Court of Justice EU, 13 February 2014, Hungary v European Commission

LITIGATION – GEOGRAPHICAL INDICATIONS

Any measures adopted by the institutions of the European Union which are intended to have binding legal effects, are actionable measures (article 263 TFEU)

- **According to consistent case-law any measures adopted by the institutions of the European Union, whatever their form, which are intended to have binding legal effects, are regarded as actionable measures, within the meaning of Article 263 TFEU (see, in particular, Case C-316/91 Parliament v Council [1994] ECR I-625, paragraph 8; Joined Cases C-138/03, C-324/03 and C-431/03 Italy v Commission [2005] ECR I-10043, paragraph 32; and Joined Cases C-463/10 P and C-475/10 P Deutsche Post and Germany v Commission [2011] ECR I-9639, paragraph 36).**

55 Those binding legal effects of a measure must be assessed in accordance with objective criteria, such as the contents of that measure (see, to this effect, inter alia Case 60/81 IBM v Commission [1981] ECR 2639, paragraph 9, and Case C-57/95 France v Commission [1997] ECR I-1627, paragraph 9), taking into account, as appropriate, the context in which it was adopted (see, to this effect, inter alia the Order of 13 June 1991 in Case C-50/90 Sunzest v Commission [1991] ECR I-2917, paragraph 13, and Case C-362/08 P Internationaler Hilfsfonds v Commission [2010] ECR I-669, paragraph 58), and the powers of the institution which adopted the measure (see, to this effect, inter alia Case C-301/03 Italy v Commission [2005] ECR I-10217, paragraph 28).

Automatic registration by European Commission of already protected wine names in E-Bacchusdatabase does not establish binding legal effects and thus is not subject to appeal

- **It follows from all of the foregoing that an entry made in the E-Bacchus database by the Commission under Article 73(1) of Regulation No 607/2009 concerning wine names recognised by Member States as designations of origin or geographical indications before 1 August 2009, which were not published by the Commission under Article 54(5) of Regulation No 1493/1999, has no effect on the automatic protection which those wine names enjoy at EU level. Indeed, the Commission is not authorised either to grant protection or to decide on the wine name which must be entered in the E-Bacchus database pursuant to Article 73(1). Thus, there is no need to make a distinction between the effects of an entry in the lists of quality wines psr published in the 'C' Series of the Official Journal of the European Union and the effects of an entry in the E-Bacchus database.**

64 Therefore, the General Court, in paragraphs 21 and 23 of the judgment under appeal, rightly found that an entry in the E-Bacchus database is not required for those wines names to enjoy protection at EU level, as those names are protected automatically under Regulation No 1234/2007, as amended, without that protection being dependent on their inclusion in that database.

65 Given that the entry at issue does not satisfy the requirements laid down in the case-law cited in paragraph 54 above, the General Court did not err in law by concluding that that entry does not constitute an actionable measure.

Source: **curia.europa.eu**

Court of Justice EU, 13 February 2014

(M. Ilešič (Rapporteur), C.G. Fernlund, A. Ó Caoimh, C. Toader, E. Jarašiūnas)

JUDGMENT OF THE COURT (Third Chamber)

13 February 2014 (*)

"Appeals — Protected geographical indications — Regulation (EC) No 1234/2007 — Register of protected designations of origin and protected geographical indications for wine — E-Bacchus database — Tokaj"

In Case C-31/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 22 January 2013,

Hungary, represented by M.Z. Fehér and K. Szíjjártó, acting as Agents, appellant,

the other parties to the proceedings being:

European Commission, represented by V. Bottka, B. Schima and B. Eggers, acting as Agents, defendant at first instance,

Slovak Republic, represented by B. Ricziová, acting as Agent, intervener at first instance,

THE COURT (Third Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 6 November 2013,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

1 By its appeal, Hungary seeks to have set aside the judgment of the General Court of the European Union of 8 November 2012 in Case T‑194/10 Hungary v Commission ('the judgment under appeal'), in which the General Court dismissed as inadmissible its application for cancellation of the entry of 26 February 2010 of the protected designation of origin 'Vinohradnícka oblast' Tokaj' ('the entry at issue') with Slovakia indicated as country of origin in the electronic register of protected designations of origin and protected geographical indications for wine ('the E-Bacchus database').

Legal context

Regulation (EC) No 1493/1999

2 Article 54 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1) provided the following:

'1. Quality wines produced in specified regions ("quality wines psr") shall mean wines which comply with the provisions of this Title and the Community and national provisions adopted in this connection.

[[...]]

4. Member States shall forward to the Commission the list of quality wines psr which they have recognised, stating, for each of these quality wines psr, details of the national provisions governing the production and manufacture of those quality wines psr.

