, from the clear wording of Article 8(2) of Regulation No 1768/95, second, from the scheme of those provisions and, third, from the principle of effective judicial protection.

32 As regards the wording of Article 8(2) of Regulation No 1768/95, STV asserts that there is no doubt that it can be inferred from subparagraph (b) of that provision that any farmer must, on request, indicate whether he has used products of the harvest of one or more varieties of the holder with a view to planting them on his farm. That interpretation alone gives meaning to Article 8(2)(c) of that regulation, which only applies if a farmer has made such use and obliges him to indicate the quantity of the product of the harvest of the variety he used.

33 STV contends that the scheme of provisions on subsequent planting in itself confers on holders the right to know whether a farmer has undertaken such planting.

34 The rules on subsequent planting constitute an exception to the principle of plant variety rights set out in Article 13(1) and (2) of Regulation No 2100/94, according to which only the holder can authorise the use of seeds of his varieties. Under the derogation provided for in Article 14 of that regulation a variety can be planted without the authorisation of the holder. Those rules have no equivalent in the rest of the law on intellectual property, for example in the law on patents, which is comparable. For instance, any use of a patent requires the prior authorisation of its holder, whereas the farmer alone decides whether and to what extent he makes use of the possibility allowed by Article 14 of Regulation No 2100/94 and undertakes subsequent planting. Accordingly, an incalculable number of plantings are undertaken each year, so that the holder or, as the case may be, the organisation representing him are not in a position to uncover by themselves cases of planting which entitle them to remuneration.

35 As regards the principle of effective judicial protection, STV contends that, if the right to information on planting existed only where it was specifically proven for each plant variety, holders would be deprived of any right, particularly where planting was undertaken during one or more of the three preceding years, in respect of which the holder could request information under Article 8(3) of Regulation No 1768/95. Once seeds and plants have been removed from their packaging and planted, it becomes impossible to ascertain whether they are certified seeds and plants or the product of the harvest.

36 STV also disputes the argument that the holder's right to information is conditional on evidence of the fact that the seeds of the protected plant variety have been used, because the holder cannot adduce such evidence. Trade in

certified seeds relies on a long chain of distribution of which the holder does not form part. In practice, the holder arranges for certified seed to be produced from his plant variety by propagating firms. That seed is later sold by the producers to cooperatives and wholesalers who in turn sell them to various farmers through intermediaries and resellers. In general, the holder does not market the certified seed. Consequently he cannot know whether a given farmer has bought a certain seed. In particular, there is no legal basis allowing the holder to monitor the various stages of the marketing of his plant variety in order to obtain such information.

37 STV contends further that the absence of an extensive right to information leaves the way open for abuses because any farmer could plant protected varieties without having to pay any remuneration in exchange.

38 The Commission considers that Article 14 of Regulation No 2100/94 exclusively concerns the planting of seeds which have not been purchased but which have previously been harvested by the farmer on his own holding.

39 It is clear from the purpose of that Article, which is to allow the planting of the product of the harvest, that the information it refers to relates to the use of the product of the harvest of protected plant varieties. As paragraph 3 of that provision takes account of the safeguarding of 'the legitimate interests of the breeder and of the farmer', the farmers subject to the obligation to provide information can only be those involved in the planting of the product of the harvest, that is to say, those who have acquired seeds covered by plant variety rights.

40 It follows that the obligation to provide information does not concern all farmers. In particular, it does not affect those who, never having used a variety constituent of a protected variety on their farm, cannot have harvested that variety.

41 Article 8(1) of Regulation No 1768/95 provides that the details of the information to be provided by the farmer to the holder may form the object of a contract between them. A contract covering the provision of information on the subsequent planting of protected varieties is generally concluded only in conjunction with a contract on the cultivation of protected varieties, for example a contract for the purchase of seeds, and thus presupposes the existence of a contractual relationship between the farmer and the holder or his co-contractors authorised to sell the seeds.

