Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

7 October 2014*

(Action for annulment — EU external action — Article 218(9) TFEU — Establishing the position to be adopted on behalf of the European Union in a body set up by an international agreement — International agreement to which the European Union is not a party — International Organisation of Vine and Wine (OIV) — 'Acts having legal effects' — OIV recommendations)

In Case C-399/12,

ACTION for annulment under Article 263 TFEU, brought on 28 August 2012,

Federal Republic of Germany, represented by T. Henze, B. Beutler and N. Graf Vitzthum, acting as Agents,

applicant,

supported by:

Czech Republic, represented by M. Smolek, E. Ruffer and D. Hadroušek, acting as Agents,

Grand Duchy of Luxembourg, represented by P. Frantzen, acting as Agent,

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

Kingdom of the Netherlands, represented by M. Bulterman, B. Koopman and J. Langer, acting as Agents,

Republic of Austria, represented by C. Pesendorfer, acting as Agent,

Slovak Republic, represented by B. Ricziová, acting as Agent,

United Kingdom of Great Britain and Northern Ireland, represented by J. Holmes, Barrister,

interveners,

v

Council of the European Union, represented by E. Sitbon and J.-P. Hix, acting as Agents,

defendant,

* Language of the case: German.

supported by:

European Commission, represented by F. Erlbacher, B. Schima and B. Eggers, acting as Agents, with an address for service in Luxembourg,

intervener,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts (Rapporteur), Vice-President, A. Tizzano, R. Silva de Lapuerta and T. von Danwitz, Presidents of Chambers, J. Malenovský, E. Levits, J.-C. Bonichot, A. Arabadjiev, D. Šváby, M. Berger, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: P. Cruz Villalón,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 26 November 2013,

after hearing the Opinion of the Advocate General at the sitting on 29 April 2014,

gives the following

Judgment

1 By its application, the Federal Republic of Germany requests the annulment of the Decision of the Council of the European Union of 18 June 2012 establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be adopted in the framework of the International Organisation of Vine and Wine (OIV) ('the contested decision').

Legal context

International law

2 Under Article 1(2) of the Agreement Establishing the International Organisation of Vine and Wine, concluded on 3 April 2001 ('the OIV Agreement'), '[the OIV] shall pursue its objectives and exercise its activities defined in Article 2. The [OIV] shall be an intergovernmental organisation of a scientific and technical nature of recognised competence for its work concerning vines, wine, wine-based beverages, grapes, raisins and other vine products'.

3 Article 2 of the OIV Agreement provides:

'1. In the framework of its competence, the objectives of the [OIV] shall be as follows:

(a) to inform its members of measures whereby the concerns of producers, consumers and other players in the vine and wine products sector may be taken into consideration;

(b) to assist other international organisations, both intergovernmental and non-governmental, especially those which carry out standardisation activities;

(c) to contribute to international harmonisation of existing practices and standards and, as necessary, to the preparation of new international standards in order to improve the conditions for producing and marketing vine and wine products, and to help ensure that the interests of consumers are taken into account.

2. To attain these objectives, the [OIV]'s activities shall be:

...

(b) to draw up and frame recommendations and monitor implementation of such recommendations in liaison with its members, especially in the following areas:

(i) conditions for grape production,

(ii) oenological practices,

(iii) definition and/or description of products, labelling and marketing conditions,

(iv) methods for analysing and assessing vine products;

...'

4 Article 8 of the OIV Agreement provides that an international intergovernmental organisation may participate in or be a member of the OIV and help to fund the OIV under conditions determined, on a case by case basis, by the General Assembly on a proposal from the Executive Committee.

5 Within the European Union, 21 Member States are members of the OIV. However, the European Union itself is not a member. Nevertheless, it is a 'guest', as defined in Article 5.2 of the OIV's Internal Rules of Procedure. In that connection, the European Commission is authorised to attend meetings of groups of experts and OIV Commissions and to intervene in such meetings under the conditions set out in those Internal Rules.

