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**Zusammenfassung:**

Nach dem Urteil des Europäischen Gerichtshofs (EuGH) im Verfahren *Greenpeace ./. Brüstle* (in diesem Heft, S. nn) stellt sich die Frage, ob die Forschung an und mit embryonalen Stammzellen von der EU weiterhin gefördert werden kann. In einer gutachterlichen Stellungnahme hierzu vertritt der Bonner Verfassungsrechtler Prof. Dr. Klaus F. Gärditz die Auffassung, dass die Förderung der Forschung mit embryonalen Stammzellen durch die EU das Prinzip der Menschenwürde verletzt, welches vom EU-Recht garantiert ist.

Wir dokumentieren die Stellungnahme nachfolgend im englischen Original.

**Human dignity and research programmes using embryonic stem cells: An Analysis of Brüstle/Greenpeace-judgment of the European Court of Justice**

The following brief report analyzes the judgement in the case of *Brüstle/Greenpeace*, passed by the European Court of Justice on 18 October 2011, and its legal repercussions regarding European research policy, in particular the further promotion of stem cell research under Title XIX of the Treaty on the Functioning of the European Union (TFEU).

**I. The Judgement**

On 18 October 2011, the European Court of Justice in the case of *Brüstle/Greenpeace* (C-34/10) decided on

a reference for a preliminary ruling under Article 267 TFEU from the German Federal Supreme Court of Justice (*Bundesgerichtshof*) with respect to the patentability of technical processes using human embryonic stem cells. Greenpeace filed proceedings seeking annulment of a patent, which relates to neural precursor cells, the processes for their production from embryonic stem cells, and their use for therapeutic purposes. The preliminary ruling given by the Court concerns the interpretation of Article 6(2)(c) of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (Official Journal 1998 L 213, p. 13).

The Court of Justice decided on the merits as follows:

1. Any human ovum after fertilisation, any non-fertilised human ovum into which the cell nucleus from a mature human cell has been transplanted, and any non-fertilised human ovum whose division and further development have been stimulated by parthenogenesis constitute a 'human embryo' regarding to the directive and are, thus, excluded from patentability.
2. The exclusion from patentability concerning the use of human embryos for industrial or commercial purposes according to the directive covers the use of human embryos for purposes of scientific research.
3. The directive also excludes an invention from patentability where the technical teaching which is the subject-matter of the patent application requires the prior destruction of human embryos or their use as base material, whatever the stage at which that takes place.