42 According to the Commission, Article 8(2) of Regulation No 1768/95, which contains a list of information to be provided where no specific contractual agreement has been concluded concerning provision of information, none the less presupposes that there is a legal or contractual relationship between the parties as regards the first planting.

43 The Commission submits that the farmer has the right to obtain propagating material himself, generally in return for remuneration, by planting protected varieties, without the express prior consent of the holder. The holder, for his part, has the right to ask for information from a farmer on condition that the holder has a particular reason to suspect or there are specific signs of planting by that farmer. However, neither Regulation No 2100/94, nor Regulation No 1768/95 give any clear guidance as to the nature of such reasons to suspect or the type of evidence or signs which could justify a request for information.

44 Unlike cases in which farmers plant the product of the harvest without the knowledge or influence of the holder, here the holder generally has information concerning the sale of protected varieties. Where the holder does not have information such as the name of all the farmers who have used his varieties at least once and can currently propagate them by planting, it seems more appropriate to refer the holder to seed dealers and other suppliers who market his products than to simply impose an obligation to provide information on all farmers.

45 Accordingly, the Commission takes the view that the holder of a plant variety right protected under Regulation No 2100/94 can demand information not from any farmer but only from farmers who have acquired at least one of his protected varieties and therefore can potentially undertake subsequent planting of it.

Findings of the Court

46 It must be observed as a preliminary point that, under Article 13(2) of Regulation No 2100/94, the authorisation of the holder of a Community plant variety right is required in respect of variety constituents, or harvested material of the protected variety, *inter alia* for production or reproduction (multiplication), conditioning for the purpose of propagation, offering for sale, selling or other marketing and for stocking for those purposes.

47 The provisions of Article 14 of that regulation, which, as is clear from the 17th and 18th recitals of the preamble thereto, were adopted on the basis of the public interest in safeguarding agricultural production, constitute an exception to that rule.

48 Article 14(1) of Regulation No 2100/94 authorises farmers to use for propagating purposes in the field, on their own holding the product of the harvest which they have obtained by planting, on their own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant variety right, in the case of the plant species listed in Article 14(2).

49 That authorisation is thus confined to use by a farmer on his own holding of the product of the harvest which he has obtained by planting, also on his own holding, propagating material from a protected plant variety. Any other use of variety constituents or harvested material from a protected plant variety as a rule requires the authorisation of the holder pursuant to Article 13(2) of Regulation No 2100/94.

50 Article 14(3) of Regulation No 2100/94 states that conditions to give effect to the derogation provided for in paragraph 1 of that Article and to safeguard the legitimate interests of the breeder and of the farmer, are to be established in implementing rules on the basis of a number of criteria. For instance, Article 14(3) provides *inter alia* in its fourth indent that, 'farmers, apart from small farmers, are to be required to pay an equitable remuneration to the holder', and, in its sixth indent, that 'relevant information is to be provided to the holders on their request, by farmers and by suppliers of processing services'.

51 Contrary to STV's claims, it is clear from the scheme of Article 14 of Regulation No 2100/94, entitled '[d]erogation from Community plant variety right', and from the wording of paragraph 3 of that provision that the sixth indent of that paragraph does not refer to all farmers.

52 Article 14(3) of Regulation No 2100/94, which, moreover, provides expressly that conditions to give effect to the derogation provided for in paragraph 1 of that Article are to be established in implementing rules, must be interpreted in the light of that paragraph 1 and cannot therefore refer to cases in which that derogation is not even liable to be applicable.

53 Thus, it is clear from Article 14(2) of Regulation No 2100/94 that that derogation applies only to the agricultural plant species listed there. Farmers who have merely planted propagating material from other plant species thus cannot use that derogation and, therefore, cannot fall within paragraph 3 of that article either.

