Court of Justice EU, 25 June 2015, STV v Vogel

PLANT BREEDER'S RIGHT

In order to be able to benefit from the derogation from the obligation to obtain the authorization of the holder of the plant variety right, the right holder is required to pay the equitable remuneration, no later than 30 June following the date of reseeding

- **In the light of the foregoing considerations, the answer to the questions referred is that, in order to be able to benefit from the derogation provided for in Article 14 of Regulation No 2100/94 from the obligation to obtain the authorisation of the holder of the plant variety right concerned, a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) without having concluded a contract for so doing with the holder, is required to pay the equitable remuneration by way of derogation within the period that expires at the end of the marketing year during which that planting took place, that is, no later than 30 June following the date of reseeding.**

Source: **curia.europa.eu**

Court of Justice EU, 25 June 2015

(R. Silva de Lapuerta, J.‑C. Bonichot, A. Arabadjiev, J. L. da Cruz Vilaça en C. Lycourgos (rapporteur))

JUDGMENT OF THE COURT (Second Chamber)

25 June 2015 (*)

(Reference for a preliminary ruling — Community plant variety rights –Regulation (EC) No 2100/94 — Derogation provided for in Article 14 –Use by farmers of the product of the harvest for propagating purposes without the holder's authorisation — Farmers under an obligation to pay equitable remuneration for such use — Period within which that remuneration must be paid in order to be able to benefit from the derogation — Whether it is possible for the holder to have recourse to Article 94 — Infringement)

In Case C‑242/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Mannheim (Germany), made by decision of 9 May 2014, received at the Court on 19 May 2014, in the proceedings

Saatgut-Treuhandverwaltungs GmbH

v

Gerhard und Jürgen Vogel GbR,

Jürgen Vogel,

Gerhard Vogel,

THE COURT (Second Chamber), composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos (Rapporteur), Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure, after considering the observations submitted on behalf of:

– Saatgut-Treuhandverwaltungs GmbH, by K. von Gierke and E. Trauernicht, Rechtsanwälte,

– Gerhard und Jürgen Vogel GbR, Mr G. Vogel and Mr J. Vogel, by J. Beismann, and M. Miersch, Rechtsanwälte,

– the Spanish Government, by A. Gavela Llopis, acting as Agent,

– the Netherlands Government, by M. Bulterman, C. Schillemans and J. Langer, acting as Agents,

– the European Commission, by G. von Rintelen and I. Galindo Martín, acting as Agents, after hearing the **Opinion of the Advocate General at the sitting on 5 March 2015**, gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of certain provisions of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1) and 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 The request has been made in proceedings between Saatgut-Treuhandverwaltungs GmbH ('STV'), which represents the interests of the holder of Community plant variety rights in respect of the winter barley variety 'Finita', and Gerhard und Jürgen Vogel GbR, an agricultural company, Mr G. Vogel and Mr J. Vogel, the personally liable partners in that company (together, 'the Vogels') concerning the Vogels' planting of that variety.

Legal context

Regulation No 2100/94

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

'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);

...

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

...'

4 Article 14 of Regulation No 2100/94, entitled 'Derogation from Community plant variety right', is worded as follows:

'1. 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.

2. The provisions of paragraph 1 shall only apply to agricultural plant species of:

...

(b) Cereals:

...

Hordeum vulgare L. — Barley

...

3. 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;

– monitoring compliance with the provisions of this Article or the provisions adopted pursuant to this Article shall be a matter of exclusive responsibility of holders; in organising that monitoring, they may not provide for assistance from official bodies;

– relevant 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. ...'

5 Article 94 of Regulation No 2100/94, which deals with the civil law actions which may be brought in the event of use of a plant variety in a manner which amounts to an infringement, provides as follows:

'1. Whosoever:

(a) effects one of the acts set out in Article 13(2) without being entitled to do so, in respect of a variety for which a Community plant variety right has been granted;

...

may be sued by the holder to enjoin such infringement or to pay reasonable compensation or both.

2. Whosoever acts intentionally or negligently shall moreover be liable to compensate the holder for any further damage resulting from the act in question. In cases of slight negligence, such claims may be reduced according to the degree of such slight negligence, but not however to the extent that they are less than the advantage derived therefrom by the person who committed the infringement.'

Regulation No 1768/95

6 Article 1(1) of Regulation No 1768/95 states that the 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.

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.

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 6 of Regulation No 1768/95, entitled 'Individual obligation to payment', provides in paragraph 1 thereof as follows:

'Without prejudice to the provisions of paragraph 2, the individual obligation of a farmer to pay the equitable remuneration shall come to existence at the time when he actually makes use of the product of the harvest for propagating purposes in the field. The holder may determine the date and the manner of payment. However, he shall not determine a date of payment which is earlier than the date on which the obligation has come to existence.'

9 Article 7 of Regulation No 1768/95, entitled 'Small farmers', states in paragraph 2 thereof as follows:

'Areas of the holding of the farmer on which plants have been grown, but which are land set aside, on a temporary or permanent basis, in the marketing year starting on 1 July and ending on 30 June of the subsequent calendar year ("the marketing year"), in which the payment of the remuneration would be due, shall be considered to be areas on which plants are still grown, if subsidies or compensatory payments are granted by the Community or by the Member State concerned in respect of that set aside.'

10 Article 17 of Regulation No 1768/95, entitled 'Infringement', provides as follows:

'The holder may invoke the rights conferred by the Community plant variety right against a person who contravenes any of the conditions or limitations attached to the derogation pursuant to Article 14 of the basic Regulation as specified in this Regulation.'

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

11 STV is an association of plant variety right holders that manages, inter alia, the rights of the holder of the winter barley variety 'Finita', which is protected under Regulation No 2100/94. STV publishes on its website a

list setting out all the protected plant varieties the rights to the administration of which it has been granted in the course of various marketing years, as well as the planting fees payable for those varieties. Moreover, each year STV asks farmers, without specifying a particular variety, to provide information on any planting of protected plant varieties for which STV administers the rights, sending to them planting declaration forms for that purpose, together with a guide listing all the protected varieties for which it administers the rights in the relevant marketing year and the corresponding right holders and persons enjoying rights of exploitation. The Vogels, which do not have any contractual relations with STV, did not respond to those requests for information.

12 On 16 December 2011, STV became aware, through a processor, that in the marketing year 2010/11 the Vogels had, among other things, arranged for 35 quintals of seed of the winter barley variety 'Finita' to be processed.

13 By letter of 31 May 2012, STV asked the Vogels to verify the information concerning the planting of the winter barley variety 'Finita' disclosed by that processor and to send it information concerning that planting, directing them to reply by 20 June 2012 at the latest. The Vogels did not reply to that reply.

