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Judgment of the Court in Case C-522/21 | Saatgut-Treuhandverwaltung (KWS Meridian)

Protection of plant variety rights: no minimum level of compensation set

The provision providing for a minimum lump sum calculated on the basis of quadruple the licence fee as compensation for repeated and intentional infringement is invalid

STV is an association of holders of protected plant variety rights, tasked by its members to defend their rights and, in particular, to assert rights to information and entitlements to payment rights in its own name.

It seeks damages before the German courts from a farmer who planted KWS Meridian winter barley, a protected plant variety, without authorisation.

The court seized of the case has doubts as to the validity of the provision contained in an implementing regulation adopted by the Commission. That regulation provides that the holder may claim, in the case of repeated and intentional infringement, a minimum lump sum calculated on the basis of quadruple the licence fee.¹ It then referred a question to the Court of Justice in that regard.

In its judgment delivered on 16 March 2023, the Court found that **the provision at issue is invalid**.

That provision sets a minimum lump sum calculated by reference to the average amount of the **licence fee**, although the amount of the fee cannot in itself form the basis for determining the **damage** since it does **not** necessarily have **any connection** with that damage.

Moreover, the establishment of a minimum lump sum as compensation for the damage suffered by the holder is **contrary to the holder's obligation to prove the extent of the damage** suffered. The provision merely presupposes evidence of the existence of a repeated and intentional infringement of the holder's rights.

Furthermore, that provision is **contrary to the prohibition of punitive damages provided for by EU law**. By establishing the level of compensation at a minimum lump sum calculated on the basis of quadruple the average amount of the licence fee, it may lead to punitive damages being awarded.

Lastly, it **imposes inadmissible limits on the discretion of the court** seized by establishing an irrebuttable presumption regarding the minimum extent of the damage suffered by the holder.

On those grounds, the Court holds that the Commission went beyond the scope of its implementing power.

¹ Article 18(2) of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agriculture exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights (OJ 1995 L173, p. 14), as amended by Commission Regulation (EC) No 2605/98 of 3 December 1998 (OJ 1998 L 328, p. 6).

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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