

JUDGMENT OF THE COURT (Fifth Chamber)

11 March 2004 *

In Case C-182/01,

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

Saatgut-Treuhandverwaltungsgesellschaft mbH

and

Werner Jäger,

on the interpretation of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1) and of Articles 3(2) and 8 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 (OJ 1995 L 173, p. 14),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: P. Jann, acting for the President of the Fifth Chamber,
C.W.A. Timmermans and S. von Bahr (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

- the Saatgut-Treuhandverwaltungsgesellschaft mbH, by K. von Gierke,
Rechtsanwalt,

- Mr Jäger, by W. Graf von Schwerin, Rechtsanwalt,

- the Italian Government, by I.M. Braguglia, acting as Agent, and M. Fiorilli,
avvocato dello Stato,

- the Commission of the European Communities, by G. Braun and M. Niejahr,
acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Saatgut-Treuhandverwaltungsgesellschaft mbH, represented by K. von Gierke and E. Krieger, Rechtsanwalt, of Mr Jäger, represented by W. Graf von Schwerin, M. Miersch, Rechtsanwalt, and R.E. Wilhelms, Patentanwalt, of the United Kingdom Government, represented by P. Ormond, acting as Agent, and by M. Hoskins, barrister, and of the Commission, represented by G. Braun and R. Bierwagen, Rechtsanwalt, at the hearing on 3 October 2002,

after hearing the Opinion of the Advocate General at the sitting on 7 November 2002,

gives the following

Judgment

- 1 By order of 22 March 2001, received at the Court on 26 April 2001, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1) and of Articles 3(2) and 8 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 (OJ 1995 L 173, p. 14).

- 2 Those questions were raised in proceedings between Saatgut-Treuhandverwaltungsgesellschaft mbH ('STV') and Mr Jäger on the subject of the latter's obligation, as a farmer, to indicate to STV, on its request, whether and, if so, to what extent he has grown various plant varieties, some of which are protected under Regulation No 2100/94.

Legal background

Community legislation

Regulation No 2100/94

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

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

5 Under Article 13(1) and (2) of the regulation:

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

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

(a) production or reproduction (multiplication);

(b) conditioning for the purpose of propagation;

(c) offering for sale;

(d) selling or other marketing;

(e) exporting from the Community;

(f) importing to the Community;

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

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

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

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

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

8 Under Article 14(3) of Regulation No 2100/94 ‘[c]onditions to give effect to the derogation provided for in paragraph 1 and to safeguard the legitimate interests of the breeder and of the farmer, shall be established, before the entry into force of this Regulation, in implementing rules pursuant to Article 114’. Paragraph (3) states the criteria on the basis of which those conditions must be established,

which include the principles that there should be no quantitative restriction of the level of the farmer's holding, that the product of the harvest may be processed for planting, either by the farmer himself or through services supplied to him, that farmers, apart from small farmers, are to be required to pay an equitable remuneration to the holder, which is to be sensibly lower than the amount charged for the licensed production of propagating material of the same variety in the same area, and that monitoring compliance with Article 14 is to be the exclusive responsibility of holders.

- 9 The sixth indent of Article 14(3) of Regulation No 2100/94 also provides, among those criteria, for an obligation on farmers to provide information. That provision is worded as follows:

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

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

Regulation No 1768/95

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

12 Article 2 of Regulation No 1768/95 provides:

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

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

13 Under Article 3(1) and (2) of Regulation No 1768/95:

‘1. The rights and obligations of the holder which derive from the provisions of Article 14 of the basic Regulation, as specified in this Regulation, other than the right [relating to] an already quantifiable payment of the equitable remuneration referred to in Article 5, may not be the object of a transfer to others. However, they shall be included in the rights and obligations which are concerned by a transfer of the Community plant variety right in accordance with the provisions of Article 23 of the basic Regulation.

2. Rights referred to in paragraph 1 may be invoked by individual holders, collectively by several holders or by an organisation of holders which is established in the Community at Community, national, regional or local level. An organisation of holders may act only for its members, and only for those thereof which have given the respective mandate in writing to the organisation. It shall act either through one or more of its representatives or through auditors accredited by it, within the limits of their respective mandates.’