14 By letter of 27 July 2012, STV claimed from the Vogels payment of EUR 262.50, corresponding to the full fee that would be due for licensed use of seeds of the winter barley variety 'Finita', known as the 'C-Licence', as compensation for the damage suffered as a result of the undisclosed planting of that protected variety. As no such payment was forthcoming, STV brought an action on 18 March 2013 seeking such compensation on the basis of Article 94(1) and (2) of Regulation No 2100/94.

15 In support of its action, STV argues that the Vogels are required to pay to it reasonable compensation in an amount equivalent to the full C-Licence fee, pursuant to Article 94(1) of Regulation No 2100/94, because they carried out planting 'without being entitled to do so' within the meaning of that provision, and were not entitled to avail themselves of the derogation provided for in Article 14(1) of the regulation as they had failed to comply with the requirement to pay equitable remuneration laid down in the fourth indent of Article 14(3) of that regulation. STV also claims that that payment requirement is enforceable irrespective of whether a request for information has been made by the holder of the protected plant variety concerned and that the farmer must make the payment prior to sowing and, in any event, by the end of the marketing year in which the protected variety was planted. STV is also of the view that the information published on its website and the guide listing all the protected varieties the rights to the management of which it has been granted, which is sent each year to farmers, enables the Vogels to calculate themselves, and therefore pay, the amount due for planting those varieties.

16 The Vogels claim that they are not liable for payment of an amount equivalent to the full C-Licence fee by way of compensation. They submit that they owe, at the most, a reduced fee, on the ground that the planting was 'authorised' within the meaning of Article 14(1) of Regulation No 2100/94. They also contend that they were not under any obligation to reply to the request for information of 31 May 2012, as that request did not relate to the current marketing year. According to the Vogels, there would have to be an infringement of the obligation to provide information in order for the conditions governing entitlement to compensation to be satisfied.

17 The referring court has expressed doubts concerning STV's claim that the farmer is required to pay, of his own initiative, the remuneration referred to in the fourth indent of Article 14(3) of Regulation No 2100/94 before sowing, in particular in the light of Article 6(1) of Regulation No 1768/95. It observes that the latter provision would appear to preclude the inference that the farmer is required to pay that remuneration in advance, before sowing. Furthermore, that court states that if that remuneration could be paid after planting the protected variety, the question then arises as to the date by which the farmer is required to pay that remuneration in order to be able to benefit from the derogation provided for in Article 14 of Regulation No 2100/94 and thus fall outside the infringement provisions laid down in Article 94 of the regulation. According to the referring court, the provisions of Regulation Nos 2100/94 and 1768/95 do not provide a clear and unambiguous answer to that question, which the Court has not had occasion to address.

18 In those circumstances, the Landgericht Mannheim decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is a farmer who has planted propagating material obtained from a protected plant variety without having concluded a contract for so doing with the plant variety right holder required to pay reasonable compensation, as provided for in Article 94(1) of Regulation No 2100/94, and — if he has acted intentionally or negligently — to compensate the holder for any further damage resulting from the infringement of the plant variety right in accordance with Article 94(2) of that regulation, where he has not yet fulfilled his obligation under the fourth indent of Article 14(3) of that regulation, in conjunction with Articles 5 and 6 of Regulation No 1768/95, to pay an equitable remuneration (planting fee) at the time when he actually made use of the product of the harvest for propagating purposes in the field?

(2) If the first question is to be answered to the effect that the farmer can still fulfil his obligation to pay an equitable planting fee even after he has actually made use of the product of the harvest for propagating purposes in the field, are the aforementioned provisions to be interpreted as fixing a period within which a farmer who has planted propagating material obtained from a protected plant variety must fulfil his obligation to pay an equitable planting fee in order for the

planting to be capable of being regarded as "authorised" for the purposes of Article 94(1) of Regulation No 2100/94 in conjunction with Article 14 of that regulation?'

Consideration of the questions referred

19 By its questions, which it is appropriate to consider together, the referring court seeks to ascertain, in essence, the period within which a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) without having concluded a contract for so doing with the holder of the plant variety right concerned must comply with the requirement to pay the equitable remuneration due under the fourth indent of Article 14(3) of Regulation No 2100/94 ('the equitable remuneration by way of derogation') in order to be able to benefit from the derogation from the obligation to obtain the holder's authorisation provided for in Article 14.

20 It should be noted, first, that Article 13(2) of Regulation No 2100/94 provides that the authorisation of the holder of the plant variety right is required, in respect of variety constituents or harvested material of the protected variety, inter alia, for production or reproduction (multiplication). In that context, Article 14(1) of that regulation establishes a derogation from that rule, insofar as use of the product of the harvest obtained by farmers, on their own holding, for propagating purposes in the field is not conditional upon authorisation by the holder of the right where they fulfil certain conditions expressly set out in Article 14(3) of that regulation (see judgment in Geistbeck, C‑509/10, EU:C:2012:416, paragraphs 21 and 22).

21 One of those conditions, set out in the fourth indent of Article 14(3) of Regulation No 2100/94, requires payment to be made, by way of derogation from the authorisation requirement, to the holder of the plant variety right concerned of equitable remuneration in respect of such use.

22 A farmer who does not pay equitable remuneration to the holder when he uses the product of the harvest obtained by planting propagating material of a protected variety cannot rely on Article 14(1) of Regulation No 2100/94 and, therefore, must be regarded as having undertaken, without being entitled to do so, one of the acts set out in Article 13(2) of that regulation. Accordingly, it follows from Article 94 of that regulation that an action may be brought against such a farmer by the holder for an injunction in respect of the infringement or for payment of fair compensation, 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 (judgment in Schulin, C‑305/00, EU:C:2003:218, paragraph 71).

23 The referring court is uncertain, first, whether the farmer concerned must pay the equitable remuneration by way of derogation before actually using the product of the harvest for propagating purposes in the field.

24 In that regard, Article 6 of Regulation No 1768/95, which establishes the implementing rules in respect of the obligation to pay equitable remuneration by way of derogation, provides in the second subparagraph of paragraph 1 thereof that while the holder of the protected plant variety concerned may determine the date and manner of payment, he may not determine a date for payment which is earlier than the date on which the obligation to pay such equitable remuneration arose. In accordance with the first subparagraph of Article 6(1) of that regulation, that obligation arises when the farmer actually makes use of the product of the harvest of the protected variety for propagating purposes in the field. It follows that such a farmer may still fulfil that obligation after he has sown the product of the harvest of the protected variety, as that date of actual use of the product for propagating purposes in the field is not the deadline by which payment of equitable remuneration by way of derogation must be made but the date from which that remuneration becomes payable.

25 While that provision makes it possible to assert that a farmer may still fulfil his obligation to pay equitable remuneration by way of derogation after he has actually sown the product of the harvest of the protected variety, there is no indication whatsoever in that provision of the period within which the farmer is required to pay that remuneration when no date for payment has been set, under the second subparagraph of Article 6(1) of Regulation No 1768/95, by the holder of the right to the protected variety.

