

European Union

“Mylan”

Decision of the Court of Justice of the European Union (Third Chamber)

11 January 2024 – Case No. C-473/22; ECLI:EU:C:2024:8

*Mylan AB v. Gilead Sciences Finland Oy, Gilead
Biopharmaceutics Ireland UC, Gilead Sciences Inc.*

Directive 2004/48/EC, Art. 9(7)

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Keywords Medicinal product for human use · Supplementary protection certificate (SPC) · Placement on the market · Subsequent invalidity · Appropriate compensation · Strict liability · Provisional measures · National legislation

Article 9(7) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as not precluding national legislation which provides for a mechanism for compensation for any injury caused by a provisional measure, within the meaning of that provision, based on a system of strict liability of the applicant for those measures, in the context of which the court is entitled to adjust the amount of damages by taking into account the circumstances of the case, including whether the defendant played a part in the occurrence of the injury.

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