14 Article 4(3) of Regulation No 1768/95 provides as follows:

‘The person or persons to whom the holding concerned belongs as property at the time at which the fulfilment of an obligation is claimed, shall be deemed to be the farmer, unless they provide the proof that another person is the farmer who must fulfil the obligation, in accordance with the provisions of paragraphs 1 and 2.’

15 Article 8 of Regulation No 1768/95 provides:

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

2. Where such contract has not been concluded or does not apply, the farmer shall, without prejudice to information requirements under other Community

legislation or under legislation of Member States, on request of the holder, be required to provide a statement of relevant information to the holder. The following items shall be considered to be relevant:

- (a) the name of the farmer, the place of his domicile and the address of his holding,
- (b) the fact whether the farmer has made use of the product of the harvest belonging to one or more varieties of the holder for planting in the field or fields of his holding,
- (c) if the farmer has made such use, the amount of the product of the harvest belonging to the variety or varieties concerned, which has been used by the farmer in accordance with Article 14(1) of ... Regulation [No 2100/94],
- (d) under the same condition, the name and address of the person or persons who have supplied a service of processing the relevant product of the harvest for him for planting,
- (e) if the information obtained under (b), (c) or (d) cannot be confirmed in accordance with the provisions of Article 14, the amount of licensed propagating material of the varieties concerned used as well as the name and address of the supplier or suppliers thereof,

...

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

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

...

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

5. A request which has not been made directly to the farmer concerned, shall be considered to comply with the provisions of paragraph 4, third sentence, if it is sent to farmers through the following bodies or persons, with their prior agreement respectively:

National legislation

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

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

The main proceedings and the questions referred to the Court

- 17 According to the order for reference, STV is a limited liability company ('Gesellschaft mit beschränkter Haftung'), established under German law, whose object is the protection of the economic interests of natural and legal persons and of associations which directly or indirectly produce or market seeds or which are involved in the production or marketing of seeds. The company's activities include, in particular (i) monitoring plant variety rights nationally and internationally, especially the conduct of checks in respect of the plant variety rights of its members or third parties at propagating firms and propagating and distribution associations; (ii) collecting licence fees in respect of plant variety rights and (iii) adopting general measures intended to promote production and to guarantee the supply to consumers of top-quality seeds and the distribution of the latter. It does not, however, purchase or sell seeds.

- 18 STV's shareholders include holders and exclusive licensees of plant variety rights under national law, that is to say under the SortG, and/or under Community law, that is to say under Regulation No 2100/94. According to the order for reference, STV's shareholders also include the Bundesverband Deutscher Pflanzenzüchter eV (Federal Association of German Plant Breeders; 'BDP'), whose members include a large number of holders and exclusive licensees of plant variety rights under German law and/or Community law.
- 19 By virtue of powers of attorney and written mandates, STV is invoking in its own name, before a large number of German courts and against hundreds of German farmers, including Mr Jäger, the rights of more than 60 persons, holders of and/or persons entitled to plant variety rights under Community law or national law, in connection with the planting of harvested material from a total of over 500 protected plant varieties. The persons whose rights it is invoking include its own shareholders and members of an association which is a shareholder in STV and persons who are neither shareholders in STV nor members of a connected association but who have given STV a written mandate to invoke in its own name, in return for remuneration, their plant variety rights in respect of the planting of harvested material from protected plant varieties.
- 20 STV requested information from Mr Jäger about the extent to which in the 1997/98 growing season he planted harvested material from a total of over 500 plant varieties, of which approximately one third are protected under Regulation No 2100/94.
- 21 The national court notes that STV submits that it is an 'organisation of holders' under Article 3(2) of Regulation No 1768/95 and therefore may bring legal proceedings, by virtue of the power conferred on it for that purpose, to enforce the rights of all the holders of plant variety rights and persons entitled to those rights who have given it a mandate to do so, irrespective of whether or not they number among its shareholders.

