

Fuente: Texto original del fallo aportado por UAIPIT-Portal Internacional de la Universidad de Alicante en PI y SI- <http://www.uaipit.com>.

JUDGMENT OF THE COURT (First Chamber)

15 November 2012

(Community plant variety rights – Regulation (EC) No 2100/94 – Processing services – Obligation of the supplier of processing services to provide information to the holder of the Community right – Requirements regarding the time and content of an application for information)

In Case C-56/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Germany), made by decision of 3 January 2011, received at the Court on 8 February 2011, in the proceedings

Raiffeisen-Waren-Zentrale Rhein-Main eG

v

Saatgut-Treuhandverwaltungs GmbH,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits (Rapporteur), J.-J. Kasel and M. Berger, Judges,

Advocate General: N. Jääskinen,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2012,

after considering the observations submitted on behalf of:

- Raiffeisen-Waren-Zentrale Rhein-Main eG, by C. Bittner and F. Eckard, Rechtsanwälte,
- Saatgut-Treuhandverwaltungs GmbH, by K. von Gierke and J. Forkel, Rechtsanwälte,
- the Spanish Government, by A. Rubio González, acting as Agent,

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– the European Commission, by B. Schima, M. Vollkommer, F. Wilman and I. Galindo Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 June 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns 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 of Article 9(2) and (3) 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), as amended by Commission Regulation (EC) No 2605/98 of 3 December 1998 (OJ 1998 L 328, p. 6) ('Regulation No 1768/95').

2 The reference has been made in proceedings between Raffeisen-Waren-Zentrale Rhein-Main eG ('RWZ') and Saatgut-Treuhandverwaltungs GmbH ('STV') concerning the latter's request for information relating to the marketing years 2005/2006 and 2006/2007 for certified seed.

Legal context

Regulation No 2100/94

3 Under Article 11 of Regulation No 2100/94, 'the breeder', that is to say the 'person who bred, or discovered and developed the variety, or his successor in title', is entitled to Community plant variety rights.

4 Article 13 of Regulation No 2100/94, which is entitled 'Rights of the holder of a Community plant variety right and prohibited acts', provides:

'(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 ... shall require the authorisation of the holder:

(a) production or reproduction (multiplication);

...

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

...'

5 Article 14 of Regulation No 2100/94, which is entitled 'Derogation from Community plant variety right', provides in paragraph 1 thereof:

'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.'

6 Article 14(3) of Regulation No 2100/94 provides:

'Conditions 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, on the basis of the following criteria:

– ...

– small farmers shall not be required to pay any remuneration to the holder; ...

– ...

– other farmers shall be required to pay an equitable remuneration to the holder, which shall be sensibly lower than the amount charged for the licensed production of propagating material of the same variety in the same area; the actual level of this equitable remuneration may be subject to variation over time, taking into account the extent to which use will be made of the derogation provided for in paragraph 1 in respect of the variety concerned,

– ...

– relevant information shall be provided to the holders on their request, by farmers and by suppliers of processing services; ...'

Regulation No 1768/95

7 Article 2 of Regulation No 1768/95 is worded as follows:

'(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.'

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(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.'

8 Article 5 of Regulation No 1768/95, which lays down rules on the remuneration to be paid to the holder, states:

'(1) The level of the equitable remuneration to be paid to the holder pursuant to Article 14(3), fourth 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 level of remuneration shall be sensibly lower than the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the same area.

...

(5) Where in the case of paragraph 2 an agreement as referred to in paragraph 4 does not apply, the remuneration to be paid shall be 50% of the amounts charged for the licensed production of propagating material as specified in paragraph 2.

...'

9 Article 8 of Regulation No 1768/95, which is entitled 'Information by the farmer', provides in paragraphs 3 and 4 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.

...

Fuente: Texto original del fallo aportado por UAIPIT-Portal Internacional de la Universidad de Alicante en PI y SI- <http://www.uaipit.com>.

(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.'

10 Article 9 of Regulation No 1768/95, which is entitled 'Information by the processor', provides:

'(1) The details of the relevant information to be provided by the processor 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 processor concerned.

(2) Where such contract has not been concluded or does not apply, the processor 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 processor, the place of his domicile and the name and address registered for his business;

(b) the fact whether the processor has supplied a service of processing the product of the harvest belonging to one or more varieties of the holder for planting, where the variety or varieties were declared or otherwise known to the processor;

(c) if the processor has supplied such service, the amount of the product of the harvest belonging to the variety or varieties concerned, which has been processed for planting, by the processor, and the total amount resulting from that processing;

(d) the dates and places of the processing referred to in (c);

(e) the name and address of the person or persons to whom he has supplied the service of processing referred to in (c), and the respective amounts.