European Union ('EU') law

6 Article 120f of 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 Regulation (EU) No 1234/2010 of the European Parliament and of the Council of 15 December 2010 (OJ 2010 L 346, p. 11) ('Regulation No 1234/2007'), entitled 'Authorisation criteria', provides:

'When authorising oenological practices in accordance with the procedure referred to in Article 195(4), the Commission shall:

(a) base itself on the oenological practices recommended and published by the [OIV] as well as on the results of experimental use of as yet unauthorised oenological practices;

...'

7 Article 120g of Regulation No 1234/2007, entitled 'Methods of analysis', states:

'The methods of analysis for determining the composition of the products of the wine sector and the rules whereby it may be established whether these products have undergone processes contrary to the authorised oenological practices shall be those recommended and published by the OIV.

Where there are no methods and rules recommended and published by the OIV, corresponding methods and rules shall be adopted by the Commission in accordance with the procedure referred to in Article 195(4).

Pending the adoption of such rules, the methods and rules to be used shall be the ones allowed by the Member State concerned.'

8 The first two paragraphs of Article 158a of Regulation No 1234/2007, which concerns '[s]pecial import requirements for wine', state:

'1. Save as otherwise provided for, in particular in agreements concluded pursuant to [Article 218 TFEU], the provisions concerning designations of origin and geographical indications and labelling set out in Subsection I of Section Ia of Chapter I of Title II of Part II as well as Article 113d(1) of this Regulation shall apply to products falling under CN codes 2009 61, 2009 69 and 2204 which are imported into the Community.

2. Save as otherwise provided for in agreements concluded pursuant to [Article 218 TFEU], products referred to in paragraph 1 of this Article shall be produced in accordance with oenological practices recommended and published by the OIV or authorised by the Community pursuant to this Regulation and its implementing measures.'

9 The first subparagraph of Article 9(1) of Commission Regulation (EC) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions (OJ 2009 L 193, p. 1), as amended by Commission Implementing Regulation (EU) No 315/2012 of 12 April 2012 (OJ 2012 L 103, p. 38) ('Regulation No 606/2009'), provides:

'Where they are not laid down by Commission Directive 2008/84/EC ..., the purity and identification specifications of substances used in the oenological practices referred to in point (e) of the second paragraph of Article 32 of Regulation (EC) No 479/2008 shall be those laid down and published in the International Oenological Codex of the [OIV].'

10 Under Article 15(2) of Regulation No 606/2009:

'The Commission shall publish in the C Series of the Official Journal of the European Union the list and description of the analysis methods referred to [in] the first paragraph of [Article 120g of Regulation No 1234/2007] and described in the Compendium of International Methods of Analysis of Wines and Musts of the International Organisation of Vine and Wine and applicable for verification of the limits and requirements laid down by Community rules for the production of wine products.'

Background to the dispute and the contested decision

11 Until June 2010, the Member States, on their own initiative, coordinated their positions within the OIV's working group on wines and alcohol.

12 On 16 May 2011, the Commission, acting on the basis of Article 218(9) TFEU, submitted a proposal for a Council Decision establishing the position to be adopted on behalf of the European Union with regard to certain recommendations to be adopted in the framework of the OIV. However, that proposal was not adopted.

13 During the coordination meetings which took place in Porto (Portugal) on 22 and 24 June 2011, the Member States which were members of the OIV agreed on their positions on the subject of the recommendations featured in the Agenda of the OIV's General Assembly. The Commission stated

that those Member States could not adopt a position which would affect the acquis of the European Union and that, consequently, they were required to oppose any recommendation from the OIV which was likely to alter that acquis. The Commission also drew attention to a list containing fourteen examples of draft recommendations which, if adopted by that Assembly, would — in its view — be detrimental to the acquis of the European Union.

14 At the OIV's General Assembly of 24 June 2011, several recommendations were approved by — inter alia — delegations from the Member States, using the consensus procedure referred to in Article 5(3)(a) of the OIV Agreement.