- 22 According to the national court, STV also maintains that Mr Jäger had, as a farmer, to tell it whether, and if so to what extent, he had planted harvested material of any of the varieties referred to in the action — without it being required to establish specifically that he had done so in respect of a particular variety. That comprehensive obligation to provide information derives, in respect of the plant varieties protected by Regulation No 2100/94, from the sixth indent of Article 14(3) of Regulation No 2100/94 in conjunction with Article 8(2) of Regulation No 1768/95.
- 23 Mr Jäger contends that Article 3(2) of Regulation No 1768/95 refers to an organisation, or an association, which has ‘members’ and not to a commercial undertaking, such as a limited company, which has ‘shareholders’ rather than ‘members’. Furthermore, even if STV were to be regarded as an organisation under Article 3(2) of Regulation No 1768/95, that provision would not apply to the interests of the holders of Community plant variety rights who are merely members of a shareholder in STV or are wholly outside it.
- 24 As to the right to information, Mr Jäger argues that neither the sixth indent of Article 14(3) nor Article 8 of Regulation No 1768/95 obliges the farmer to provide information where the holder has not proved that seeds have been used.
- 25 The Landgericht Düsseldorf (District Court, Düsseldorf, Germany) dismissed the action brought by STV against Mr Jäger. It found that STV was not entitled to bring an action in its own name for those holders and persons entitled which STV had not shown to be qualified by virtue of membership. For the remainder, the court dismissed the action as unfounded, finding that STV had failed to establish whether and in respect of which varieties the persons who had given it a mandate were the holders of the plant variety rights, or the holders of exclusive rights of exploitation, during the relevant period.

26 STV appealed against that judgment to the Oberlandesgericht Düsseldorf.

27 The Oberlandesgericht states that the merits of the appeal depend first and foremost on whether STV, which is not invoking plant variety rights of its own, is entitled to assert, in its own name, the national and Community rights of the holders and persons entitled specifically named in the application.

28 In that regard, the national court points out that there is some indication that the terms ‘organisation’ and ‘members’ in Article 3(2) of Regulation No 1768/95 must be interpreted broadly, because Article 3(2) must be considered independently and because, in the German version, it refers to ‘organisation’ in general (‘Organisation’) with the same meaning as may be given to an association (‘Vereinigung’), without making reference to any particular legal form. According to the Oberlandesgericht, doubts none the less remain as to whether the provision covers all groups of holders, including in particular a limited company, and whether the power of an organisation under Article 3(2) of Regulation No 1768/95 to invoke the rights referred to in paragraph (1) of that article also extends to the rights of members of shareholders in that organisation, whose status is that of ‘indirect members’ of the organisation.

29 In addition, the national court wonders whether STV is also entitled to enforce the rights under Article 3(1) of Regulation No 1768/95 of the holders and persons entitled, who are neither shareholders in STV nor indirect members of it in the way explained in the foregoing paragraph but who none the less make STV responsible for safeguarding their interests in return for a consideration.

- 30 Next, regarding the interpretation of the sixth indent of Article 14(3) of Regulation No 2100/94 and Article 8 of Regulation No 1768/95, the national court states that STV has adduced no evidence to suggest that Mr Jäger carried out any of the acts listed in Article 13(2) of Regulation No 2100/94 in respect of the protected varieties specified in STV's action or that, at the very least, he used the varieties concerned on his holding. Consequently, STV has the right to information which it claims only if the provisions concerned confer an entitlement to information from any farmer, irrespective of the circumstances of the main proceedings.
- 31 The national court finds that the provision of the relevant information, provided for in the sixth indent of Article 14(3) of Regulation No 2100/94, is one of the conditions which a farmer must satisfy for the planting referred to in Article 14(1) to be permitted by way of exception. Consequently, in its view, the obligation to provide information necessarily requires there to have been an act of planting.
- 32 As regards Article 8 of Regulation No 1768/95, the Oberlandesgericht Düsseldorf recalls that, as an implementing regulation, Regulation No 1768/95 has as its objective merely to lay down in more detail the conditions in which the exemption provided for in Article 14(1) of Regulation No 2100/94 is to apply.
- 33 The national court adds that it is true that it will often be very difficult for the holder to establish infringements deriving from the use by a farmer, on his own holding, of the harvested material of a protected variety as propagating material, since a plant cannot be checked to establish whether it has been produced from harvested material or from purchased seed. However, this difficulty would not be wholly resolved by a comprehensive entitlement to obtain information from any farmer, since, particularly if the answer were in the negative, the holder would be faced with the same difficulties, since adequate checks are not possible. Furthermore, in the national court's view, it seems 'fundamentally questionable

to recognise an entitlement to information in order to open the way to a claim for payment, by virtue of which the person entitled to the information first intends to find out whether the conditions for a claim for payment exist at all'. Usually it is the responsibility of the person claiming a right to adduce, at the least, concrete evidence of the facts establishing the liability of the person who has infringed that right.