(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 holder has not yet made an earlier request in accordance with the provisions of paragraphs 4 or 5; however, the first marketing year to which the information refers, shall be the one in which the first of such requests was made in respect of the variety or varieties and the processor concerned.

(4) The provisions of Article 8(4) shall apply *mutatis mutandis*.

Fuente: Texto original del fallo aportado por UAIPIT-Portal Internacional de la Universidad de Alicante en PI y SI- <http://www.uaipit.com>.

...’

11 Article 14 of Regulation No 1768/95, which concerns monitoring, by the holder, of the fulfilment of obligations of the farmer, provides in paragraph 1 thereof:

‘For the purpose of monitoring, by the holder, compliance with the provisions of Article 14 of [Regulation No 2100/94] as specified in this Regulation, as far as the fulfilment of obligations of the farmer is concerned, the farmer shall, on request of the holder:

(a) provide evidence supporting his statements of information under Article 8, through disclosure of available relevant documents such as invoices, used labels, or any other appropriate device such as that required pursuant Article 13(1)(a), relating to:

– the supply of services of processing the product of the harvest of a variety of the holder for planting, by any third person,

or

– in the case of Articles 8(2)(e), the supply of propagating material of a variety of the holder,

or through the demonstration of land or storage facilities.

(b) make available or accessible the proof required under Article 4(3) or 7(5).’

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 RWZ is a farming cooperative which offers farmers seed processing services by which it conditions harvested material for storage and future planting.

13 Those services are offered, on the one hand, to the holders of plant variety rights, represented inter alia by STV, who, under planting contracts, have arranged for certified seeds to be propagated for marketing.

14 On the other hand, those services are offered to farmers who plant seeds in accordance with Article 14(3) of Regulation No 2100/94.

15 It is apparent from the order for reference that RWZ carried out processing operations for various farmers for the marketing years 2005/2006 and 2006/2007, in connection with the growing of crops under contract for the holders of plant variety rights represented by STV.

Fuente: Texto original del fallo aportado por UAIPIT-Portal Internacional de la Universidad de Alicante en PI y SI- <http://www.uaipit.com>.

16 On the basis of statements relating to the growing of crops under contract from the farmers concerned, STV sent two series of requests for information to RWZ concerning the processing operations it carried out:

- by letters of 30 June 2006, 7 August 2006, 15 September 2006 and 30 April 2007 in respect of the marketing year 2005/2006, and
- by letters of 25 and 29 June 2007, 23 August 2007 and 29 May 2008 in respect of the marketing year 2006/2007.

17 Those requests, which sought to establish whether RWZ had processed the varieties in question, who had requested the service of processing and in what quantity, contained tables identifying – in addition to the protected variety and marketing year concerned – the name and address of the farmer planting the product of the harvest, but did not contain copies of the statement of planting or any other evidence.

18 RWZ did not reply favourably to those requests, relying on three series of grounds for its refusal. First, it considered that each request for information should contain the indications that it carried out processing operations subject to the obligation to provide information laid down in the sixth indent of Article 14(3) of Regulation No 2100/94. Second, it considered that only requests for information made in the marketing year to which the information relates were relevant in law. Third, it considered that no indication of possible planting of seeds can be derived at all from processing operations which have taken place in connection with the growing of crops under contract for the holder.

19 STV, bringing an action against RWZ, was successful at first instance. The court at first instance held, on the one hand, that there was no limitation period for making requests for information and, on the other hand, that the statements of planting under contract constituted sufficient indications establishing the supplier's obligation to provide information, since the farmer who plants under a propagation contract has the specific possibility of planting the product of the harvest. RWZ brought an appeal against that judgment before the Oberlandesgericht Düsseldorf.

20 Since the Oberlandesgericht Düsseldorf has doubts concerning the interpretation to be given to Article 14(3) of Regulation No 2100/94 and Article 9(2) and (3) of Regulation No 1768/95, it decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the obligation of the supplier of processing services to provide information laid down in the sixth indent of Article 14(3) of Regulation No 2100/94 and Article 9(2) and (3) of Regulation No 1768/95 become established only if the request for information from the holder of the variety right is received by the supplier of processing services before the expiry of the marketing year (or the most recent marketing year where there are several) concerned by the request?’

Fuente: Texto original del fallo aportado por UAIPIT-Portal Internacional de la Universidad de Alicante en PI y SI- <http://www.uaipit.com>.