15 On the basis of Article 218(9) TFEU, the Commission submitted a proposal for a Council Decision, with a view to the OIV's Extraordinary General Assembly of 28 October 2011 in Montpellier (France). However, that proposal was not adopted either.

16 On 27 April 2012, with a view to the OIV's General Assembly of 22 June 2012 in Izmir (Turkey), the Commission sent the Council a proposal for a Council Decision establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be adopted in the framework of the International Organisation of Vine and Wine (OIV) (COM(2012) 192 final).

17 Since no majority was reached in favour of the proposed decision, the EU Presidency submitted two subsequent proposals by way of a compromise. The second, dated 6 June 2012, was adopted by a qualified majority at the Council's 'Agriculture and Fisheries' meeting of 18 June 2012, and constitutes the contested decision.

18 A certain number of Member States, including the Federal Republic of Germany, voted against that proposal.

19 According to recitals 5, 6 and 7 in the preamble to the contested decision:

'(5) The draft Resolutions OENO-TECHNO 08-394A, 08-394B, 10-442, 10-443, 10-450A, 10-450B, 11-483 and 11-484 establish new oenological practices. In accordance with Articles 120f and 158a of Regulation (EC) No 1234/2007, these Resolutions will affect the acquis.

(6) The draft Resolutions OENO-SCMA 08-385, 09-419B, 10-436, 10-437, 10-461, 10-465 and 10-466 establish methods of analysis. In accordance with Article 120g of Regulation (EC) No 1234/2007, these Resolutions will affect the acquis.

(7) The draft Resolutions OENO-SPECIF 08-363, 08-364, 09-412, 10-451, 10-452, 10-459, 11-485, 11-486B, 11-489, 11-490, 11-491 and 11-494 establish purity and identification specifications of substances used in oenological practices. In accordance with Article 9 of Regulation (EC) No 606/2009, these Resolutions will affect the acquis.'

20 The contested decision is worded as follows:

'The Council of the European Union,

[h]aving regard to the [TFEU], and in particular Article 43, in conjunction with Article 218(9) thereof,

...

Article 1

The position of the Union at the General Assembly of the OIV to be held on 22 June 2012 shall be in accordance with the Annex to this Decision and shall be expressed by the Member States which are [m]embers of the OIV, acting jointly in the interest of the Union.

Article 2

1. Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the meetings of the OIV, Member States which are [m]embers of the OIV shall request that voting in the OIV General Assembly be postponed until the position of the Union is established on the basis of the new elements.

2. Following coordination, in particular on the spot, and without further decision of the Council establishing the position of the Union, the Member States which are [m]embers of the OIV, acting jointly in the interest of the Union, may agree to changes to the draft resolutions referred to in the Annex to this Decision which do not alter the substance thereof.

Article 3

This Decision is addressed to the Member States.'

21 The annex to the contested decision indicates the draft resolutions in respect of which the position of the Union referred to in Article 1 of that decision is to be established.

Forms of order sought and procedure before the Court

22 The Federal Republic of Germany claims that the Court should annul the contested decision and order the Council to pay the costs.

23 The Council contends that the Court should dismiss the action and order the Federal Republic of Germany to pay the costs. In the alternative, in the event that the contested decision is annulled, it contends that the Court should maintain the effects of that decision.

24 The Czech Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Republic of Austria, the Slovak Republic and the United Kingdom of Great Britain and Northern Ireland have been granted leave to intervene in support of the form of order sought by the Federal Republic of Germany, while the Commission has been granted leave to intervene in support of the form of order sought by the Council.

Action

25 The action is based on a single plea in law alleging that Article 218(9) TFEU is not applicable in the present case.

26 In addition, Hungary and the Kingdom of the Netherlands raise pleas in their statements in intervention, alleging infringement of provisions of the TFEU other than the one relied on in the single plea in law referred to in the preceding paragraph.