26 In that regard, the Vogels and the Spanish Government maintain, in essence, that that period may run indefinitely. They rely specifically on Article 6(1) of Regulation No 1768/95, stating in that regard that, while that provision governs the date on which the payment obligation arises, it does not lay down any deadline for payment.

27 That interpretation cannot be accepted, however.

28 In the first place, **as the Advocate General observed at point 39 of his Opinion**, to allow a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) to fulfil, without any time-limit, the obligation to pay equitable remuneration by way of derogation and, thereby, avail himself indefinitely of the derogation under Article 14 of Regulation No 2100/94 would deprive the legal proceedings provided for in Article 94 of that regulation of any useful purpose. Moreover, since it provides that proceedings may be brought against any infringer who has failed to comply with that payment obligation, Article 94 of Regulation No 2100/94 precludes such a person from being able to regularise his situation at any time, including after the holder of the plant variety right has discovered an undisclosed use of the protected plant variety. If follows that only by defining a payment period is it possible to ensure that such proceedings are effective.

29 In the second place, it should be recalled that the holders of plant variety rights alone are responsible for the control and supervision of the use of the protected varieties in the context of authorised planting and they depend, therefore, on the good faith and cooperation of the farmers concerned (judgment in Geistbeck, C‑

509/10, EU:C:2012:416, paragraph 42). Accordingly, the absence of a precisely defined period within which farmers are required to comply with the obligation to pay equitable remuneration by way of derogation is liable to encourage farmers to defer that payment indefinitely, in the hope of avoiding payment altogether. To allow farmers to avoid complying with their own obligations towards holders in such a way would be at odds with the objective set out in Article 2 of Regulation No 1768/95 of maintaining a reasonable balance between the legitimate interests of the farmers and the holders concerned.

30 For the purpose of examining whether the relevant provisions actually make provision for a payment period, it should be noted that it is apparent from Article 7(2) of Regulation No 1768/95 that the marketing year during which payment of the remuneration is due starts on 1 July and ends on 30 June of the subsequent calendar year. Although that provision concerns the definition of areas dedicated to growing plant varieties by small farmers, it clearly shows that the marketing year during which propagating material obtained from a protected plant variety (farm-saved seed) was planted was regarded by the institution responsible for that regulation, when establishing the implementing rules for Article 14(3) of Regulation No 2100/94, as the relevant period in which the equitable remuneration by way of derogation is to be paid.

31 Thus, if he has failed to pay the equitable remuneration by way of derogation within the period that expires at the end of the marketing year during which he planted propagating material obtained from a protected plant variety, without having concluded a contract for so doing with the plant right holder, a farmer must be regarded as having effected, without being entitled to do so, one of the acts set out in Article 13(2) of Regulation No 2100/94, which entitles the holder to bring the forms of action provided for in Article 94 of that regulation.

32 In the light of the foregoing considerations, the answer to the questions referred is that, in order to be able to benefit from the derogation provided for in Article 14 of Regulation No 2100/94 from the obligation to obtain the authorisation of the holder of the plant variety right concerned, a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) without having concluded a contract for so doing with the holder, is required to pay the equitable remuneration by way of derogation within the period that expires at the end of the marketing year during which that planting took place, that is, no later than 30 June following the date of reseeding.

Costs

33 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 (Second Chamber) hereby rules:

In order to be able to benefit from the derogation provided for in Article 14 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights from the obligation to obtain the authorisation of the holder of the plant variety right concerned, a farmer who has planted propagating material obtained from a protected plant variety (farm-saved seed) without having concluded a contract for so doing with the holder is required to pay the equitable remuneration due under the fourth indent of Article 14(3) of that regulation within the period that expires at the end of the marketing year during which that planting took place, that is, no later than 30 June following the date of reseeding.

[Signatures]

* Language of the case: German.

OPINION OF ADVOCATE GENERAL

Jääskinen

delivered on 5 March 2015 (1)

Case C‑242/14

Saatgut-Treuhandverwaltungs GmbH

v

Gerhard und Jürgen Vogel GbR

Jürgen Vogel

Gerhard Vogel

(Request for a preliminary ruling from the Landgericht Mannheim (Germany))

(Community plant variety rights — Regulation (EC) No 2100/94 — Articles 14 and 94 — Regulation (EC) No 1768/95 — Use by a farmer of the product of the harvest of a protected plant variety without the authorisation of the right holder — Derogation from that right — Farmer's privilege — Obligation to pay an equitable remuneration to the holder — Period within which payment must be made in order to benefit from the derogation — Start and end of that period)

I – Introduction

1. This request for a preliminary ruling made by the Landgericht Mannheim (Regional Court, Mannheim) (Germany) focuses on the interpretation of Articles 14 and 94 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (2) ('the Basic Regulation') and of certain provisions 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 (3) ('the Implementing Regulation'). (4)

2. The request stems from a dispute between, on the one hand, Saatgut-Treuhandverwaltungs GmbH (STV), which represents the interests of several plant variety right holders, and, on the other, Gerhard und Jürgen Vogel GbR, a company that runs a farm, and Gerhard and Jürgen Vogel, the personally liable partners in that company ('the Vogels') over the use by the Vogels of propagating material from one of those varieties without the prior authorisation of its right holder.

3. Arguing that such use constituted an infringement, STV claimed from the defendants in the main proceedings, pursuant to Article 94 of the Basic Regulation, payment of the full amount that would be due in respect of licenced use of the protected variety in question. This was opposed by the Vogels, who relied on the regime established by Article 14 of that regulation, under which farmers may benefit from a derogation from the Community plant variety right subject to fulfilment of certain conditions including, in particular, the obligation to pay the right holder an equitable remuneration whose level is lower than that of the compensation due in case of proven infringement.

4. In essence, the referring court is asking the Court whether a farmer is able to rely on that derogation regime if he pays the equitable remuneration prescribed by Article 14 on a date after he uses the variety concerned by sowing the product of his harvest, such that that act is then considered to be authorised and is not therefore subject to the legal proceedings provided for in Article 94. If that question is answered in the affirmative, the Court is requested to interpret the provisions of those articles in order also to determine the date up to which the farmer concerned can make payment of that remuneration.

II – The main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

5. STV is a company established in Germany which brings together different plant variety right holders (5) and is asserting, inter alia, the rights of the holder of the winter barley variety 'Finita' ('the variety "Finita"'), which is protected at EU level under the Basic Regulation.

6. In that capacity, STV publishes on its website a list setting out all the protected plant varieties forming the subject of contracts administered by it and the planting fees payable for those varieties. In addition, each year STV asks farmers, in a general manner, to provide information on any planting of one of those varieties and, for that purpose, sends them declaration forms together with a guide listing all the protected varieties administered by it in the relevant marketing year and the identity of the corresponding right holders and persons enjoying rights of exploitation.

7. The Vogels, who do not have any contractual relations with STV, did not respond to those requests for information. However, on 16 December 2011, STV became aware, through a processor, (6) that in the marketing year 2010/2011 the Vogels had, among other things, had seeds processed of the variety 'Finita'.