- 34 It was in those circumstances that the Oberlandesgericht Düsseldorf decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Can

- (a) a limited company established under German law (GmbH) be an "organisation of holders" within the meaning of Article 3(2) of Regulation ... No 1768/95 ..., and can
- (b) such a company invoke, pursuant to Article 3(2), the rights deriving from Article 3(1) of the abovementioned regulation even in respect of holders who are not shareholders in it but members of an association which is a shareholder in it, and can
- (c) such a company invoke, pursuant to Article 3(2), the rights deriving from Article 3(1) of the abovementioned regulation (for a consideration) even in respect of holders who are neither shareholders nor members of an association which is a shareholder?

- (2) Must the sixth indent of Article 14(3) of ... Regulation ... No 2100/94 ... in conjunction with Article 8 of Regulation ... No 1768/95 ... be interpreted as

meaning that the holder of a plant variety right protected under Regulation No 2100/94 can require the information referred to in the abovementioned provisions from any farmer, irrespective of whether or not there is any indication that he has carried out an act of use in respect of the variety in question under Article 13(2) of Regulation No 2100/94, or at least otherwise used the variety in question on his holding?’

The first question

35 By its first question, the national court is asking essentially whether Article 3(2) of Regulation No 1768/95 must be interpreted as meaning that a limited company can constitute an ‘organisation of holders’ for the purposes of that provision and, if it can, whether it may invoke (i) the rights of holders who are members not of the company but of an organisation which is itself a shareholder in the company and (ii) the rights of holders who are neither shareholders in the company nor members of an association which is such a shareholder, but who appoint the company to safeguard their interests for a consideration.

Observations submitted to the Court

36 STV maintains that Article 3(2) of Regulation No 1768/95 must be interpreted broadly. The Community legislature deliberately refrained from specifying the exact form of the group of holders concerned in order to take account of the different situations within the Member States. The provision applies to a central body responsible for enforcing holders’ rights. Accordingly, a limited company incorporated under German law is covered by the provision.

- 37 Furthermore, by virtue of Article 3(2) of Regulation No 1768/95, for STV to be able to invoke the rights of holders deriving from Article 3(1) of the regulation, it is sufficient that each holder has given it a written mandate to do so.
- 38 In that regard, STV submits that the term ‘members’ must, like the term ‘organisation’, be interpreted broadly and simply means ‘belonging’. Therefore, where a mandate is given to such an organisation, the condition concerning ‘members’ for the purpose of Article 3(2) of Regulation No 1768/95 is also satisfied.
- 39 Holders are *a fortiori* members when they have not only given a mandate to an organisation which is in the form of a company but are also members of an association which is, for its part, a shareholder in that organisation. In any event, such holders are ‘indirect members’ of the organisation, who, by having formed the association of which they are members, are connected by virtue of company law with the organisation acting on their behalf.
- 40 Mr Jäger contends that an undertaking such as STV cannot be covered by the term ‘organisation’ in Article 3(2) of Regulation No 1768/95. In particular, a limited company obviously does not have ‘members’ within the meaning of that provision. The use of the term ‘members’ shows that the Community legislature was contemplating a professional interest group, whose legal form is an association or similar structure and not an undertaking which is wholly independent both from a legal and organisational point of view and from the point of view of the individual interests of the holders.

