

Art. 94 Regulation 2100/94 [Infringement]

(1) Whosoever:

effects one of the acts set out in Art. 13 (2) without being entitled to do so, ...; or

(b) omits the correct usage of a variety denomination ...; or

(c) ... uses the variety denomination of a variety for which a Community plant variety right has been granted or a designation that may be confused with it; 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.

**CJEU, 9/6/2016 – C-481/14, *Jørn Hansson v Jungpflanzen Grünewald GmbH*,
ECLI:EU:C:2016:419**

[33] [...] Art. 94 ... establishes for the holder of a Community plant variety right an entitlement to compensation which not only is full but which also rests on an objective basis, that is to say, it covers solely the damage which he has sustained as a result of the infringement.

[34] Art. 94 ... cannot therefore be interpreted as providing a legal basis, to the benefit of the rightholder, which permits an infringer to be required to pay punitive damages, established on a flat-rate basis.

[35] Rather, the extent of the compensation payable under Art. 94 ... must reflect, as accurately as possible, the actual and certain damage suffered by the holder of the plant variety right because of the infringement.

[40] In those circumstances, Art. 94 ... does not permit an infringer to be ordered to pay a flat-rate 'infringer supplement', ... since such a supplement does not necessarily reflect the damage suffered by the holder of the variety infringed ...

[41] Similarly, Art. 94 does not permit the holder of a Community plant variety right to claim restitution of the gains and profits made by an infringer. In fact, both the 'reasonable compensation' and the amount of compensation payable under Art. 94(2) of Regulation No 2100/94 must be set on the basis of the damage suffered by the injured party and not on the basis of the profit made by the person who committed the infringement.

[42] Although para. 2 of Art. 94 refers to the 'advantage derived ... by the person who committed the infringement', it does not provide that that advantage has to be taken into account, as such, in the amount of the financial compensation actually awarded to the holder. ...

[51] In any event, ... Art. 94(1) ... does not provide for reparation for damage other than damage connected to the failure to pay that compensation, thereby excluding from the amount of the compensation costs incurred for monitoring compliance with the rights of the plant variety holder ...

[63] ... [T]he referring court must determine whether the foreseeable amount of the legal costs that may be awarded to the victim of the infringement is such, in view of the sums he has incurred in respect of out-of-court expenses and their utility in the main action for damages, as to deter him from bringing legal proceedings in order to enforce his rights.

CJEU 12/21/2016 – C-618/15, *Concurrence SARL v Samsung Electronic France SAS et al*, ECLI:EU:C:2016:976

[24] By its question, the referring court asks, in essence, how Article 5(3) of Regulation No 44/2001 should be interpreted for the purpose of conferring the jurisdiction given by that provision to hear an action to establish liability for infringement ... on websites operated in various Member States,

[34] In that regard, the fact that the websites ... operate in Member States other than that of the court seised is irrelevant, as long as the events which occurred ... resulted in or may result in the alleged damage in the jurisdiction of the court seised,