

Press and Information Division

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Judgment of the Court in Case C-305/00

*Christian Schulin and Saatgut-Treuhandverwaltungsgesellschaft mbH*

**THE HOLDER OF A COMMUNITY PLANT VARIETY RIGHT CAN ASK A  
FARMER TO PROVIDE INFORMATION IF THERE IS SOME  
INDICATION THAT THE FARMER HAS MADE USE OF THE  
"AGRICULTURAL EXEMPTION"**

*The fact of having bought seed from the holder must be held to be such an  
indication.*

A 1994 regulation established a single exclusive system of Community plant variety rights. A person who bred or discovered and developed a variety is entitled to a Community plant variety right. The regulation provides for a derogation from the general principle of protection of the holder's rights, known as the "agricultural exemption". Farmers can use, on their holding, the product of the harvest of a protected variety without obtaining the authorisation of the holder. That exception was adopted on the basis of the public interest in safeguarding agricultural production.

A 1995 regulation established the conditions to give effect to the derogation and provided that farmers who made use of that possibility were to pay remuneration to the holder of the right. That regulation also imposes an obligation on farmers to provide the holder with certain information.

Mr Schulin, a German farmer, refused to provide information to Saatgut-Treuhandverwaltungsgesellschaft mbH (a German seed company engaged in trust management authorised by holders to assert their rights to remuneration) and to let it know whether he had made use of the agricultural exemption in the 1997/1998 marketing year.

He was ordered by the Landgericht Frankfurt am Main to provide the information requested. In the course of the appeal to the Oberlandesgericht Frankfurt am Main, that court asked the Court of Justice whether the holder of a Community protected plant variety right can request information from any farmer with a view to claiming payment of the remuneration due for use of the exemption even where there is no indication that he has used that variety on his holding.

The Court of Justice held, first, that it is clear from the relevant provisions of the 1994 regulation and their structure that they do not refer to any farmer. It also held that to interpret that regulation as meaning that **all farmers**, simply by belonging to that profession, even those who have never planted propagating material of a protected plant variety, **must on request supply holders with all relevant information is not proportionate with the objective of safeguarding the legitimate interests of both breeders and farmers.**

However, given, on the one hand, the difficulty the holder has in asserting his right to information, (in practice, examination of a plant does not reveal whether it was obtained by the use of the product of the harvest or by the purchase of seed), and, on the other hand, the obligation to safeguard the legitimate interests of both the breeder and the farmer, **the holder must be authorised to request information from a farmer where he has some indication that the latter has relied or will rely on the "agricultural exemption".**

The Court has held that **the fact of having bought seed from the holder must be considered to be such an indication.**

*Unofficial document for media use; not binding on the Court of Justice*

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*For the full text of the Judgment, consult our Internet page*

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*at approximately 3 pm today.*

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