



Monsanto cannot prohibit the marketing in the EU of soy meal containing, in a residual state, a DNA sequence patented by it

A European patent can only be relied on in relation to an invention which actually performs the function for which it is patented

Since 1996 Monsanto has held a European patent relating to a DNA sequence which, once introduced into the DNA of a soybean plant, makes it resistant to the herbicide glyphosate, which is commonly used in agriculture. Farmers can thus eliminate weeds without harming soybean plant cultivation.

This genetically-modified soybean plant, known as the 'RR soybean plant', is cultivated on a large scale in Argentina, where there is no patent protection for Monsanto's invention.

In 2005 and 2006, European companies imported soy meal from Argentina into the Netherlands. Tests carried out at Monsanto's request revealed the presence of traces of the DNA characteristic of 'RR soybean', which indicated that the imported soy meal had been produced using that type of soybean plant.

The Rechtbank's-Gravenhage (Court of The Hague, Netherlands), before which Monsanto brought proceedings, referred questions to the Court of Justice concerning the issue whether the mere presence of the DNA sequence protected by a European patent is sufficient to constitute infringement of Monsanto's patent when the soy meal is marketed in the European Union.

The Court observes that the Biotechnology Directive¹ makes the protection conferred by a European patent subject to the condition that the genetic information contained in the patented product or constituting that product performs its function in the material in which that information is contained.

In that regard, the Court notes that the function of Monsanto's invention is being performed when the genetic information protects the soybean plant against the effect of the herbicide glyphosate. However, that function of the protected DNA sequence can no longer be performed when it is in a residual state in the soy meal, which is a dead material obtained after the soy has undergone several treatment processes. As a result, the protection conferred on European patents is not available when the genetic information has ceased to perform the function it performed in the initial material from which the material in question is derived.

Such protection cannot be granted on the ground that the genetic information contained in the soy meal could possibly perform its function once again in another plant. For that to be so, it would be necessary that the DNA sequence actually be introduced in that other plant for protection under a European patent to be conferred in relation to that plant.

In those circumstances, **Monsanto cannot reply on the Directive to prohibit the marketing of soy meal originating from Argentina which contains its biotechnological invention in a residual state.**

¹ Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13).

Lastly, the Court states that the Directive precludes a national rule from granting absolute protection to a patented DNA sequence as such, regardless of whether it performs its function in the material containing it. The provisions of the Directive providing for a requirement of actual performance of that function must be regarded as constituting an exhaustive harmonisation of the matter in the European Union.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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