8. By letter of 31 May 2012, STV instructed the Vogels to verify that information, which indicated undisclosed use of propagating material of that variety obtained by planting the variety, and to send it information in this regard, directing them to reply by 20 June 2012 at the latest. The Vogels did not comply with that request.

9. By letter of 27 July 2012, STV claimed from the Vogels payment of an amount of EUR 262.50, corresponding to the full fee that would be due for licenced use of seeds of the variety 'Finita', known as the 'C- Licence fee', as compensation for the damage suffered as a result of the undisclosed planting of that protected variety.

10. As no payment was received, STV brought an action before the Amtsgericht Euskirchen (Local Court, Euskirchen), by document of 18 March 2013, seeking payment of that compensation. On 13 September 2013, that court declined jurisdiction and referred the case to the Landgericht Mannheim (Regional Court, Mannheim).

11. In support of its application, STV submits that the Vogels were required to pay it reasonable compensation under Article 94(1) of the Basic Regulation in the amount of the full C-Licence fee because their planting constituted an infringement, as it had not been 'entitled' to do so within the meaning of that provision. It argues that the Vogels cannot rely on the derogation under Article 14(1) of that regulation, as they did not comply with the obligation to pay the plant variety right holder the equitable remuneration referred to in the fourth indent of Article 14(3). It claims that any farmer should fulfil that payment obligation in principle prior to sowing, but in any event by the end of the marketing year in which the protected variety was planted, and do so on his own initiative, irrespective of whether or not a timeous request for information has been made by the right holder.

12. The Vogels dispute these claims. They submit that they owe, at the most, the reduced fee for 'authorised' planting under the derogation laid down in Article 14(1) of the Basic Regulation. Furthermore, they claim that, for the conditions governing entitlement to compensation laid down in Article 94 of that regulation to be satisfied, there would have to be an infringement of the obligation to provide information to the right holder, as laid down in EU law, which is not proven, they submit, in the present case. (7)

13. Against this background, by decision of 9 May 2014, which was received by the Court on 19 May 2014, the Landgericht Mannheim decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a farmer who has planted propagating material obtained from a protected plant variety without having concluded a contract for so doing with the plant variety right holder required to pay reasonable compensation, as provided for in Article 94(1) of [the Basic Regulation], and — if he has acted intentionally or negligently — to compensate the holder for any further damage resulting from the infringement of the plant variety right in accordance with Article 94(2) of that regulation, where he has not yet fulfilled his obligation under Article 14(3), fourth indent, of that regulation, in conjunction with Articles 5 and 6 of [the Implementing Regulation], to pay an equitable remuneration (planting fee) at the time when he actually made use of the product of the harvest for propagating purposes in the field?

2. If the first question is to be answered to the effect that the farmer can still fulfil his obligation to pay an

equitable planting fee even after he has actually made use of the product of the harvest for propagating purposes in the field, are the aforementioned provisions to be interpreted as fixing a period within which a farmer who has planted propagating material obtained from a protected plant variety must fulfil his obligation to pay an equitable planting fee in order for the planting to be capable of being regarded as "authorised" for the purposes of Article 94(1) of [the Basic Regulation] in conjunction with Article 14 of that regulation?'

14. Written observations have been submitted to the Court by STV, by the Vogels, by the Spanish and Netherlands Governments, and by the European Commission. There has been no hearing.

III – Analysis

A – The parameters of the problem referred to the Court

15. It is important at the outset to point out certain facts about the legal regime to which the present case relates, which are either established in the light of the relevant instruments and the connected case-law or are still uncertain as EU law stands at present. Having regard to those aspects, the wording of the questions referred to the Court will then need to be clarified.

16. Under Article 11(1) of the Basic Regulation, the person, referred to as 'the breeder', who is entitled to the Community plant variety right is the person 'who bred, or discovered and developed the variety, or his successor in title'. Article 13(1) of that regulation provides that that right has the effect that its holder or holders are exclusively entitled to effect certain acts, which are listed in paragraph 2 of that article.

17. Accordingly, paragraph 2 requires, in principle, the authorisation of the holder of a Community plant variety right ('the holder') for the performance by a third party of the acts set out therein, including 'reproduction (multiplication)' and 'conditioning for the purpose of propagation' of the harvested material of a protected plant variety. This requirement is enforceable by the possibility of bringing civil law claims which is open to the right holder under Article 94 of that regulation where use of such a variety proves to constitute an infringement.

18. However, 'in the public interest' (8) and, more particularly, 'for the purposes of safeguarding agricultural production', (9) Article 14 of the Basic Regulation establishes a 'derogation' from that principle, which is usually called 'farmer's privilege'. (10) Provided all the conditions laid down in that article are met, farmers are entitled to use, of their own accord and without the need to obtain the authorisation of the right holder, the product of the harvest which they have obtained by planting one of the protected varieties mentioned (11) for propagating purposes in the field, on their own holding, an operation also known as using 'farm-saved seed'. (12) The rules implementing the conditions to give effect to this derogation regime are defined by the Implementing Regulation, which calls that regime an 'agricultural exemption'. (13)

19. In particular, the fourth indent of Article 14(3) requires that, in return for such use, (14) a farmer who wishes to benefit from that privilege is required to pay the holder an 'equitable remuneration'. (15) Article 6(1) of the Implementing Regulation determines the circumstances in which the 'individual obligation' to pay that remuneration comes into existence and becomes payable, without, however, expressly defining a precise period or time to make the required payment. The International Union for the Protection of New Varieties of Plants Convention ('the UPOV Convention'), (16) with which the provisions of the Basic Regulation were aligned, (17) provides for a similar derogation but does not offer further clarification as to the determination of such a period. (18) It is this temporal uncertainty that has given rise to this request for a preliminary ruling, as I will explain below.

20. If he fails to fulfil his individual payment obligation in good time, the farmer will be considered to have made unlawful use of a protected plant variety. (19) The same applies to a farmer who, by not declaring a part of the product of the harvest that he had planted, did not pay an equitable remuneration. (20) In such cases, the person concerned cannot benefit from farmer's privilege and the derogation regime under Article 14 of the Basic Regulation is not applicable, but the basic rule provided for in Article 13(2) applies, which is invoked by STV in the main proceedings. (21)

21. In these cases, the plant variety right holder may take legal action against the farmer who has used it without his authorisation (22) pursuant to Article 94 of the Basic Regulation. (23) Article 17 of the Implementing Regulation confirms that the person concerned is entitled to bring 'infringement' proceedings against any person who has not complied with all the conditions for implementing the derogation, as set out in Article 14 of the Basic Regulation. Under Article 94(1) of the Basic Regulation, the holder may seek either enjoinment of the infringement or payment of reasonable compensation, or both. Article 94(2) adds that if the farmer being sued has committed the alleged act intentionally or negligently, the infringer must also compensate the holder for the resulting damage. (24)

22. In order to avoid any risk of confusion in this regard, it should be stressed that the equitable remuneration payable under the fourth indent of Article 14(3), which must be paid directly to the holder as legitimate compensation by any person making use of farmer's privilege, is distinct from the reasonable compensation payable under Article 94(1), which a farmer against whom legal proceedings are brought will possibly be ordered to pay if the claims for infringement are established by the applicant right holder. (25) This difference is reflected in the criteria for fixing the remuneration and the compensation. In the first case, the remuneration is lower, as it must 'be sensibly lower than the amount charged for the licensed production of propagating material of the same variety in the same area', (26) while in the second case, 'it is appropriate to base the calculation on the amount

equivalent to the fee payable for production under the C-Licence'. (27) The Vogels claim that their situation possibly comes under the first case, which is more favourable to them financially, though not the second.