27 However, a party who, pursuant to Article 40 of the Statute of the Court of Justice of the European Union, is granted leave to intervene in a case submitted to the Court may not alter the subject-matter of the dispute as defined by the forms of order sought by the main parties and the pleas in law raised by those parties. It follows that arguments submitted by an intervener are not admissible unless they fall within the framework provided by those forms of order and pleas in law.

28 Accordingly, the pleas raised by Hungary and the Kingdom of the Netherlands referred to in paragraph 26 above must be rejected from the outset as inadmissible.

Arguments of the parties

29 By its single plea in law, the Federal Republic of Germany, supported by the Czech Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Republic of Austria, the Slovak Republic and the United Kingdom, claims, first, that Article 218(9) TFEU is not applicable in the context of an international agreement which, like the OIV Agreement, has been concluded by the Member States and not by the European Union.

30 It can be seen from the wording of the provision in question that it relates only to the positions which must be adopted 'on the Union's behalf', which presupposes that the European Union has a right to be represented or to vote in the international body concerned.

31 The scheme of Article 218 TFEU confirms that Article 218(9) TFEU applies only in the context of agreements concluded by the European Union.

32 That interpretation is supported by the origin and purpose of Article 218(9) TFEU: that provision, which reproduces Article 300(2) EC almost verbatim, sets out a specific procedure allowing the European Union to respond swiftly in the event that an international agreement to which the European Union is a party is breached by one or more of the other contracting parties.

33 The principle of conferral referred to in Article 5(1) and (2) TEU which governs the limits of the European Union's competences prohibits applying, by extension, the procedural process envisaged in Article 218(9) TFEU to the implementation of international agreements concluded by the Member States.

34 Moreover, the rules and practices covered by the OIV's recommendations do not fall within an area in which the European Union has exclusive competence, but within the area of agriculture as referred to in Article 4(2)(d) TFEU, which is an area of shared competence between the European Union and its Member States.

35 Secondly, the Federal Republic of Germany and the Member States granted leave to intervene in its support claim that the only acts which constitute 'acts having legal effects' for the purposes of Article 218(9) TFEU are acts of international law which are binding on the European Union. They argue that such an interpretation can be inferred from the wording of Article 218(9) TFEU and is supported by the scheme of the provisions of which it forms part.

36 In the present case, the OIV's recommendations do not fall within the category of acts referred to in Article 218(9) TFEU. First, such recommendations are not binding under international law. Second, the references to the OIV's recommendations in Articles 120f(a), 120g and 158a(1) and (2) of Regulation No 1234/2007 and Article 9 of Regulation No 606/2009 stem from a unilateral act of the EU legislature which is not capable of transforming those recommendations into binding acts of international law, particularly with regard to third countries.

37 Thirdly, the Kingdom of the Netherlands argues that the idea that Article 218(9) TFEU is not applicable in the present case is confirmed by the fact that, when the contested decision was adopted, there was no absolute certainty as to the recommendations which were actually going to be voted on at the OIV's General Assembly of 22 June 2012.

38 The Council, supported by the Commission, contends, first, that Article 218(9) TFEU is applicable to the establishment of positions to be adopted on the Union's behalf in an organisation — such as the OIV — which has been set up by an international agreement concluded by the Member States and which is called upon to adopt acts having legal effects, if the area in question falls within the competence of the European Union.

39 The literal interpretation of Article 218(9) TFEU supports the view that, in the absence of any statement to the contrary, the provision in question also applies in the context of agreements to which the European Union is not a party and which concern areas falling within the competence of the European Union.

40 Regarding the context of Article 218(9) TFEU, the Council maintains that no conclusion can be drawn from Article 216 TFEU or Article 218(1) TFEU, as those provisions concern the conclusion of international agreements by the European Union, whereas Article 218(9) TFEU refers, not to a procedure for negotiating or concluding such agreements, but to the implementation of an agreement capable of having legal effects within the European Union.

41 From a teleological perspective, Article 218(9) TFEU is intended to establish a procedural framework which allows the European Union's position in international organisations to be defined — even in the context of international agreements to which it is not a party — where the acts to be adopted are to be incorporated subsequently into EU law.