5. The Commission shall publish the list in the "C" Series of the Official Journal of the European Communities.'

3 That regulation was repealed by Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (OJ 2008 L 148, p. 1).

Regulations No 479/2008 and (EC) No 1234/2007

4 Recital 5 of the preamble to Regulation No 479/2008 stated that it was 'appropriate fundamentally to change the Community regime applying to the wine sector'.

5 Recital 36 of the preamble to that regulation was worded as follows:

'Existing designations of origin and geographical indications in the Community should for reasons of legal certainty be exempt from the application of the new examination procedure. The Member States concerned should, however, provide the Commission with the basic information and acts under which they have been recognised at national level, failing which they should lose their protection as designations of origin or geographical indications. The scope for cancellation of existing designations of origin and geographical indications should be limited for reasons of legal certainty.'

6 Under Article 51(1) of Regulation No 479/2008, wine names which were protected in accordance with Articles 51 and 54 of Regulation No 1493/1999 were automatically protected under Regulation No 479/2008.

7 Regulation No 479/2008 was repealed by Council Regulation (EC) No 491/2009 of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 1999 L 154, p. 1) with effect from 1 August 2009.

8 The second subparagraph of Article 3(1) of Regulation No 491/2009 provides that references to the repealed regulation, that is to say Regulation No 479/2008, will be construed as references to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), as amended by Council Regulation (EC) No 1140/2009 of 20 November 2009 (OJ 2009 L 312, p. 4, 'Regulation No 1234/2007') and will be read in accordance with the respective correlation table set out in Annex XXII to that regulation.

9 That correlation table points out that Article 51 of Regulation No 479/2008 corresponds to Article 118s of Regulation No 1234/2007.

10 Thus, Regulation No 1234/2007 has, pursuant to Regulation No 491/2009, and with effect from 1 August 2009, incorporated Regulation No 479/2008.

11 Article 118i of Regulation No 1234/2007 provides:

'On the basis of the information available to the Commission, the Commission shall decide [...] either to confer protection on the designation of origin or geographical indication which meets the conditions laid down in this subsection and is compatible with Community law, or to reject the application where those conditions are not satisfied.'

12 Article 118n of Regulation No 1234/2007 states:

'The Commission shall establish and maintain an electronic register of protected designations of origin and geographical indications for wine which shall be publicly accessible.'

13 Article 118s of Regulation No 1234/2007, entitled 'Existing protected wine names', is worded as follows:

'1.Wine names, which are protected in accordance with Articles 51 and 54 of Regulation (EC) No 1493/1999 and Article 28 of Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products [...] shall automatically be protected under this Regulation. The Commission shall list them in the register provided for in Article 118n of this Regulation.

2. Member States shall, in respect of existing protected wine names referred to in paragraph 1, transmit to the Commission:

(a) the technical file [...];

(b) the national decisions of approval.

3. Wine names referred to in paragraph 1, for which the information referred to in paragraph 2 is not submitted by 31 December 2011, shall lose protection under this Regulation. The Commission shall take the corresponding formal step of removing such names from the register provided for in Article 118n.

4. Article 118r shall not apply in respect of existing protected wine names referred to in paragraph 1.

The Commission may decide, until 31 December 2014 [...] to cancel protection of existing protected wine names referred to in paragraph 1 if they do not meet the conditions laid down in Article 118b.'

14 On 1 August 2009, pursuant to Article 118n of Regulation No 1234/2007, the E-Bacchus database replaced the publication of the lists of quality wines psr in the Official Journal of the European Union. That database contains protected designations of origin and geographical indications of wines from Member States pursuant to Regulation No 1234/2007 and the designations of origin and geographical indications of wines from third countries protected under bilateral agreements between the European Union and those third countries.

15 Article 71(2) of Commission Regulation (EU) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (OJ 2009 L 193, p. 60), states:

'Any decision to cancel a designation of origin or geographical indication concerned in accordance with Article 51(4) of Regulation (EC) No 479/2008 shall be taken by the Commission on the basis of the documents available to it under Article 51(2) of that Regulation.'

16 Article 73 of Regulation No 607/2009, entitled 'Transitional provisions', provides in paragraphs 1 and 2:

'1. Wine names recognised by Member States as designation of origin or geographical indication by 1 August 2009, which have not been published by the Commission under Article 54(5) of Regulation (EC) No 1493/1999 or Article 28 of Regulation (EC) No 753/2002, shall be subject to the procedure provided for in Article 51(1) of Regulation (EC) No 479/2008.

2. Any amendment to the product specification referr[ing] to wine names protected pursuant to Article 51(1) of Regulation (EC) No 479/2008, or wine names not protected pursuant to Article 51(1) of Regulation (EC) No 479/2008, which has been filed with the Member State at the latest on 1 August 2009, shall be subject to the procedure referred to in Article 51(1) of Regulation (EC) No 479/2008 provided that there is an approval decision by the Member State and a technical file as provided for in Article 35(1) of Regulation (EC) No 479/2008 communicated to the Commission at the latest on 31 December 2011.'

