

The General Court wrongly assessed the legal nature of technical protocols and guidelines to be applied in the technical examination of an applied for Community plant variety right, resulting in a wrong assessment of the time frame in which the President of the Community Plant Variety Office may decide that a new characteristic for determination of distinctness of the new variety may be taken into account.

The General Court erred in assessing the consequence of the application of the principles of legal certainty, the objectivity of the Community Plant Variety Office and equal treatment in relation to the decisions of the President of the Community Plant Variety Office in the examination of a new variety.

⁽¹⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights
OJ L 227, p. 1.

⁽²⁾ Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office
OJ L 121, p. 37.

Appeal brought on 2 December 2015 by Hungary. against the judgment delivered on 15 September 2015 in Case T-346/12 Hungary v European Commission

(Case C-644/15 P)

(2016/C 027/32)

Language of the case: Hungarian

Parties

Appellant: Hungary (represented by: M.Z. Fehér)

Other party to the proceedings: European Commission

Form of order sought

- Annul the judgment of the General Court in Case T-346/12;
- Decide the case on the basis of the possibility provided by Article 61 of the Statute;
- Order the Commission to bear the costs.

Pleas in law and main arguments

The Hungarian Government submits that the General Court misapplied the law in holding that, in its decision on the partial reimbursement of national financial assistance granted — on the basis of Article 103e of Council Regulation (EC) No 1234/2007 ⁽¹⁾ — to producers' organisations operating in the fruit and vegetable sector, the Commission had a legal basis for making the amount repaid by the European Union subject to the amount of assistance notified.

The Hungarian Government submits that, on the basis of the interpretation of the relevant provisions of Regulation No 1234/2007/EC in conjunction with Regulation No 1580/2007/EC, ⁽²⁾ the Commission was not entitled to agree to reimburse only those amounts which were indicated by the Hungarian Government in its application for the grant of national assistance, where they are given as estimated, expected or provisional amounts, in its decision on the partial reimbursement of national financial assistance granted to producers' organisations operating in the fruit and vegetable sector.

Under Article 103e of Regulation No 1234/2007/EC the authorisation of the Commission for national assistance concerns the grant of assistance but not the establishment of an upper limit by the Commission for the amount of assistance which may be granted. Such an upper limit is provided for unequivocally by Regulation No 1234/2007, which provides that national assistance may not exceed 80 % of financial contributions to operational funds of members or producers' organisations. Nor do the rules on partial reimbursement of Community assistance allow the Commission, when granting the partial reimbursement of assistance, to establish as the upper limit for reimbursement the amount which the Member State indicated to the Commission in its application for authorisation, either as the total amount of the assistance, or as the amount of assistance scheduled for certain producers' organisations.

The use of the term 'amount' in the wording of the second paragraph of Article 94(1) of Regulation No 1580/2007 — having regard to the 80 % limit on assistance in Article 103e of Regulation No 1234/2007 together with the limit of 25 % for the amount of the operational fund referred to in Article 67 of Regulation No 1580/2007 — is intended to ensure that the Commission, when granting authorisation, is able to calculate in advance the amount of national assistance which might be paid, and thus the potential amount of any reimbursement. Thus, the purpose of the notification of amounts is in no way the approval of the notified amounts, but is to make clear to the Commission the extent of the assistance which potentially might be paid under the rules in the basic regulation and the Commission regulation.

⁽¹⁾ 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 (OJ 2007 L 299, p. 1).

⁽²⁾ Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (OJ 2007 L 299, p. 1).