42 The Council maintains that the European Union does not encroach upon the competences of the Member States when it exercises, at international level, the competences conferred on it on the basis of Article 43 TFEU in areas such as oenological practices and methods of analysing vine and wine products.

43 Furthermore, pursuant to Article 3(2) TFEU, the European Union has exclusive external competence in the areas covered by the draft recommendations listed in the annex to the contested decision, since they are likely to affect common EU rules. Those draft recommendations relate to oenological practices and methods of analysis which, in accordance with Articles 120f(a), 120g and 158a(2) of Regulation No 1234/2007, as well as Regulation No 606/2009, will serve as a basis for drawing up EU legislation or will be rendered applicable by such legislation.

44 Secondly, the Council, supported by the Commission, contends that Article 218(9) TFEU requires only that acts which the international body is called upon to adopt have effects in the European Union legal order: it is not necessary for those acts to produce effects in the international legal order.

45 Consequently, that provision covers a situation in which international recommendations, although non-binding, none the less produce legal effects within the European Union through the provisions of EU law which enforce them.

46 In the present case, the recommendations relating to oenological practices and methods of analysis which are adopted during an OIV General Assembly have legal effects within the European Union owing to the EU legislature's decision to incorporate them into EU legislation.

47 Thirdly, the Council contends that the Kingdom of the Netherlands' argument as reproduced in paragraph 37 above disregards both the wording and the objective of Article 218(9) TFEU.

Findings of the Court

48 Article 218(9) TFEU states that '[t]he Council, on a proposal from the Commission ..., shall adopt a decision ... establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement'.

49 First of all, it should be noted that the provision in question makes reference to a body set up by 'an agreement', but does not specify whether the European Union must be a party to that agreement. Similarly, the reference in that provision to the positions to be adopted 'on the Union's behalf' does not mean that the European Union has to have been a party to the agreement which set up the international body in question.

50 It follows that there is nothing in the wording of Article 218(9) TFEU to prevent the European Union from adopting a decision establishing a position to be adopted on its behalf in a body set up by an international agreement to which it is not a party.

51 It is also important to point out that the present case concerns matters relating to the Common Agricultural Policy and, more specifically, the common organisation of the wine markets, an area which is regulated for the most part by the EU legislature in the exercise of its competence under Article 43 TFEU.

52 Where an area of law falls within a competence of the European Union, such as the one mentioned in the preceding paragraph, the fact that the European Union did not take part in the international agreement in question does not prevent it from exercising that competence by establishing, through its institutions, a position to be adopted on its behalf in the body set up by that agreement, in particular through the Member States which are party to that agreement acting jointly in its interest (see judgment in *Commission* v *Greece*, C-45/07, EU:C:2009:81, paragraphs 30 and 31; see also, to that effect, Opinion 2/91, EU:C:1993:106, paragraph 5).

53 The above findings are not called in question by Germany's assertions that (i) the provisions preceding Article 218(9) TFEU in Title V of Part V of the TFEU concern only agreements between the European Union and one or more third countries, or between the European Union and international organisations, and (ii) the adoption by the European Union of a decision suspending application of an agreement — also referred to in Article 218(9) TFEU — cannot be envisaged except in the context of an international agreement concluded by the European Union.

54 Indeed, it should be noted, in that regard, that the provisions other than Article 218(9) TFEU referred to in the preceding paragraph have as their object the negotiation and conclusion of agreements by the European Union. By contrast, Article 218(9) TFEU concerns the establishment of positions to be adopted on the Union's behalf in a body set up by an agreement, which, unlike a European Union decision suspending application of an agreement, can — in the situation evoked in paragraph 52 above — be adopted even in the context of an agreement to which the European Union is not a party.

55 Consequently, the fact that the European Union is not a party to the OIV Agreement does not prevent it from applying Article 218(9) TFEU.