23. Within this framework, the Court is essentially being asked to determine from when and until what time a farmer who has planted propagating material obtained from a protected plant variety without having concluded a contract for so doing with the plant variety right holder must pay the holder the equitable remuneration due to him under the fourth indent of Article 14(3) of the Basic Regulation in order for that farmer to be able to benefit from the derogation from the obligation to obtain the authorisation of the holder, as laid down in that article, thereby avoiding the legal proceedings provided for in Article 94 of that regulation.

24. Since these provisions do not in themselves offer a clear answer to these two questions, it is necessary to examine the wording of Articles 14 and 94 of the Basic Regulation not only in conjunction with Article 5 et seq. of the Implementing Regulation, but also in the light of the rules of interpretation repeatedly noted and followed by the Court. Consideration should thus be given to the usual criteria such as the historical background to those provisions, (28) their general scheme, their specific purpose, their wording in the various language versions of those regulations (29) and, in particular if legislation is silent or even deficient, the overall scheme of which those provisions form part.

25. Even though it seems that it will ultimately be possible to provide a joint answer to the two questions asked, since they both seek to identify the period within which a farmer must fulfil the obligation to pay an equitable remuneration in the circumstances mentioned in Article 14 of the Basic Regulation, those questions should, in my view, be dealt with separately, as they concern the diametrically opposite ends of that period and because the relevant interpretative guidance for each of them is different. It seems necessary to deal with the questions separately in particular because the methods of interpretation used and the appropriate legal bases for answering these two questions will be different in so far as the definition of the start of that period will be based primarily on a significant provision of the Implementing Regulation, whilst the determination of the end of that period will rest more on the key principles on the foundation of which the Basic Regulation was drafted.

B – The start of the period for payment by a farmer of the equitable remuneration due under Article 14 of the Basic Regulation

26. By its first question, the referring court asks the Court, in essence, to define the time from which a farmer who wishes to benefit from the derogation regime provided for in Article 14 of the Basic Regulation is obliged to pay the right holder of the protected plant variety that he wishes to use the equitable remuneration prescribed by the fourth indent of paragraph 3 of that article, failing which he is liable to legal proceedings for infringement under Article 94 of that regulation. More specifically, it raises the question whether that derogation can have its beneficial effects either only where the required payment is made before the planting of the product of the harvest of that variety or even where it is made subsequently.

27. STV claims that the farmer in question should meet all the conditions for the application of that derogation regime at the time of the actual use of the product of the harvest of the protected variety, that is to say on the date on which that product is actually seeded for propagating purposes in the field. In particular, that farmer should fulfil his obligation to pay an equitable remuneration on his own initiative (30) even before he plants the protected plant variety, that is to say from the time he has opted to make use of the farmer's privilege referred to in Article 14. The referring court expresses serious doubts over this point of view. The other parties that submitted observations to the Court all take the opposite view to the applicant in the main proceedings.

28. Like the referring court and these latter parties, I take the view that even though the fourth indent of Article 14(3) of the Basic Regulation is certainly not explicit in this regard, there are significant elements of a possible answer in the provisions of the Implementing Regulation which are intended specifically to define the implementing rules for the derogation set out in Article 14.

29. I consider it contrary to the wording of Article 6(1) of the Implementing Regulation to require the farmer to make payment of that remuneration in advance, namely even before he has sowed the seeds in question.

30. According to the first subparagraph of Article 6(1), the obligation on a farmer to pay the equitable remuneration due under the fourth indent of Article 14(3) of the Basic Regulation *'shall come to existence at the time when he actually makes use of the product of the harvest for propagating purposes in the field'* on his own agricultural holding, (31) and only from that precise time. (32)

31. STV claims that it might follow from this first subparagraph that the obligation to pay that remuneration comes into existence as soon as a farmer decides to reseed propagating material obtained from a protected plant variety which he has produced himself without obtaining the authorisation of the right holder concerned, and that payment would therefore be immediately due.

32. However, in my view, the remainder of Article 6(1) contradicts that analysis. Under the first sentence of the second subparagraph of Article 6(1) of the Implementing Regulation, 'the holder may determine the date and the manner of payment' of the equitable remuneration, in particular where he has concluded a contract with the farmer, which is not the case in the main proceedings. In any event, the second sentence of that subparagraph states that '[h]owever, he shall not determine a date of payment which is earlier than the date on which the obligation has come to existence'. (33) It is clear from that provision, in conjunction with the abovementioned first subparagraph, that the holder cannot require an advance payment before the product

of the harvest has actually been planted for the abovementioned propagating purposes.
33. In addition, I consider that this latter interpretation of the fourth indent of Article 14(3) of the Basic Regulation is consistent, first, with the purpose of the derogation regime, which was adopted 'on the basis of the public interest in safeguarding agricultural production', in the established wording of the Court's case-law, (34) and, second, with the need to ensure that a reasonable balance is maintained between the legitimate interests of the farmer and those of the holder (35) in accordance with the second recital and Article 2 of the Implementing Regulation. (36)
34. In my view, it would be excessive to require that, in order to be able to benefit from the derogation in question, a farmer must already have fulfilled his payment obligation before seeding the product of his harvest of the protected plant variety, even though the holder's rights have not yet actually been affected and there is therefore no need to grant the holder financial compensation in this regard. Such a requirement would be likely to dissuade a farmer from relying on farmer's privilege and could thus discourage the agricultural production covered by that regime. (37)
35. Consequently, I suggest that the first question should be answered in the negative, and thus to the effect that a farmer is required to pay the plant variety right holder the equitable remuneration due under the fourth indent of Article 14(3) of the Basic Regulation only from the time when he actually makes use of the product of his harvest for propagating purposes in the field and that legal proceedings cannot therefore be brought against the farmer pursuant to Article 94 of that regulation if he has not yet fulfilled his payment obligation on the date of his actual use.