(2) If Question 1 is answered in the affirmative:

Is there a request for information “complying with the time-limit” where the holder claims in his request that he has some indication that the supplier of processing services has processed or intends to process for planting harvested material of the protected variety which the farmer named in the request has obtained by planting from propagating material of the protected variety, or must the supplier of the processing services also be furnished with evidence of the claimed indication in the request for information (for example, by providing a copy of the farmer’s statements of planting the product of the harvest)?

(3) Can indications establishing the obligation of the supplier of processing services to provide information be derived from the fact that the supplier of processing services, as the agent of the holder of the plant variety right, performs a propagation contract for the production of consumption-related seed of the protected variety, which the holder of the plant variety right has concluded with the farmer effecting propagation, where and because the farmer is in fact granted the possibility, in performing the propagation contract, of using some of the propagation seed for planting?’

Consideration of the questions referred

The first question

21 By its first question, the referring court asks, in essence, whether Article 9(3) of Regulation No 1768/95 is to be interpreted as meaning that the obligation of the supplier of processing services to provide information on the protected varieties in question is extinguished if the request for information from the holder of the variety rights is received by the supplier of processing services after the expiry of the marketing year concerned by that request.

22 According to the very wording of Article 9(3) of Regulation No 1768/95, the supplier of processing services is under the obligation to provide information under Article 9(2)(b), (c), (d) and (e) where that information refers to the marketing year during which the request was made.

23 Thus, in principle, a request for information referring to a given marketing year received by the supplier of processing services after the expiry of that marketing year cannot give rise to an obligation on his part to provide information.

24 However, Article 9(3) of Regulation No 1768/95 states that the information may also refer to one or more of the three preceding marketing years for which the holder has not yet made an earlier request. In that regard, that provision specifies that the first marketing year to which the information refers must be the one in which the first of such requests was made in respect of the variety or varieties and the supplier of processing services concerned.

Fuente: Texto original del fallo aportado por UAIPIT-Portal Internacional de la Universidad de Alicante en PI y SI- <http://www.uaipit.com>.

25 It is therefore apparent from the wording of that provision that the holder of the plant variety right may make a request for information to the supplier of processing services with regard to one of more of the three marketing years preceding the current marketing year, in so far as the first request in respect of the variety or varieties and the processor concerned was made during the first of the preceding marketing years.

26 Such an interpretation is supported by the very objective of Regulation No 1768/95 which, pursuant to Article 14(3) of Regulation No 2100/94, seeks to safeguard the legitimate interests of the breeder and of the farmer. Article 2(2) of Regulation No 1768/95 states that it is necessary to maintain a reasonable balance between all of those interests in order to safeguard them.

27 In that context, it should be pointed out that, unlike several other language versions, the French version of Article 9(3) of Regulation No 1768/95 fails to limit the possibilities for making a request for information to, at most, three preceding marketing years.

28 Contrary to STV's submission, it would be contrary to the objective of Regulation No 1768/95, as noted in paragraph 26 above, to consider that there is no temporal limit on the obligation of the supplier of processing services to provide information.

29 Moreover, it must be noted that Article 8(3) of Regulation No 1768/95, which lays down the farmer's obligation to provide information, expressly limits the holder's right to make a request for information to information relating to, at most, three preceding marketing years. Since the farmer's obligation to provide information is virtually identical to the processor's obligation, it is not necessary to make a distinction between the periods covered by the holder's requests for information in terms of the different addressees of those requests.

30 That interpretation of Article 9(3) of Regulation No 1768/95 best guarantees the holder's interests, on the one hand, in so far as the holder has a degree of flexibility with regard to submitting requests for information, and the interests of the supplier of processing services, on the other hand, who has to keep such information only for a limited period of time, after having been given prior warning to do so.

31 In the present case, it is clear from the order for reference that STV sent two series of requests for information to RWZ: on 30 June, 7 August and 15 September 2006 and 30 April 2007 in respect of the marketing year 2005/2006 and on 25 and 29 June 2007, 23 November 2007 and 29 May 2008 in respect of the marketing year 2006/2007.

32 Since, pursuant to Article 7(2) of Regulation No 1768/95, the marketing year starts on 1 July and ends on 30 June of the subsequent calendar year, and in so far as it cannot be determined from the order for reference which protected varieties are covered by the requests for information submitted by STV or whether it is a case of the first of

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such requests within the meaning of the second part of Article 9(3) of that regulation, it is for the referring court to determine which of those requests were made within the period prescribed.