54 It is also clear from the criteria listed in Article 14(3) of Regulation No 2100/94 on the basis of which the conditions to give effect to the derogation provided for in paragraph 1 of that article are to be established in implementing rules, that paragraph 3 does not refer to all farmers. In that regard, it must be observed that, apart from the criterion laid down in its fifth indent, which does not concern farmers, and that laid down in its sixth indent, which is at issue in the present case, that paragraph provides, in its first indent, that there is to be no quantitative restriction of the level of the farmer's holding, in the second indent, that the product of the harvest may be processed for planting, either by the farmer himself

or through services supplied to him, in the third indent, that small farmers are not to be required to pay any remuneration to the holder and, in the fourth indent, that farmers other than those referred to in the previous indent are to be required to pay an equitable remuneration to the holder.

55 It would be contrary to the scheme of Article 14 of Regulation No 2100/94 and to the need for consistency in the terms used there to consider that the term 'farmer' used in the sixth indent of paragraph 3 of that provision could have a different and much wider meaning than the terms used in paragraphs 1 and 3, first to fourth indents, thereof.

56 That interpretation is supported by the fact that Article 14(3) of Regulation No 2100/94 contains a requirement, implemented by Article 2 of Regulation No 1768/95, that the conditions established in the implementing rules should also make it possible to safeguard the legitimate interests of the breeder and the farmer.

57 It must be held that to interpret Article 14(3) of Regulation No 2100/94 as meaning that all farmers, merely by belonging to that profession, even those who have never planted propagating material from a variety covered by a Community plant variety right belonging to one of the plant species listed in Article 14(2), must provide the holder with all relevant information on request, goes beyond what is necessary in order to safeguard the legitimate interests of both the breeder and the farmer.

58 Moreover, it must be borne in mind that, according to settled case-law, the principle of legal certainty requires that legal rules be clear and precise, and aims

to ensure that situations and legal relationships governed by Community law remain foreseeable (see Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20, and Case C-107/97 *Rombi and Arkopharma* [2000] ECR I-3367, paragraph 66). That requirement is all the more important where obligations are imposed on individuals.

59 In the present case, it is not established clearly and precisely that the term 'farmers' used in the sixth indent of Article 14(3) of Regulation No 2100/94 refers to any farmer, even those having no legal relationship whatsoever with the holder of the Community plant variety right. On the contrary, as pointed out at paragraph 55 of the present judgment, it is clear from a systematic and consistent interpretation of Article 14 that the term 'farmer' is used there to denote a uniform concept, referring only to farmers taking advantage of the derogation referred to in that article. It follows that to interpret the term 'farmer' appearing in the sixth indent of Article 14(3) as referring to any farmer breaches the principle of legal certainty.

60 As regards the interpretation of Article 8(2) of Regulation No 1768/95, suffice it to note that, given that that regulation is an implementing regulation laying down conditions to give effect to the derogation provided for in Article 14(1) of Regulation No 2100/94, those provisions cannot, in any event, impose more extensive obligations on farmers than those under Regulation No 2100/94.

61 Moreover, Article 8(1) of Regulation No 1768/95 provides that the details of the relevant information to be provided by the farmer to the holder may form the object of a contract between 'the holder and the farmer concerned'. Accordingly, the first sentence of paragraph 2 of that Article, which provides that where such contract has not been concluded or does not apply, the 'farmer' is, at the request of the 'holder', to be required to provide a statement of relevant information, must be held to refer, like paragraph 1, only to the holder and the farmer concerned.

62 It follows that Article 14(3) of Regulation No 2100/94 and Article 8(2) of Regulation No 1768/95 cannot be interpreted as authorising holders to require any farmer to provide all relevant information on request.

63 However, given, on the one hand, the difficulty the holder has in asserting his right to information, by reason of the fact that, as the referring court, in particular, pointed out, examination of a plant does not reveal whether it was obtained by the use of the product of the harvest or by the purchase of seed, and, on the other hand, the obligation to safeguard the legitimate interests of both the breeder and the farmer under Article 14(3) of Regulation No 2100/94 and Article 2 of Regulation No 1768/95, the holder must be authorised to request information from a farmer where he has some indication that the latter has relied or will rely on the derogation provided for by Article 14(1) of Regulation No 2100/94.