C – The expiry of the period for payment by a farmer of the equitable remuneration due under Article 14 of the Basic Regulation

36. The referring court asks the second question in the alternative in the event that, as I propose, the Court should rule that, in order to benefit from the derogation regime provided for in Article 14 of the Basic Regulation, the farmer is not required to pay an equitable remuneration to the right holder of the protected plant variety that he wishes to use before carrying out the acts referred to in that article. In essence, it asks the Court whether, in the absence of a contract with the right holder, farmer's privilege is subject to compliance with a limited payment period to be defined by the relevant provisions of EU law and, if that is the case, what are the criteria for fixing that period. According to the referring court, such a period does not have a clear legal basis either in the applicable provisions in the present case or in the Court's case-law.
37. In this regard, the Vogels and the Spanish Government claim that EU law does not lay down any period within which a farmer should pay an equitable remuneration to the holder in such circumstances. On the other hand, the Netherlands Government considers that, where the holder has not made a request for payment of that remuneration to the farmer, the farmer is required, in order to be able to rely on the derogation regime, to pay that remuneration 'within a reasonable period'. STV and the Commission suggest that the answer should be that payment must be made at the latest by the end of the marketing year in which the farmer seeded the harvested material unless the holder and the farmer have expressly agreed otherwise. I share the latter view.
38. It is true that, as is pointed out in particular by the Vogels and the Spanish Government, neither Article 14 of the Basic Regulation nor Article 6 of the Implementing Regulation expressly provides for a final date for the obligation to pay that equitable remuneration, Article 6 governing only when that obligation comes into existence and not when it ends.
39. Nevertheless, I consider that it would run counter to the scheme and the effectiveness of the relevant provisions to accept that the period within which that obligation must be fulfilled can run without any time-limit. In particular, the possibility of legal proceedings under Article 94 of the Basic Regulation would be deprived of its purpose if a person who wishes to rely on farmer's privilege had an indefinite period of time to pay the equitable remuneration due to the holder under Article 14 of that regulation. Only by defining a period imposed on the farmer in question is it possible to bring legal proceedings against possible infringers and thus to ensure compliance with that obligation.
40. I would point out in this respect that the Basic Regulation has established a rights system which must be applied uniformly throughout the European Union, in particular as regards the conditions under which a farmer is entitled to make use of the product of the harvest for propagating purposes, (38) which would not be the case if that instrument were interpreted as not implicitly requiring compliance with a common payment period. Furthermore, I stress that this is not procedural period, a category of periods for which the Member States have legislative autonomy where there is no EU legislation, (39) but a substantive period in so far as it prevents the loss of the benefit of a substantive right such as farmer's privilege.
41. In addition, it should be recalled that a reasonable balance must be ensured between the respective legitimate interests of the farmer and of the holder concerned in accordance with the objective mentioned in Article 2 of the Implementing Regulation. However, if there is no strictly defined period, a farmer acting in bad faith could wait indefinitely, without any great risk, in the hope of avoiding payment, (40) when it is necessary to give farmers an incentive to fulfil their obligations to Community plant variety right holders. (41) As STV claims, if the farmer could regularise his situation even after the holder has discovered an undisclosed use, the holder's interests would no longer be sufficiently safeguarded. (42) Moreover, authorising such regularisation would be contrary to the intention of the Community legislature, as it took care to provide, in Article 94 of the Basic Regulation, for legal proceedings in case of proven failure to fulfil the

obligation to pay an equitable remuneration within the meaning of Article 14 of that regulation. It must therefore be recognised that it is logical for a payment period to be prescribed for a farmer who relies on the derogation under that article.

42. In order to increase legal certainty, which is a general principle of EU law that must be respected all the more strictly in the case of financial obligations, (43) it does not seem desirable to follow the proposal made in the alternative by the Netherlands Government to recognise that the criterion of a 'reasonable period' would be sufficient for payment of that remuneration. I think it preferable to fix a period whose expiry is more clearly identifiable and thus foreseeable.

43. Like STV and the Commission, I consider the most appropriate expiry date to be the date of the end of the marketing year in which the farmer in question actually planted propagating material obtained from a protected plant variety. Article 7(2) of the Implementing Regulation states that the equitable remuneration under Article 14(3) of the Basic Regulation must be paid *'in' the 'marketing year', which is defined as 'starting on 1 July and ending on 30 June of the subsequent calendar year'*. I agree with the Commission's point of view that even though that provision relates to an area other than farmer's privilege, (44) it nevertheless casts light on the fact that the marketing year was seen by the Community legislature as the relevant period in which the equitable remuneration provided for in Article 14 of the Basic Regulation must be paid.

44. Moreover, the Netherlands Government concurs with this approach, as it states that the 'reasonable period' which it proposes should in any event end before the date marking the start of the sowing season following the marketing year in which the products of the harvest were seeded, on the basis, which I consider to be well-founded, that it is logical to require a farmer to have fulfilled his financial obligation no later than that date, as he will, in principle, have received the income generated by the harvested material.

45. Lastly, with regard to the conditions for payment of the equitable remuneration due under the fourth indent of Article 14(3) of the Basic Regulation, the problem whether payment must be made by the farmer without being prompted or at the request of the right holder is not explicitly raised in the questions referred for a preliminary ruling, but it is nevertheless implicit in the grounds of the order for reference. In this regard, STV argues that, contrary to the views of the Vogels and the Spanish Government, (45) the obligation to pay that remuneration is not subject to a request for payment or even the prior issue of an invoice by the holder since the farmers concerned are in a position to determine the amount of that remuneration themselves in order to pay it to the right holder concerned. (46)

46. The wording of that fourth indent seems to lean towards the position taken by STV, as it states, in the imperative, that the *'farmers shall be required to pay an equitable remuneration to the holder', whereas the sixth indent of paragraph 3 provides that 'relevant information shall be provided to the holders on their request, by farmers'*. (47) In addition, if it were sufficient for a farmer acting in bad faith to refrain from coming forward when he has carried out the operations referred to in Article 14 of the Basic Regulation, it would be extremely easy for him to evade his payment obligation until he is subject to hypothetical check, as there is less fear of such a check in the case of agricultural plants which, like potatoes, do not undergo services of processing.

47. As is generally the case with the exploitation of intellectual property rights, their users are required to find out by themselves information on the right holders and the conditions for their exploitation, in particular from a financial point of view. This is clear from the provisions of Article 94(1) of the Basic Regulation, which lays down an obligation to pay reasonable compensation even in cases of non-culpable infringement, legal proceedings against the farmer concerned then being instituted on an objective basis. (48)

48. Nevertheless, in order to maintain the reasonable balance between the legitimate interests of the farmer and those of the holder referred to in Article 2 of the Implementing Regulation, it would seem that the farmer should, in principle, take the initiative in making payment of the equitable remuneration within the period to be defined by the Court, but that, in case of doubt over the amount due, as the calculation may sometimes prove difficult for the farmer himself, (49) he should contact the holder in order to determine, with his assistance, the sum payable to him. (50) Whilst it is true that the Court has ruled that the obligation to inform the holder which is laid down in the sixth indent of Article 14(3) of the Basic Regulation should not be considered to apply generally to all farmers, (51) that case-law certainly does not imply that a farmer who has consciously decided to make use of the derogation under Article 14 of the Basic Regulation is not required to inform the holder concerned without being prompted. (52)

49. Consequently, in my view, a joint answer should be provided to the two questions referred to the Court and it should be ruled that Articles 14 and 94 of the Basic Regulation must be interpreted to the effect that, unless agreed otherwise by the parties concerned, a farmer who relies on the derogation provided for in Article 14 is required to pay an equitable remuneration to the holder of the protected plant variety only from the date of actual use of that variety and at the latest by the end of the marketing year in which that operation took place, that is to say no later than 30 June following the date of reseeding.