Background to the dispute

17 The lists of quality wines psr published by the Commission in the Official Journal of the European Union on 17 February 2006 (OJ 2006 C 41, p. 1) and on 10 May 2007 (OJ 2007 C 106, p. 1) in accordance with Article 54(5) of Regulation No 1493/1999 included the protected designation of origin 'Vinohradnícka oblasť Tokaj' to describe wine from the viticultural region of Tokaj in Slovakia. That protected designation of origin was registered by the Commission on the basis of information provided by the Slovak authorities according to which that protected designation of origin was included in Articles 8 and 34 of Law No 182/2005 on viticulture and wine (Zákon o vinohradníctve a vinárstve) of 17 March 2005 ('Law No 182/2005').

18 However, the final list of quality wines psr published on 31 July 2009 (OJ 2009 C 187, p. 1) before the introduction of the E-Bacchus database, unlike the previous lists, referred to the protected designation of origin 'Tokajská/Tokajské/Tokajský vinohradnícka oblasť' and to Order No 237/2005 of the Slovak Ministry of Agriculture, laying down the procedures for granting planting rights and implementing certain other provisions of Law No 182/2005 (Vyhláška Ministerstva pôdohospodárstva Slovenskej republiky, ktorou sa ustanovujú podrobnosti o podmienkach udeľovania výsadbových práv a ktorou sa vykonávajú niektoré ďalšie ustanovenia zákona č. 182/2005 Z. z. o vinohradníctve a vinárstve) of 13 May 2005 ('Order No 237/2005'). That amendment was made at the request of the Slovak Government.

19 On 1 August 2009, the protected designation of origin 'Tokajská/Tokajské/Tokajský vinohradnícka oblasť' was listed in the E-Bacchus database.

20 On 30 November 2009, the Slovak authorities sent a letter to the Commission in which they requested the Commission to replace the protected designation of origin 'Tokajská/Tokajské/Tokajský vinohradnícka oblasť' in that database with the protected designation of origin 'Vinohradnícka oblasť Tokaj' or with the protected designation of origin 'Tokaj'. In support of their request they stated that those names were the ones which actually appeared in their national provisions in force on 1 August 2009, that is to say, in Law No 182/2005 and Order No 237/2005.

21 In a letter addressed to the Slovak authorities on 18 February 2010, the Commission stated that only the term 'Vinohradnícka oblasť Tokaj' appeared in those provisions. It therefore rejected the Slovak Government's request to list the designation of origin 'Tokaj' in that database. According to the Commission, the term 'Tokaj' appeared in the national provisions, not on its own but as part of compound terms consisting of a number of words, such as 'Vinohradnícka oblasť Tokaj', 'Akostné víno pochádzajúce z vinohradníckej oblasti Tokaj' or 'Tokajské víno'.

22 However, on 26 February 2010, taking note of the other arguments put forward by the Slovak authorities in their letter of 30 November 2009, and having regard to the Slovak provisions in force on 1 August 2009, the Commission amended the information contained in the E-Bacchus database to make it compatible with the

exact wording of the Slovak provisions in question, and accordingly made the entry at issue.

23 In a letter of 5 March 2010 addressed to the Commission, the Hungarian authorities contested that entry. They claimed that the correct designation of origin is 'Tokajská vinohradnícka oblasť' and not 'Vinohradnícka oblasť Tokaj'. They referred to the new Slovak legislation on wines, that is to say, Law No 313/2009 on viticulture and wine (Zákon o vinohradníctve a vinárstve) of 30 June 2009 ('Law No 313/2009') which came into force on 1 September 2009, in which the term 'Tokajská vinohradnícka oblasť' appeared.

24 On 27 April 2010, the Slovak Parliament adopted a new law, repealing Law No 313/2009 and introducing the protected designation of origin 'Tokaj'. That new law entered into force on 1 June 2010.

The procedure before the General Court and the contested judgment

25 By application lodged at the Registry of the General Court on 28 April 2010, Hungary brought an action for annulment of the entry at issue.

26 By order of 13 September 2010, the Slovak Republic was granted leave to intervene in support of the Commission.

27 At the hearing before the General Court, the Commission raised a plea of inadmissibility, claiming that the entry at issue did not constitute an 'actionable measure' for the purposes of Article 263 TFEU. Relying on the judgment in Case T‑237/08 Abadía Retuerta v OHIM (CUVÉE PALOMAR) [2010] ECR II‑1583, paragraph 101, the Commission contended that the protection of the protected designation of origin 'Vinohradnícka oblasť Tokaj' was based on Slovak national legislation, and so the entry at issue was devoid of legal effects.

