

WRITTEN QUESTION P-0948/05
by Antoine Duquesne (ALDE)
to the Commission

Subject: Processes for modifying the germ line genetic identity of human beings

Article 6(2)(b) of Directive 98/44/EC¹ of 6 July 1998 on the legal protection of biotechnological inventions states that 'processes for modifying the germ line genetic identity of human beings' are to be deemed unpatentable.

Recital 40 of the directive states that 'there is a consensus within the Community that interventions in the human germ line and the cloning of human beings offends against ordre public and morality; whereas it is therefore important to exclude unequivocally from patentability processes for modifying the germ line genetic identity of human beings and processes for cloning human beings'.

This directive, which took more than 10 years to be adopted, would already appear no longer to be in tune with the latest developments, since the consensus referred to in recital 40 clearly no longer exists within the Community. In Belgium, for example, researchers are able to work on germ line therapies with a view to combating disease, but are not able to file patents. Belgian law makes a clear distinction between germ line therapy for corrective purposes (authorised) and germ line therapy for improvement purposes (banned).

Can the Commission confirm or deny the interpretation that the spirit of the directive, as evidenced by Article 6(2)(b) and recital 40, is to ban patents aimed at improving the species but not patents for inventions involving processes for modifying the genetic heritage for therapeutic purposes?

¹ OJ L 213, 30.7.1998, p. 13.