50. To reinforce my proposed interpretation of the provisions to which the request for a preliminary ruling relates, I would point out that this approach is consistent with the common rule in the field of intellectual property rights according to which, in the absence of prepayment, which is ruled out in the present case in my view, the obligation to pay a fee, generally in the form of royalties, is linked to the actual exploitation of the right in question. In addition, the

referring court emphasises that this approach is also in keeping with the practice usually followed with regard to plant variety rights, including by STV.

IV – Conclusion

51. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Landgericht Mannheim (Germany) as follows:

Articles 14 and 94 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights in conjunction with Article 5 et seq. 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 must be interpreted to the effect that a farmer is able to make use of the product of the harvest which he has obtained by planting, on his own holding, propagating material obtained from a protected variety without the authorisation of the right holder, provided he pays the holder an equitable remuneration in accordance with Article 14 within a period beginning on the date on which the farmer actually seeded the product of his harvest and expiring at the end of the marketing year in which that use took place.

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1 – Original language: French.

2 – OJ 1994 L 227, p. 1.

3 – OJ 1995 L 173, p. 14.

4 – The successive amendments to the regulations in question after their adoption have no direct bearing on the present case.

5 – With regard to the objects of STV and the validity of such an organisation of right holders, see the judgment in Saatgut-Treuhandverwaltungsgesellschaft (C‑182/01, EU:C:2004:135, paragraphs 17, 51 and 58).

6 – With regard to the obligation of suppliers of processing services to provide information to the holder of a Community plant variety right under Article 14 of the Basic Regulation, see judgments in Brangewitz (C‑336/02, EU:C:2004:622, paragraphs 54 and 66) and Raiffeisen-Waren-Zentrale Rhein-Main (C‑56/11, EU:C:2012:713, paragraph 42).

7 – The Vogels claim that they were not under any obligation to respond to the request for information dated 31 May 2012 on the ground that that request did not relate to the current marketing year, contrary to Article 8(3) of the Implementing Regulation. That article governs the information to be provided under the sixth indent of Article 14(3) of the Basic Regulation by a farmer to right holders at their request. In this regard, see judgments in Schulin (C‑305/00, EU:C:2003:218, especially paragraphs 59 to 72) and Saatgut-Treuhandverwaltungsgesellschaft (C‑182/01, EU:C:2004:135, paragraphs 59 to 62).

8 – According to the seventeenth recital of the Basic Regulation, *'the exercise of Community plant variety rights must be subjected to restrictions laid down in provisions adopted in the public interest'*.

9 – See the eighteenth recital and Article 14(1) of the Basic Regulation.

10 – See, inter alia, Schulin (C‑305/00, EU:C:2003:218, paragraphs 7 and 47).

11 – The derogation only applies to agricultural plant species specifically mentioned in Article 14(2), which include 'Hordeum vulgare L. — Barley', the cereal whose undisclosed use is in dispute in the main proceedings.

12 – A farmer who has lawfully acquired the seeds of a protected plant variety has the consent of the holder to proceed with the first reproduction or propagation of that variety. On the other hand, use of the product of the harvest is an act for which the holder has not, in general, given consent and which would therefore be liable to constitute an infringement. Nevertheless, under the derogation provided for in Article 14, the farmer is authorised to use all or part of the product of his harvest for a second planting of the variety, that is to say to reseed it, on his own holding (see, inter alia, Bouche, N., 'Protection communautaire des obtentions végétales', JurisClasseur Droit international, fascicule 572-200, 2014, paragraph 150 et seq.).

13 – See the first and second recitals of the Implementing Regulation.

14 – The objective of 'legitimate compensation' is mentioned in Article 5(3) of the Implementing Regulation, which concerns the 'level of remuneration' provided for in Article 14.

15 – The third indent of paragraph 3 provides, however, that 'small farmers', as defined in that provision, are not required to pay that remuneration to the holder.

16 – Convention signed in Paris on 2 December 1961, revised several times, most recently on 19 March 1991, the text of which is available at the website: http://www.upov.int/en/publications/conventions/1991/act1991.htm. The European Union became a member of the UPOV on 29 July 2005.

17 – See the twenty-ninth recital of the Implementing Regulation.

18 – Article 15(2) of the UPOV Convention provides for the following 'optional exception': *'[n]otwithstanding Article 14 [relating to the 'Scope of the Breeder's Right'], each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety …'*. With regard to the historical background and the peculiarities of that provision compared with the corresponding provisions of EU law, see Würtenberger, G., et al., European Community Plant Variety Protection, Oxford University Press, Oxford, 2009, p. 131.

19 – Judgment in Schulin (C‑305/00, EU:C:2003:218, paragraph 71).

20 – Judgment in Geistbeck (C‑509/10, EU:C:2012:416, paragraphs 13, 23 and 24).