56 Next, it must be ascertained whether the recommendations to be adopted by the OIV which are under consideration in the present case constitute 'acts having legal effects' for the purposes of that provision.

57 In that regard, it can be seen from recitals 5, 6 and 7 to the contested decision and from the annex thereto that the OIV recommendations to be voted on at that organisation's General Assembly which are referred to in that decision relate to new oenological practices, methods of analysis for determining the composition of products of the wine sector, or purity and identification specifications of substances used in oenological practices.

58 Consequently, those recommendations fall within the areas indicated in Article 2(2)(b) of the OIV Agreement, which, moreover, is not disputed by any of the parties to these proceedings.

59 Under Article 2(1)(b) and (c) and Article 2(2) of the OIV Agreement, the aim of the recommendations adopted by the OIV in those areas is to help to achieve the objectives of that organisation, which include assisting other international organisations, especially those which carry out standardisation activities, and contributing to international harmonisation of existing practices and standards and, as necessary, to the preparation of new international standards.

60 It should also be noted that, under Article 2(2)(b) of the OIV Agreement, the OIV is responsible for monitoring the implementation of such recommendations in liaison with its members.

61 In addition, within the framework of the common organisation of the wine markets, the EU legislature incorporates those recommendations into the legislation adopted in that regard: Articles 120g and 158a(1) and (2) of Regulation No 1234/2007 and the first subparagraph of Article 9(1) of Regulation No 606/2009 explicitly compare OIV recommendations to rules of EU law as regards the methods of analysis for determining the composition of products of the wine sector, the special requirements applicable, in terms of oenological practices, to imports of wine originating from third countries, and the purity and identification specifications of substances used in such practices.

62 As regards Article 120f(a) of Regulation No 1234/2007, in stating that the Commission is to 'base itself' on the OIV's recommendations when authorising oenological practices, that provision necessarily requires those recommendations to be taken into consideration for the purposes of drawing up rules of EU law in that regard.

63 It follows that the recommendations under consideration in the present case, which — as has been noted in paragraph 57 above — relate to new oenological practices, methods of analysis for determining the composition of products of the wine sector, or purity and identification specifications of substances used in oenological practices, are capable of decisively influencing the content of the legislation adopted by the EU legislature in the area of the common organisation of the wine markets.

64 It follows from the findings set out in paragraphs 57 to 63 above that such recommendations, in particular by reason of their incorporation into EU law by virtue of Articles 120f(a), 120g and 158a(1) and (2) of Regulation No 1234/2007 and the first subparagraph of Article 9(1) of Regulation No 606/2009, have legal effects in that area for the purposes of Article 218(9) TFEU and that the European Union, while not a party to the OIV Agreement, is entitled to establish a position to be adopted on its behalf with regard to those recommendations, in view of their direct impact on the European Union's acquis in that area.

65 As regards the Kingdom of the Netherlands' argument as reproduced in paragraph 37 above, it is contrary to both the wording and the objective of Article 218(9) TFEU, which is to enable a position previously established on behalf of the European Union to be expressed in an international body which is 'called upon' to adopt acts having legal effects, regardless of whether the acts in respect of which that position is established will, in fact, actually be voted on by the competent body.

66 In the light of all of the foregoing, the Council was right to use Article 218(9) TFEU as the basis for adopting the contested decision.

67 Accordingly, the single plea in law raised by the Federal Republic of Germany in support of its action cannot succeed.

68 It follows that the action must be dismissed.

Costs

69 Under Article 138(1) of the Rules of Procedure, 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 Council has applied for costs and the Federal Republic of Germany has been unsuccessful, the latter must be ordered to pay the costs. Under Article 140(1) of those Rules, pursuant to which the Member States and institutions which have intervened in the proceedings are to bear their own costs, the Czech Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Republic of Austria, the Slovak Republic, the United Kingdom and the Commission must be ordered to bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the action;**

2. **Orders the Federal Republic of Germany to pay the costs;**

3. **Orders the Czech Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Republic of Austria, the Slovak Republic, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.**

[Signatures]