28 By the judgment under appeal, the General Court rejected Hungary's action as inadmissible on the ground that the entry at issue did not produce legal effects and was not therefore an 'actionable measure' for the purposes of Article 263 TFEU. The General Court relied inter alia on the automatic nature of the protection of wine names already protected under Regulation No 1493/1999, as laid down by Article 118s(1) of Regulation No 1234/2007. In that regard, the General Court ruled as follows in paragraph 21 of the judgment under appeal: *'It follows from the automatic nature of the protection of wine names already protected under Regulation No 1493/1999, as laid down in Article 118s(1) of Regulation No 1234/2007 [...] that, as regards those wine names, an entry in the E-Bacchus database is not necessary for them to benefit from protection at EU level. The wine names in question are "automatically" protected under Regulation No 1234/2007 [...] without that protection being dependent on their entry in the database. That entry is only a consequence of the automatic transition of the pre-existing protection from one regulatory regime to another and not a condition of that protection. Therefore, since the protected designation of origin "Vinohradnícka oblasť Tokaj" is one of the wine names already protected under Regulation No 1493/1999, its inclusion in the E-Bacchus database was not necessary for its protected designation of origin to benefit from protection at EU level.'*

29 Concerning in particular the protection under Regulation No 1493/1999, the General Court, in paragraph 23 of the judgment under appeal, found that *'the Community protection of wine names established by [that regulation] was based on wine names such as they were determined by laws of the Member States in compliance with the relevant provisions of that regulation. That protection did not result from an autonomous Community procedure or even from a mechanism under which the geographical indications recognised by Member States were incorporated in a binding Community measure [see, to that effect, Abadía Retuerta v OHIM (CUVÉE PALOMAR), paragraph 97].'*

30 The General Court thus found that that conclusion is not called into question either by the erroneous publication of the protected designation of origin 'Tokajská/Tokajské/Tokajský vinohradnícka oblasť' in the list of quality wines psr published in the Official Journal of the European Union on 31 July 2009, or by the adoption of Law No 313/2009.

31 In that regard, the General Court found first in paragraph 26 of the judgment under appeal that an erroneous publication in the 'C' Series of the Official Journal of the European Union 'does not invalidate the protection which Regulation No 1493/1999 grants to designations of origin which benefit from protection under Slovak law, including the designation "Vinohradnícka oblasť Tokaj"'.

32 Secondly, the General Court stated in paragraph 28 of its judgment that Law No 313/2009, which repealed Law No 182/2005 and Order No 237/2005, and which provides that the Slovak wine-growing area includes the sub-division 'Tokajská vinohradnícka oblasť', entered into force on 1 September 2009, whereas, for inclusion in the E-Bacchus database, only legislation in force on 1 August 2009 was relevant.

33 In addition, in paragraphs 29 and 30 of the judgment under appeal, the General Court rejected Hungary's argument that Article 73(2) of Regulation No 607/2009 should have been applied, as that provision implies the existence of a product specification of the wine names. The General Court considered that Law No 313/2009 could not be regarded as an amendment to the product specification of the designations in question since, on the date of the amendment of the E-Bacchus database, that is to say 26 February 2010, the Slovak Republic had not sent any product specification concerning the designation 'Vinohradnícka oblasť Tokaj' or 'Tokajská/Tokajské/Tokajský vinohradnícka oblasť'.

34 The General Court also rejected the other arguments put forward by Hungary in support of the admissibility of its action.

35 Thus, with regard, first, to the argument that the importance of the E-Bacchus database as a source of information for interested third parties must be regarded as producing legal effects for those interested

parties, the General Court found at paragraph 33 of the judgment under appeal that the function of providing information cannot bring about a distinct change in the situation of those third parties, as the enforceability of the national measures by which the Slovak Republic created that protection stems from the publication of those provisions in the official journal of the Slovak Republic, and not the entry in the E-Bacchus database.

36 Secondly, as regards Hungary's argument that the protection conferred by the entry in the E-Bacchus database is not automatic since the Commission is required to verify that the conditions which make it possible to benefit from that protection are fulfilled, the General Court found, at paragraphs 34 and 35 of the judgment under appeal, that until 31 December 2014 Article 118s(4) of Regulation No 1234/2007 confers on the Commission the power, under certain conditions, to cancel the automatic protection of the designations protected under Regulation No 1493/1999, but that that power can actually be exercised only after submission of the technical file containing the product specification. On the date of the entry at issue, the Slovak Republic had not submitted a product specification to the Commission. Therefore, on that date, the Commission had not carried out any control in accordance with Article 118s(4) of Regulation No 1234/2007, nor was it obliged to do so.