33 Consequently, the answer to the first question is that Article 9(3) of Regulation No 1768/95 is to be interpreted as meaning that the obligation of the supplier of processing services to provide information on the protected varieties in question is established if the request for information referring to a given marketing year was submitted before the expiry of that marketing year. However, there may be such an obligation so far as concerns information relating to up to three preceding marketing years, in so far as the holder submitted a first request in respect of the same varieties to the same supplier of processing services during the first of the preceding marketing years covered by the request for information.

The second and third questions

34 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether the sixth indent of Article 14(3) of Regulation No 2100/94 read in conjunction with Article 9 of Regulation No 1768/95 is to be interpreted as meaning, on the one hand, that the fact that a farmer has planted under contract a protected plant variety for the benefit of its holder is capable of constituting an indication which gives rise to the information obligation on the supplier who has processed the consumption-related seed of that variety and, on the other hand, that the holder's request for information must contain evidence of the indications with which he justifies his right to information.

35 It must be noted at the outset that Article 9(4) of Regulation No 1768/95, read in conjunction with Article 8(4) of that regulation, which defines the formal requirements to be fulfilled by the holder's request for information from the supplier of processing services, does not require that request to contain evidence to support the indications set out therein. The first sentence of the second subparagraph of Article 8(4) of that regulation even envisages that such a request may be made orally.

36 So far as concerns planting under contract, the Court has already held that the acquisition by a farmer of propagating material of a protected plant variety of the holder must be considered to be an indication capable of giving rise to the farmer's obligation to provide information to the holder (see Case C-305/00 *Schulin* [2003] ECR I-3525, paragraph 65).

37 The fact that a farmer has planted under contract a protected plant variety for the benefit of its holder constitutes an indication that that farmer may have seeds from the protected variety for planting, in respect of which he may intend to benefit from the privilege established under Article 14(3) of Regulation No 2100/94.

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38 However, such a situation cannot, by itself, establish an automatic right on behalf of the holder to obtain information from the supplier of processing services.

39 Whilst it follows from Article 14(3) of Regulation No 2100/94 that such a right is established where a farmer benefits or intends to benefit from the privilege provided for in that article, the Court has held that that right may be relied on, against the supplier of processing services, only where the holder has some indication that the supplier has processed or intends to process the product of the harvest obtained by planting propagating material of that variety for planting (see, to that effect, Case C-336/02 *Brangewitz* [2004] ECR I-9801, paragraph 53).

40 However, in that context, the fact that a farmer has planted under contract a protected plant variety cannot, by itself, constitute an indication that a supplier of processing services has processed or intends to process the product of the harvest obtained by planting propagating material of that variety for planting.

41 In the light of the circumstances of the case, it could, at most, be one of several elements that lead to the conclusion that there is such an indication. It is for the referring court to assess the facts of the case to decide whether that is so in the case in the main proceedings.

42 Consequently, the answer to the second and third questions is that the sixth indent of Article 14(3) of Regulation No 2100/94 read in conjunction with Article 9 of Regulation No 1768/95 is to be interpreted as meaning that the request for information made by the holder of a protected plant variety to a supplier of processing services need not contain evidence to support the indications put forward therein. Moreover, the fact that a farmer has planted under contract a protected plant variety cannot, by itself, constitute an indication that a supplier of processing services has processed or intends to process the product of the harvest obtained by planting propagating material of that variety for planting. Such a fact may, however, in the light of the other circumstances of the case, lead to the conclusion that there is such an indication, which is for the referring court to determine in the dispute before it.

Costs

43 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. Article 9(3) of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights, as

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amended by Commission Regulation (EC) No 2605/98 of 3 December 1998, is to be interpreted as meaning that the obligation of the supplier of processing services to provide information on the protected varieties in question is established if the request for information referring to a given marketing year was submitted before the expiry of that marketing year. However, there may be such an obligation so far as concerns information relating to up to three preceding marketing years, in so far as the holder of a Community plant variety right submitted a first request in respect of the same varieties and the same supplier of processing services during the first of the preceding marketing years covered by the request for information.

2. The sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights read in conjunction with Article 9 of Regulation No 1768/95, as amended by Regulation No 2605/98, is to be interpreted as meaning that the request for information made by the holder of a Community plant variety right to a supplier of processing services need not contain evidence to support the indications put forward therein. Moreover, the fact that a farmer has planted under contract a protected plant variety cannot, by itself, constitute an indication that a supplier of processing services has processed or intends to process the product of the harvest obtained by planting propagating material of that variety for planting. Such a fact may, however, in the light of the other circumstances of the case, lead to the conclusion that there is such an indication, which is for the referring court to determine in the dispute before it.

[Signatures]

* Language of the case: German.