

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 8 July 2008 in Case T-52/03 *Knauf Gips v Commission* dismissing the action for annulment of Commission Decision 2005/471/EC of 27 November 2002 relating to proceedings under Article 81 of the EC Treaty against BPB PLC, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV (Case COMP/E-1/37.152 — Plasterboard (OJ 2005 L 166, p. 8), or, in the alternative, for reduction of the fine imposed on the appellant — Cartel on the plasterboard market — Failure to take into account a breach of the rights of the defence during the administrative procedure — Infringement of the ‘*in dubio pro reo*’ principle — Taking into account, for the purpose of calculating the amount of the fine, the turnover of undertakings that do not form part of the same economic unit as the appellant

Operative part of the judgment

The Court:

1. Sets aside the judgment of 8 July 2008 of the Court of First Instance of the European Communities in Case T-52/03 *Knauf Gips v Commission* in so far as it imputes to Knauf Gips KG liability for the infringements committed by the companies constituting the Knauf Group;
2. Dismisses the rest of the appeal;
3. Dismisses the action brought by Knauf Gips KG for annulment of Commission Decision 2005/471/EC of 27 November 2002 relating to proceedings under Article 81 of the EC Treaty against BPB PLC, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV (Case No COMP/E-1/37.152 — Plasterboard);
4. Orders each party to bear its own costs relating to the appeal and Knauf Gips KG to pay all the costs at first instance.

(¹) OJ C 313, 6.12.2008.

Judgment of the Court (Grand Chamber) of 6 July 2010 (reference for a preliminary ruling from the Rechtbank's Gravenhage — Netherlands) — Monsanto Technology LLC v Cefetra BV, Cefetra Feed Service BV, Cefetra Futures BV, Alfred C. Toepfer International GmbH

(Case C-428/08) (¹)

(Industrial and commercial property — Legal protection of biotechnological inventions — Directive 98/44/EC — Article 9 — Patent protecting a product containing or consisting of genetic information — Material incorporating the product — Protection — Conditions)

(2010/C 234/10)

Language of the case: Dutch

Referring court

Rechtbank's Gravenhage

Parties to the main proceedings

Applicant: Monsanto Technology LLC

Defendants: Cefetra BV, Cefetra Feed Service BV, Cefetra Futures BV, Alfred C. Toepfer International GmbH

Intervener in support of the defendants: Argentine State

Re:

Reference for a preliminary ruling — Rechtbank 's-Gravenhage — Interpretation of Article 9 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) — Scope of the protection conferred by the patent — Product (a DNA sequence) forming part of a material (soy meal) imported into the European Union — Absolute protection conferred on the DNA sequence by national legislation — Patent granted before the Directive was adopted — Articles 27 and 30 of the TRIPS Agreement

Operative part of the judgment

1. Article 9 of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions is to be interpreted as not conferring patent right protection in circumstances such as those of the case in the main proceedings, in which the patented product is contained in the soy meal, where it does not perform the function for which it is patented, but did perform that function previously in the soy plant, of which the meal is a processed product, or would possibly again be able to perform that function after it had been extracted from the soy meal and inserted into the cell of a living organism.

2. Article 9 of the Directive effects an exhaustive harmonisation of the protection it confers, with the result that it precludes the national patent legislation from offering absolute protection to the patented product as such, regardless of whether it performs its function in the material containing it.
3. Article 9 of the Directive precludes the holder of a patent issued prior to the adoption of that directive from relying on the absolute protection for the patented product accorded to it under the national legislation then applicable.
4. Articles 27 and 30 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) do not affect the interpretation given of Article 9 of the Directive.

(¹) OJ C 313, 06.12.2008.

**Judgment of the Court (Fourth Chamber) of 1 July 2010 —
European Commission v Federal Republic of Germany**

(Case C-442/08) (¹)

(Failure of a State to fulfil its obligations — EEC-Hungary Association Agreement — Subsequent verification — Failure to comply with rules on origin — Decision of the authorities of the exporting State — Appeal — Commission inspection mission — Customs duties — Post-clearance recovery — Own resources — Making available — Default interest)

(2010/C 234/11)

Language of the case: German

Parties

Applicant: European Commission (represented by: A. Caeiros and B. Conte, acting as Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and B. Klein, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 6, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1), and the corresponding provisions of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision

94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Late payment of the Communities' own resources in the event of subsequent collection of import tariffs and refusal to pay default interest — Obligation of the importing Member State not to delay implementation of the procedure for the subsequent collection of import tariffs for goods whose certificate of origin was revoked by the authorities of the exporting State — Obligation of the importing Member State to pay default interest due in the event of late entry of the own resources payable in respect of tariff claims time-barred as a result of the inactivity of those authorities during the legal proceedings brought in the exporting State for the annulment of the decisions revoking the certificates of origin

Operative part of the judgment

The Court:

1. Declares that, by allowing customs claims to become time-barred, despite the receipt of a mutual assistance communication, paying the own resources owed in this connection late and refusing to pay the default interest payable, the Federal Republic of Germany has failed to fulfil its obligations under Articles 2, 6 and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;
2. Orders the Federal Republic of Germany to pay the costs.

(¹) OJ C 6, 10.1.2009.

**Judgment of the Court (Fourth Chamber) of 8 July 2010
(reference for a preliminary ruling from the Svea hovrätt — Sweden) — Criminal proceedings against Otto Sjöberg
(C-447/08), Anders Gerdin (C-448/08)**

(Joined Cases C-447/08 and C-448/08) (¹)

(Freedom to provide services — Gambling — Offer of gambling via the internet — Promotion of gambling organised in other Member States — Activities reserved to public or non-profit-making bodies — Criminal penalties)

(2010/C 234/12)

Language of the case: Swedish

Referring court

Svea hovrätt