

**Meaning of the term “human embryos”**  
**(C-34/10, Opinion of the Advocate General)**

Questions relating to the meaning of the term “human embryos” recited in Directive 98/44/EC (the “biotech” Directive”) have been referred to the Court of Justice of the European Union (CJEU) on 21 January 2010 (case C-34/10).

On 10 March 2011, the Advocate General of the CJEU rendered his Opinion, and proposed to the EU Court to answer these questions as follows:

*“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 must be interpreted as follows:*

- ***The concept of a human embryo applies from the fertilisation stage to the initial totipotent cells and to the entire ensuing process of the development and formation of the human body. That includes the blastocyst.***
- *Unfertilised ova into which a cell nucleus from a mature human cell has been transplanted or whose division and further development have been stimulated by parthenogenesis are also included in the concept of a human embryo in so far as the use of such techniques would result in totipotent cells being obtained.*
- ***Taken individually, pluripotent embryonic stem cells are not included in that concept because they do not in themselves have the capacity to develop into a human being.***
- ***An invention must be excluded from patentability where the application of the technical process for which the patent is filed necessitates the prior destruction of human embryos or their use as base material, even if the description of that process does not contain any reference to the use of human embryos.***
- *The exception to the non-patentability of uses of human embryos for industrial or commercial purposes concerns only inventions for therapeutic or diagnostic purposes which are applied to the human embryo and are useful to it”.*

Please note that the fourth point concurs with the Decision issued by the Enlarged Board of Appeal of the EPO in 2008 (G 2/06).