- 41 The Italian Government submits that an organisation of holders under Article 3(2) of Regulation No 1768/95 cannot take the form of a company, since a company has legal personality distinct from that of its shareholders and must therefore be regarded as a third party in relation to each holder of a plant variety right. Accordingly, under Regulation No 1768/95, the rights of a holder deriving from Article 14 of Regulation No 2100/94 cannot be assigned to a company.
- 42 The Commission submits that the concept of an organisation of holders which is established in the Community at Community, national, regional or local level should be interpreted broadly in order to encompass all the various organisational forms found in the Member States, which is also why the Community legislature deliberately chose to refer to such an organisation in general terms.
- 43 Relying on the idea that all forms of organisation must be permitted and the rights of holders safeguarded irrespective of the form of organisation, the Commission submits that both natural persons and organisations whose members are holders may be members of an organisation of holders. Consequently, a limited company established under German law may be an ‘organisation of holders’ for the purposes of Article 3(2) of Regulation No 1768/95 as regards holders who are not shareholders in it but who are members of an organisation which is itself a shareholder in the company. The latter are indirect members and the company may invoke their rights, provided that they have given it a mandate to do so.
- 44 However, the second sentence of Article 3(2) of Regulation No 1768/95 clearly states that an organisation of holders under that provision may act only for its members. It follows that an organisation of holders cannot invoke the rights referred to in Article 3(1) for holders who are not shareholders in it or members of

it and who are not members of an association which is a shareholder in or member of that organisation either.

Findings of the Court

- 45 It is appropriate to recall that, in accordance with Article 14(3) of Regulation No 2100/94 and as is stated by Article 1 of Regulation No 1768/95, Regulation No 1768/95 establishes the implementing rules on the conditions to give effect to the derogation provided for in Article 14(1) of Regulation No 2100/94.
- 46 It is apparent from Article 3(1) of Regulation No 1768/95 that, apart from the right relating to an already quantifiable payment of the equitable remuneration to be paid to the holder, the holder's rights and obligations deriving from Article 14 of Regulation No 2100/94 may not be the object of a transfer to others.
- 47 As the Advocate General has noted in point 20 of his Opinion, the rights concerned are essentially the right to receive the remuneration owed by the farmer, the right to monitor how Article 14 of Regulation No 2100/94, or the provisions adopted under it, are applied and the right of holders to obtain, on their request, all relevant information from farmers and suppliers of processing services.
- 48 Under Article 3(2) of Regulation No 1768/95, those rights may be invoked by individual holders, collectively by several holders or by an organisation of holders which is established in the Community at Community, national, regional or local level.

49 The term ‘organisation of holders’ is not, however, defined in Regulation No 1768/95.

50 Nevertheless, it follows both from the requirements of the uniform application of Community law and the principle of equality that the terms of a provision of Community law which includes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the purpose of the legislation in question (Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43, and Case C-40/01 *Ansul* [2003] ECR I-2439, paragraph 26).

51 In that regard, it must be found that the provisions of Article 3(2) of Regulation No 1768/95 seek to allow holders to organise themselves appropriately in order to enforce the rights which they derive from Article 14 of Regulation No 2100/94. They may act individually or collectively or may even establish an organisation for that purpose. Those provisions leave the choice of which legal form the organisation is to take to the holders and the organisation may thus take the form of an association or of a limited company.

52 An examination of the various linguistic versions of Article 3(2) of Regulation No 1768/95 bears out that interpretation. The terms used in the Danish (‘sammenslutning’), English (‘organisation’), Spanish (‘organizaci3n’), French (‘organisation’), Greek (‘σργάνωση’), Italian (‘organizzazione’), Dutch (‘organisatie’), Portuguese (‘organizaç3o’) Finnish (‘järjestö’) and Swedish (‘organisation’) versions are all sufficiently general to be capable of covering not only associations but also other forms of organisation, such as the limited company. Although the German version uses the term ‘Vereinigung’ in the first sentence of paragraph 2 and in Article 3(3) of Regulation No 1768/95, it is none the less the case that it

employs the term ‘Organisation’ in the second sentence of Article 3(2) of the regulation.