37 Since Hungary had also claimed that the principle of sound administration obliged the Commission to verify the accuracy, timeliness, authenticity and adequacy of the information provided by the Member States, the General Court found, without there being any need to determine whether such an obligation did in fact exist, that that obligation could not in any event bring about a distinct change in the situation of the interested third parties.

38 The General Court, in paragraph 36 of the judgment under appeal, also dismissed Hungary's argument that the content of the E-Bacchus database determined the content of the technical file which, in accordance with Article 118s(2) and (3) of Regulation No 1234/2007, was to be introduced no later than 31 December 2011. It found that, under Community rules, the content of the files was dependent on the national provisions and not on the entry in the E-Bacchus database. The same reasoning was used in paragraph 37 of the judgment under appeal concerning the rejection of Hungary's argument that the entry in the E-Bacchus database determined the compulsory information relating to labelling and the presentation of the products, provided for under Regulation No 1234/2007.

Forms of order sought by the parties

39 By its appeal, Hungary claims that the Court of Justice should:

– set aside the judgment under appeal;

– give final judgment as to the substance, in accordance with Article 61 of the Statute of the Court of Justice of the European Union; and

– order the Commission to pay the costs.

40 The Commission contends that the Court of Justice should:

– dismiss the appeal;

– in the alternative, dismiss the Hungarian Government's action; and

– order Hungary to pay the costs.

41 The Slovak Republic contends that the Court of Justice should:

– dismiss the appeal; and

– order Hungary to pay the costs.

The appeal

42 In support of its appeal, Hungary relies, essentially, on three grounds. The first alleges that the General Court erred in law in its interpretation of the term 'actionable measure', for the purposes of Article 263 TFEU. By its second ground of appeal, Hungary alleges an infringement of the principle of equal treatment. The third ground of appeal alleges a failure to state reasons in the judgment under appeal.

The first ground of appeal

Arguments of the parties

43 By its first ground of appeal, Hungary claims that the General Court, in concluding that the entry at issue did not produce legal effects, committed an error of law. In support of that ground, Hungary puts forward essentially four arguments.

44 By its first argument, as elaborated in its appeal and at the hearing, Hungary seeks to establish that the Commission, by making the entry at issue, granted protection under Article 118s of Regulation No 1234/2007 to a wine name which could not, in accordance with the relevant EU rules, be regarded as benefiting from protection under national law as at 1 August 2009. According to Hungary, the entry of a wine name in the E-Bacchus database has the effect of certifying the existence of protection under a new EU regime established by that regulation, which elevates to EU level the protection of wine names which beforehand existed only at national level. Therefore, an entry in the E-Bacchus database is not merely a consequence of the automatic transition from one regulatory regime for the protection of wine names to another, as the General Court found.

45 In those circumstances, Hungary states that the E-Bacchus database cannot be regarded as a mere list of wine names, analogous to the lists of quality wines psr published in the 'C' Series of the Official Journal of the European Union and devoid of any legal effects. Consequently, the findings made by the General Court in Abadía Retuerta v OHIM (CUVÉE PALOMAR) that the lists published in the 'C' Series are only informative do not in any way apply to the E-Bacchus database.

46 Secondly, Hungary considers that, when an entry in the E-Bacchus database is made, the Commission must carry out a control of the wine names to be entered in that database. Although Article 118s(4) of Regulation No 1234/2007 does not have to be applied, the Commission is nevertheless obliged to check that those names were 'recognised by Member States' as designations of origin or geographical indications before 1 August 2009.

47 Thirdly, the legal effects of an entry in the E-Bacchus database also have other consequences, in particular the requirement to prepare a product specification for the names entered in the E-Bacchus database, which should have been submitted for existing designations no later than the end of 2011, failing which the designations concerned should be removed from that database. An entry in that database also has consequences for labelling.

48 Hungary claims, fourthly, that as a result of its duty to keep the register of protected designations of origin and geographical indications, and in accordance with the principles of sound administration, sincere cooperation and legal certainty, the Commission should have taken note of the Slovak Republic's adoption of Law No 313/2009.

49 The Commission submits that the first ground of appeal is based on an erroneous interpretation of the relevant legislation. It states that, by virtue of Article 118s(1) of Regulation No 1234/2007, wine names already benefiting from protection under Articles 51 and 54 of Regulation No 1493/1999 are automatically protected under Regulation No 1234/2007, without the need for any decision by the Commission in that regard.