64 That interpretation is supported by Article 8(2)(b) of Regulation No 1768/95, under which the farmer is required to provide a statement of relevant information to the holder, at the latter's request, and that information is to include whether the farmer has made use of the product of the harvest belonging to one or more varieties of the holder for planting in the field or fields of his holding. Such a statement by the farmer is necessary where the holder has only an indication of the fact that the farmer has relied on or will rely on the derogation provided for by Article 14(1) of Regulation No 2100/94.

65 In that connection, as Mr Schulin and the Commission submitted, the acquisition of propagating material of a protected plant variety of the holder must be considered to be such an indication.

66 Contrary to STV's contentions, it should be possible for the holder to make arrangements to know the name and address of the farmers who buy propagating material of one of his protected plant varieties, however long the distribution chain between the holder and the farmer.

67 That is clear, in particular, from the third indent of Article 8(5) of Regulation No 1768/95, which allows the holder to send a request for information to farmers through the licensed suppliers of propagating material of varieties of the holder, and from Article 8(6) of that regulation, which provides that suppliers may be authorised by the farmers concerned to forward the required information to the holder. Those two provisions imply that the holder must know his distributors.

68 What is more, in reliance on the second subparagraph of Article 13(2) of Regulation No 2100/94, the holder can require his distributors to record the names and addresses of farmers who buy propagating material of one of his plant varieties.

69 It is clear from the second subparagraph of Article 8(3) of Regulation No 1768/95, concerning the first request for information, that the Community legislature considered that it was possible for the holder to ensure that the farmer was informed, at the time of buying propagating material of the varieties concerned or beforehand, of the conditions governing the use of such material.

70 Moreover, STV contended that the absence of an extensive right to information would open the way to abuses because in that case any farmer could plant

protected varieties without having to pay any remuneration in exchange. On that point, suffice it to note that, apart from small farmers, all farmers relying on the derogation provided for by Article 14(1) of Regulation No 2100/94 are required to pay equitable remuneration to the holder and, by making proper arrangements, the holder can have some indication that a farmer has relied or will rely on that derogation and receive relevant information from that farmer.

71 In any event, a farmer who does not pay equitable remuneration to the holder when he uses the product of the harvest obtained by planting propagating material from a protected variety, cannot rely on Article 14(1) of Regulation No 2100/94 and, therefore, must be considered to have undertaken, without being authorised, one of the acts referred to in Article 13(2) of that regulation. Accordingly, it is clear from Article 94 of that regulation that such a farmer can have an action brought against him by the holder for an injunction in respect of the infringement or for payment of equitable remuneration or both. If the infringement is intentional or negligent, the farmer is also obliged to pay damages to make good the loss suffered by the holder.

72 Having regard to all those considerations, the answer to the question referred must be that the provisions of the sixth indent of Article 14(3) of Regulation No 2100/94 in conjunction with Article 8 of Regulation No 1768/95 cannot be construed as meaning that the holder of a Community plant variety right can require a farmer to provide the information specified in those provisions where there is no indication that the farmer has used or will use, for propagating purposes in the field, on his own holding, the product of the harvest obtained by planting, on his own holding, propagating material of a variety other than a hybrid or synthetic variety which is covered by that right and belongs to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94.

Costs

73 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Oberlandesgericht Frankfurt am Main by order of 1 August 2000, hereby rules:

The provisions of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94, of 27 July 1994, on Community plant variety rights in conjunction with Article 8 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of

Regulation No 2100/94 cannot be construed as meaning that the holder of a Community plant variety right can require a farmer to provide the information specified in those provisions where there is no indication that the farmer has used or will use, for propagating purposes in the field, on his own holding, the product of the harvest obtained by planting, on his own holding, propagating material of a variety other than a hybrid or synthetic variety which is covered by that right and belongs to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94.

Wathelet Timmermanns Edward

von Bahr Rosas

Delivered in open court in Luxembourg on 10 April 2003.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber