

Case C-377/98 Netherlands, Italy, and Norway v Parliament and Council [2001] ECR I-07079

Facts: Netherlands, Italy and Norway sought to challenge the enactment of Directive 98/44/EC on the legal protection of biotechnological inventions (i.e. the Biotech Directive), particularly a provision which considered inventions whose commercial exploitation would be contrary to *ordre public* or morality to be unpatentable. They advanced six pleas, *inter alia*, that the legislature had used an incorrect justification, i.e. Article 114 TFEU. They argued that there are not enough disparities amongst Member States to ‘trigger’ Article 114, that the Directive goes beyond approximation as it creates a new type of property distinct from existing patent law. Italy, in particular, argued that the Directive should have been justified on the basis of industrial development and scientific research.

Held: The Court rejected the whole application and stated that the Biotech Directive was right to be adopted under the Article 114 internal market justification. They argued that the Directive’s main object is to remove legal obstacles in the single market among Member States which could impede and disrupt scientific research and development.