50 The protection of these designations stems therefore from the regulation itself, and not the subsequent entry in the E-Bacchus database. As a result of that purely informative role, analogous with the role of the lists published in the 'C' Series of the Official Journal of the European Union, an entry in the E-Bacchus database is not such as to change the legal situation of a third party, and the General Court did not err in law by applying Abadía Retuerta v OHIM (CUVÉE PALOMAR) to this case. Furthermore, the absence of any legal effects of the entry at issue is borne out by the fact that protection at EU level was granted on a provisional basis and would have ceased if the product specification had not been submitted before the end of 2011.

51 The Commission also refutes Hungary's arguments relating to its control powers and insists on the automatic nature of the listing of wine names already protected and on the absence of any procedure at European level. In that regard, it states that, under Article 73 of Regulation No 607/2009, the Commission must include in the E-Bacchus database every new designation of origin or every new geographical indication 'recognised by Member States' before 1 August 2009. Moreover, as the Slovak Republic still had not submitted the product specification to the Commission on the date of the entry at issue, it did not exercise any control power under Article 118s(4) of Regulation No 1234/2007, nor was it required to do so.

52 Finally, the Commission contests Hungary's arguments relating to the effects of the entry in the E-Bacchus database on the product specifications and labelling, claiming that, by its arguments, Hungary is in fact seeking a re-examination by the Court of Justice of pleas submitted at first instance.

53 The Slovak Republic, like the Commission, submits that the first ground of appeal is unfounded. It contends that the entry of the existing wine names in the E-Bacchus database does not have any legal effects and therefore is not an actionable measure for the purposes of Article 263 TFEU. In support of that submission, it relies on the former rules which, in its opinion, already established protection of wine names at EU level.

Findings of the Court

54 According to consistent case-law any measures adopted by the institutions of the European Union, whatever their form, which are intended to have binding legal effects, are regarded as actionable measures, within the meaning of Article 263 TFEU (see, in particular, Case C-316/91 Parliament v Council [1994] ECR I-625, paragraph 8; Joined Cases C-138/03, C-324/03 and C-431/03 Italy v Commission [2005] ECR I-10043, paragraph 32; and Joined Cases C-463/10 P and C-475/10 P Deutsche Post and Germany v Commission [2011] ECR I-9639, paragraph 36).

55 Those binding legal effects of a measure must be assessed in accordance with objective criteria, such as the contents of that measure (see, to this effect, inter alia Case 60/81 IBM v Commission [1981] ECR 2639, paragraph 9, and Case C-57/95 France v Commission [1997] ECR I-1627, paragraph 9), taking into account, as appropriate, the context in which it was adopted (see, to this effect, inter alia the Order of 13 June 1991 in Case C-50/90 Sunzest v Commission [1991] ECR I-2917, paragraph 13, and Case C-362/08 P Internationaler Hilfsfonds v Commission [2010] ECR I-669, paragraph 58), and the powers of the institution which adopted the measure (see, to this effect, inter alia Case C-301/03 Italy v Commission [2005] ECR I-10217, paragraph 28).

56 In the first place, concerning the contents of the entry at issue, it is common ground that the Commission, on 26 February 2010, amended the information contained in the E-Bacchus database by replacing the protected designation of origin 'Tokajská/Tokajské/Tokajský vinohradnícka oblast'' with 'Vinohradnícka oblast' Tokaj', without changing the reference to the relevant national law, that is to say, Order No 237/2005, and retaining 1 August 2009 as the reference date. It is thus clear from the content of the entry at issue which identifies both the Slovak law and the reference date that the transitional system for protecting designations of origin put in place by Article 118s of Regulation No 1234/2007 is based on the wine names as recognised by national legislation on that date.

57 Secondly, concerning the context in which the entry at issue was made, it is clear from recital 36 of the preamble to Regulation No 479/2008 that the aim of the transitional system is to remove existing designations of origin and geographical indications in the European Union from the application of the new examination procedure, and to limit the possibilities of their annulment for reasons of legal certainty.

58 It follows that the transitional system under Article 118s of Regulation No 1234/2007 was put in place in

order to maintain, for reasons of legal certainty, the protection of wine names already protected before 1 August 2009 under national law, and therefore at EU level by virtue of Regulation No 1493/1999. The wording of Article 118s(1) of Regulation No 1234/2007 confirms that objective by providing that those wine names will 'automatically be protected under this Regulation'. Therefore, the General Court, in paragraph 21 of the judgment under appeal, rightly concluded that the protection given to existing wine names was automatic.

59 Thirdly, concerning the Commission's power when the entry at issue was made, it is true that, despite the automatic nature of the protection of existing wine names, the Commission may decide, until 31 December 2014 and by relying on the second paragraph of Article 118s(4) of Regulation No 1234/2007, to cancel the automatic protection of wine names granted under paragraph 1 of that article.

60 However, the entry at issue does not constitute such a cancellation. As is clear from Article 71(2) of Regulation No 607/2009, and as Hungary acknowledges in its appeal, the Commission may exercise that power only after the Member States have sent the technical files containing the product specifications and national decisions of approval, in accordance with Article 118s(2) of Regulation No 1234/2007.