- 53 The fact that the second sentence of Article 3(2) of Regulation No 1768/95 refers to ‘members’ of the organisation of holders can be explained quite simply by the use of the term ‘organisation’ and is not an indication of the legal form which the organisation must take.
- 54 As regards the argument relied on by the Italian Government that an ‘organisation of holders’ for the purposes of Article 3(2) of Regulation No 1768/95 cannot adopt the form of a company because a company must be regarded as a third party vis-à-vis each holder, suffice it to state, first, that any organisation having legal personality is a third party vis-à-vis the holders belonging to it and that that finding does not apply solely to organisations which have taken the form of a company. Second, as the Advocate General notes in point 21 of his Opinion, the mere fact that a person becomes a member of an organisation which is incorporated as a limited company does not mean that he has transferred rights to that company.
- 55 Article 3(2) of Regulation No 1768/95 gives no guidance on the legal form to be taken by the members of an organisation of holders. However, if, as is clear from paragraph 51 of the present judgment, the choice as to which legal form the organisation is to take has been left to the holders, that must also be true of the members of the organisation. Therefore, as the Commission has rightly pointed out, both natural persons and organisations whose members are holders may be members of an organisation of holders. It follows that a limited company may constitute an ‘organisation of holders’ within the meaning of Article 3(2) of Regulation No 1768/95, also in respect of holders who are not shareholders in it but who are members of an organisation which is itself a shareholder in the company. In that case, the latter are indirect members of the company.

56 However, it is clear from the second sentence of Article 3(2) of Regulation No 1768/95 that an organisation may invoke the rights of holders deriving from Article 14 of Regulation No 2100/94 only if its members, direct or indirect, have given it a written mandate to do so.

57 It is also apparent from the second sentence of that provision that an organisation of holders may act only for its members and not on its own behalf or for holders who are not members of it.

58 Therefore, the answer to be given to the first question is that Article 3(2) of Regulation No 1768/95 must be interpreted as meaning that a limited company is capable of constituting an 'organisation of holders' of plant variety rights for the purposes of that provision. Such an organisation may invoke the rights of holders who are members of another organisation where the other organisation is itself a member of the first organisation. However, it may not invoke the rights of holders who, although not members of the first organisation or of another organisation which is, have appointed it to safeguard their interests in return for a consideration.

The second question

59 By its second question, the national court is asking essentially whether the sixth indent of Article 14(3) of Regulation No 2100/94 in conjunction with Article 8 of Regulation No 1768/95 must be construed as meaning that the holder of a Community plant variety right can require a farmer to provide the information specified in those provisions where the holder has no evidence that the farmer has used or will use, for propagating purposes in the field, on his own holding, the product of the harvest obtained by planting, on his own holding, propagating material of a variety other than a hybrid or synthetic variety which is covered by

that right and belongs to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94.

60 It must be noted that in its judgment of 10 April 2003 in Case C-305/00 *Schulin* [2003] ECR I-3525, the Court responded to a question cast in almost identical terms to those of the second question referred to it in this instance.

61 Therefore, for the purposes of this judgment, the Court must, first, refer to paragraphs 46 to 69 and paragraph 71 of the judgment in *Schulin*. Second, as to Article 4(3) of Regulation No 1768/95, which STV relies on in support of its interpretation of Article 8(2) of that regulation, it is sufficient to note that Article 4 (3) does not impose any additional obligations on farmers but quite simply lays down rules for the purpose of determining who is required to comply with the farmer's obligations deriving from Article 14 of Regulation No 2100/94.

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

Costs

- 63 The costs incurred by Italian and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Oberlandesgericht Düsseldorf by order of 22 March 2001, hereby rules:

1. Article 3(2) 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 must be interpreted as meaning that a limited company is capable of constituting an ‘organisation of holders’ of plant variety rights for the

purposes of that provision. Such an organisation may invoke the rights of holders who are members of another organisation where the other organisation is itself a member of the first organisation. However, it may not invoke the rights of holders who, although not members of the first organisation or of another organisation which is, have appointed it to safeguard their interests in return for a consideration;

2. The provisions of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights in conjunction with Article 8 of Regulation No 1768/95 cannot be construed as meaning that the holder of a Community plant variety right can require a farmer to provide the information specified in those provisions where there is no indication that the farmer has used or will use, for propagating purposes in the field, on his own holding, the product of the harvest obtained by planting, on his own holding, propagating material of a variety other than a hybrid or synthetic variety which is covered by that right and belongs to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94.

Jann

Timmermans

von Bahr

Delivered in open court in Luxembourg on 11 March 2004.

R. Grass

V. Skouris

Registrar

President