21 – Ibid., paragraphs 34 and 35.
22 – According to the judgment in Greenstar-Kanzi Europe (C‑140/10, EU:C:2011:677, paragraphs 44 and 49), the holder or the person enjoying the right of exploitation may also bring an action for infringement against a third party which has obtained harvested material of the protected variety through another person enjoying the right of exploitation who has contravened the conditions or limitations set out in the licensing contract that that other person concluded at an earlier stage with the holder, regardless of whether the third party was aware of those contractual clauses.
23 – See judgments in Schulin (C‑305/00, EU:C:2003:218, paragraph 71) and Geistbeck (C‑509/10, EU:C:2012:416, paragraph 25), in which the Court stated that the cultivation of seeds which had not been declared constitutes an 'infringement' for the purposes of Article 94 of the Basic Regulation.
24 – Paragraph 2 states that '[i]n cases of slight negligence, such claims may be reduced according to the degree of such slight negligence, but not however to the extent that they are less than the advantage derived therefrom by the person who committed the infringement'.
25 – For this distinction, see my Opinion in Geistbeck (C‑509/10, EU:C:2012:187, point 41 et seq.) and the judgment in Geistbeck (C‑509/10, EU:C:2012:416, paragraph 28).
26 – My emphasis. With regard to this notion, which appears in the fourth indent of Article 14(3), see judgment in Saatgut-Treuhandverwaltung (C‑7/05 to C‑9/05, EU:C:2006:376) relating to the interpretation of Article 5(2), (4) and (5) of the Implementing Regulation, as amended by Commission Regulation (EC) No 2605/98 of 3 December 1998 (OJ 1998 L 328, p. 6), which defines the criteria for determining the exact amount of the remuneration to be paid to the holder in this regard, where a contract has not been concluded or does not apply between those concerned.
27 – My emphasis. Judgment in Geistbeck (C‑509/10, EU:C:2012:416, paragraph 43).
28 – It should be noted in this regard that the derogation under Article 14 of the Basic Regulation is the result of a compromise, as the adoption of that provision resulted in lengthy discussions on account of the difference in the views held by breeders and agricultural producers and in the absence of unanimity between the Member States, according to Kiewiet, B., 'Régime de protection communautaire des obtentions végétales', Comptes rendus de l'Académie d'agriculture de France, 1997, vol. 83, No 2, p. 5 et seq., paragraph 2.3.
29 – Thus, certain inaccuracies in the French versions of the Basic Regulation and of the Implementing Regulation were corrected by the Court in the light of other language versions of those instruments in Geistbeck (C‑509/10, EU:C:2012:416, paragraph 28) and Raiffeisen-Waren-Zentrale Rhein-Main (C‑56/11, EU:C:2012:713, paragraph 27).
30 – In this regard, see point 45 et seq. of this Opinion.
31 – My emphasis.
32 – The idea of the time when the payment obligation comes into existence immediately is clearer from language versions other than the French version, such as the Spanish, Italian, Portuguese and Finnish versions.
33 – My emphasis.
34 – See, inter alia, Schulin (C‑305/00, EU:C:2003:218, paragraph 47).
35 – With regard to the interests at stake, see the Opinion of Advocate General Ruiz-Jarabo Colomer in Saatgut-Treuhandverwaltung (C‑7/05 to C‑9/05, EU:C:2006:97, points 22 and 23).
36 – Article 2, entitled 'Safeguarding interests', stipulates, in paragraph 1, that the conditions to give effect to the derogation provided for in Article 14 of the Basic Regulation must be *'implemented both by the holder … and by the farmer in such a way as to safeguard the legitimate interests of each other', which entails, in accordance with paragraph 2, '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'*.
37 – It can also be noted that the referring court states that fixing the start of the payment obligation on the farmer after the date of reseeding and, where applicable, after a request from the holder of a Community plant variety right is consistent with common practice.
38 – See the third and nineteenth recitals of that regulation, the latter provision stating that *'it must be ensured that the conditions are laid down at Community level'*.
39 – See, inter alia, Kone and Others (C‑557/12, EU:C:2014:1317, paragraph 24 et seq.).
40 – In this regard, the Commission states that account should be taken of the fact that, under the fifth indent of Article 14(3) of the Basic Regulation, the holders alone are responsible for the control and supervision of the use of the protected varieties in the context of the authorised planting under that article and they depend, therefore, on the good faith and cooperation of the farmers concerned (see judgment in Geistbeck, C‑509/10, EU:C:2012:416, paragraph 42).
41 – See idem and my Opinion in Geistbeck (C‑509/10, EU:C:2012:187, point 54).
42 – See, by analogy, judgment in Raiffeisen-Waren-Zentrale Rhein-Main (C‑56/11, EU:C:2012:713, paragraphs 26 to 28), in which the Court held that it would be contrary to the objective of the Implementing Regulation, which seeks to safeguard the legitimate interests of the breeder and of the farmer in a balanced manner, to consider that there is no temporal limit on the obligation of the supplier of processing services to provide information.
43 – As it forms part of the legal order of the European Union, the principle of legal certainty must be respected both by its institutions and by the Member

States when they exercise the powers conferred on them by EU legislation. That principles requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those subject to them. It is to be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the obligations which such rules impose on them. See, inter alia, judgments in Schulin (C‑305/00, EU:C:2003:218, paragraph 58); 'Goed Wonen' (C‑376/02, EU:C:2005:251, paragraph 32), and Traum (C‑492/13, EU:C:2014:2267, paragraphs 27 to 29).

44 – As is stated in the fifth recital of the Implementing Regulation, Article 7 thereof, entitled 'small farmers', supplements the criteria defining this category of farmers who are expressly exempt from paying an equitable remuneration, which are laid down in the third indent of Article 14(3) of the Basic Regulation. Article 7(2) provides that land set aside 'in the marketing year … in which the payment of the remuneration would be due' is included in the areas to be taken into account in determining whether a farmer falls within that category, provided subsidies or compensatory payments are granted by the European Union or by the Member State concerned in respect of that set aside (my emphasis).

45 – In the view of the Spanish Government, because EU law does not fix a precise period for payment of that remuneration, the holder should request payment within the time-limit prescribed by the provisions of his national law governing actions of this nature, fixing the amount payable by issuing an invoice and indicating the period within which payment must be made and, failing that, the obligation to pay that remuneration, although it has come into existence, could not be regarded as due and payable, with the result that the farmer could not commit the infringement covered by Article 94 of the Basic Regulation.

46 – STV considers that in the present case the guide listing the protected varieties administered by it, which is sent to farmers each year, and the supplementary information on its website (see point 6 of this Opinion) would allow farmers easily to calculate the amount which they owe in this respect.

47 – My emphasis.

48 – The obligation to make good the loss suffered by a holder who is the victim of an infringement, which is the aim of Article 94 (see judgment in Geistbeck, C‑509/10, EU:C:2012:416, paragraph 36), on the other hand, entails an element of intent in the circumstances mentioned in paragraph 2 of that article.

49 – The criteria for fixing the level of the equitable remuneration which are defined by Article 5(2) et seq. are complex to deal with. Furthermore, the sixth indent, in fine, of Article 14(3) of the Basic Regulation states that *'the actual level of this equitable remuneration may be subject to variation over time'*.

50 – Article 10 of the Implementing Regulation provides that the holder is obliged to communicate to the farmer the information necessary for calculating the amount of the equitable remuneration due under the fourth indent of Article 14(3) of the Basic Regulation.

51 – In the judgments in Schulin (C‑305/00, EU:C:2003:218, paragraph 69 et seq.), Brangewitz (C‑336/02, EU:C:2004:622, paragraph 53 et seq.), and Saatgut-Treuhandverwaltungsgesellschaft (C‑182/01, EU:C:2004:135, paragraph 62), the Court held that neither the Basic Regulation nor the Implementing Regulation provide for the option for the right holder, where there is no indication whether a person may have used farmer's privilege, to require him to provide information whether he has made use or intends to make use of that privilege.

52 – It has been stated in German legal writings that there is no reason why someone who has made use of farmer's privilege should not be obliged to provide the required information directly (see Würtenberger, G., 'Nachbauvergütungen: eine kritische Bestandsaufnahme', in Rechtsschutz von Pflanzenzüchtungen, Metzger, A. (ed.), Mohr Siebeck, Tübingen, 2014, p. 111).