61 In that regard, the General Court found in paragraph 34 of the judgment under appeal that the Slovak Republic had not submitted the technical file to the Commission on the date of the entry at issue, a fact which is not disputed in the context of the present appeal. Therefore, the General Court rightly found in paragraph 34 that, prior to the documents being sent to it, the Commission was neither obliged nor authorised to carry out a control of the wine names already enjoying protection and referred to in Article 118s of Regulation No 1234/2007.

62 That conclusion is not called into question by the fact that the Commission, on 26 February 2010 and at the request of the Slovak Government, amended the entry in the E-Bacchus database by replacing the protected designation of origin 'Tokajská/Tokajské/Tokajský vinohradnícka oblast'' with 'Vinohradnícka oblast' Tokaj'. That amendment was not based on a control or on a finding of the Commission, but was based on Article 73(1) of Regulation No 607/2009 which extends the automatic protection under Article 118s of Regulation No 1234/2007 to wine names actually protected in accordance with national law on 1 August 2009, and therefore in accordance with Regulation No 1493/1999, and which did not appear in the final list of quality wines psr published in the 'C' Series of the Official Journal of the European Union.

63 It follows from all of the foregoing that an entry made in the E-Bacchus database by the Commission under Article 73(1) of Regulation No 607/2009 concerning wine names recognised by Member States as designations of origin or geographical indications before 1 August 2009, which were not published by the Commission under Article 54(5) of Regulation No 1493/1999, has no effect on the automatic protection which those wine names enjoy at EU level. Indeed, the Commission is not authorised either to grant protection or to decide on the wine name which must be entered in the E-Bacchus database pursuant to Article 73(1). Thus, there is no need to make a distinction between the effects of an entry in the lists of quality wines psr published in the 'C' Series of the Official Journal of the European Union and the effects of an entry in the E-Bacchus database.

64 Therefore, the General Court, in paragraphs 21 and 23 of the judgment under appeal, rightly found that an entry in the E-Bacchus database is not required for those wines names to enjoy protection at EU level, as those names are protected automatically under Regulation No 1234/2007, as amended, without that protection being dependent on their inclusion in that database.

65 Given that the entry at issue does not satisfy the requirements laid down in the case-law cited in paragraph 54 above, the General Court did not err in law by concluding that that entry does not constitute an actionable measure.

66 That finding is in no way undermined by Hungary's arguments referred to in paragraphs 47 and 48 above.

67 In that regard, it is important to state that Hungary considers (i) the effects on labelling and on the contents of the product specification and (ii) the obligation for the Commission to take note of the new Slovak law to be the necessary consequences of the binding legal effects which should have been attributed to the entry in the E-Bacchus database. Those arguments in no way call into question the finding which the General Court made in paragraph 38 of the judgment under appeal that the entry at issue did not produce legal effects, and, in accordance with settled case-law, they are therefore ineffective (see Joined Cases C‑302/99 P and C‑308/99 P Commission and France v TF1 [2001] ECR I‑5603, paragraphs 26 and 29, and Joined Cases C‑189/02 P, C‑202/02 P, C‑205/02 P to C‑208/02 P and C‑213/02 P Dansk Rørindustri and Others v Commission [2005] ECR I‑5425, paragraph 148).

68 It follows from all of the foregoing that Hungary's first ground of appeal must be dismissed.

The second ground of appeal

Arguments of the parties

69 By its second ground of appeal, Hungary claims that the General Court, in finding that the entry at issue is not an 'actionable measure' for the purposes of Article 263 TFEU, infringed the principle of equal treatment in that it treated every entry of that nature differently from the new entries which, according to Hungary, could have been challenged by an action for annulment under Article 263 TFEU.

70 Hungary states that the E-Bacchus database is a single register. Accordingly, it claims that it is wrong to find that only entries relating to new names are to have legal effect. Despite the differences between the two

legal regimes governing the granting of protection to wine names, interested parties should be able to challenge all measures of the institutions by which the protection of wine names afforded under national law is transformed into protection under EU law.

71 In the opinion of the Commission, wine names currently enjoying protection and new names come under different legal and factual circumstances and are therefore not comparable. At the hearing, the Commission also contended that, under the European Union's new wine regime, it was for the Commission to adopt the final decision granting protection to a wine name.

72 The Slovak Republic contends that the differences in terms of the legal effects of being entered in the E-Bacchus database between existing wine names and new names are legitimate and do not amount to an infringement of the principle of equal treatment. On the contrary, that principle would be infringed in a situation where the entries for existing wine names and new wine names were treated identically, in so far as such a situation would not take account of the objective differences between those two circumstances.

Findings of the Court

73 The general principle of equal treatment, which is one of the fundamental principles of EU law, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, inter alia, Case C‑304/01 Spain v Commission [2004] ECR I‑7655, paragraph 31, and judgment of 3 March 2005 in Case C‑283/02 Italy v Commission, paragraph 79).

74 As is clear from recital 5 of the preamble to Regulation No 479/2008, the EU regime applying to the wine sector has, through that regulation, been fundamentally changed with a view to achieving objectives related, in particular, to the quality of wines. To that end, the new rules on protection subject every application for the protection of a wine name to a detailed examination which is carried out in two stages, that is to say, at national and then at EU level, in accordance with Articles 118e to 118i of Regulation No 1234/2007, with no automaticity being afforded in that regard, and with the Commission having genuine decision-making power by virtue of Article 118i of Regulation No 1234/2007 which enables it either to grant or to refuse protection of the designation of origin or geographical indication depending on whether or not the conditions laid down in that regulation have been satisfied.

75 Since the legal context and the Commission's powers connected with the entries in the E-Bacchus database under the two systems for protecting wine names, as created by the EU legislature, are not comparable, Hungary's argument alleging the General Court's infringement of the principle of equality cannot be accepted.

76 The second ground of appeal must therefore be rejected as unfounded.

The third ground of appeal

Arguments of the parties

77 By its third ground of appeal, Hungary submits that the General Court failed to provide sufficient reasons in its judgment, in that it did not respond to the arguments advanced by Hungary in its application and during the hearing. This plea is divided into two parts.

78 By the first part of the third ground of appeal, Hungary alleges that the General Court failed to respond to its argument that, for the purposes of establishing the existence of a protected name in a Member State, within the meaning of Article 118s of Regulation No 1234/2007, the relevant date is the one on which the national legislation is published in the official journal of that Member State, and not the date on which that legislation entered into force. In paragraph 28 of the judgment under appeal, the General Court stated only that the fact that Law No 313/2009 was adopted on 30 June 2009 is irrelevant as it had not entered into force on 1 August 2009, without giving any reasons justifying the choice of one date over the other.

79 By the second part of its third ground of appeal, Hungary claims that the General Court, in paragraph 30 of the judgment under appeal, did not give sufficient reasons for the finding that Law No 313/2009 cannot be interpreted as an amendment relating to the product specification for the purposes of Article 73(2) of Regulation No 607/2009. Thus the General Court did not respond to Hungary's arguments that, in Member States where it was not mandatory to draw up a product specification before the new EU legislation, an amendment of a law or a regulation relating to the information to be included in the product specification may constitute an amendment of the kind referred to in Article 73(2) of Regulation No 607/2009.

80 The Commission contends that Hungary's third ground of appeal in its entirety challenges grounds of the judgment under appeal that are included purely for the sake of completeness, and that it is therefore nugatory.

81 The Slovak Republic contends that the first part of the third ground of appeal is inadmissible in that the argument concerning the publication date of the national legislation was not raised by Hungary before the General Court, as it put forward arguments only in relation to the date the national legislation was adopted or entered into force. In any event, the first part of the third ground of appeal is unfounded, as is the second part, and furthermore both are superfluous.

Findings of the Court

82 In accordance with settled case-law, complaints directed against the grounds of a decision of the General Court included purely for the sake of completeness cannot lead to the decision being set aside and are therefore nugatory (Dansk Rørindustri and Others v Commission, paragraph 148, and order of 23 February 2006 in Case C‑171/05 P Piau v Commission, paragraph 86).

83 In this case, Hungary itself states that the General Court was not bound to deal with the issue of whether the national legislation required for the entry in the E-

Bacchus database had to be published or enter into force by the cut-off date, or with the issue of the possible relevance of Article 73(2) of Regulation No 607/2009, since it found, in paragraph 19 of the judgment under appeal, that the entry at issue is not capable of producing legal effects.

84 Accordingly, since both parts of the third ground of appeal are directed against grounds of the judgment under appeal which were included purely for the sake of completeness, this ground must be declared to be nugatory in its entirety.

85 Since none of the grounds of appeal raised by Hungary have been upheld, the appeal must be dismissed in its entirety.

Costs

86 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded the Court shall make a decision as to costs. Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Hungary has been unsuccessful, the latter must be ordered to pay the costs.

87 Under Article 140(1) of the Rules of Procedure, which is also rendered applicable to appeals by Article 184(1), Member States which intervene in the proceedings are to bear their own costs. Therefore, the Slovak Republic must bear its own costs.

On those grounds, the Court (Third Chamber) hereby

1. Dismisses the appeal;
2. Orders Hungary to pay the costs;
3. Orders the Slovak Republic to bear its own costs.