

JUDGMENT OF THE COURT (Third Chamber)

22 December 2010 *

In Case C-120/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 20 December 2007, received at the Court on 20 March 2008, in the proceedings

Bavaria NV

v

Bayerischer Brauerbund eV,

* Language of the case: German.

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby, R. Silva de Lapuerta (Rapporteur), E. Juhász and T. von Danwitz, Judges,

Advocate General: J. Mazák,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 10 June 2010,

after considering the observations submitted on behalf of:

— Bavaria NV, by G. van der Wal, advocaat, and H. Kunz-Hallstein, Rechtsanwalt,

— Bayerischer Brauerbund eV, by R. Knaak, Rechtsanwalt,

— the German Government, by J. Möller and J. Kemper, acting as Agents,

— the Greek Government, by I. Khalkias and S. Papaïoannou, acting as Agents,

- the Italian Government, by G. Palmieri, acting as Agent, and F. Arena, avvocato dello Stato,
- the Netherlands Government, by C. Wissels and J. Langer, acting as Agents,
- the European Commission, by N. Rasmussen, G. von Rintelen and T. van Rijn, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 September 2010,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Article 14(1) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) and Article 14(1) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12), with regard to

protected geographical indications ('PGI') registered in accordance with the simplified procedure under Article 17 of Regulation No 2081/92.

- 2 The reference has been made in proceedings between Bavaria NV ('Bavaria') and Bayerischer Brauerbund eV ('Bayerischer Brauerbund') regarding Bavaria's right to use a trade mark containing the word 'Bavaria', in view of the PGI 'Bayerisches Bier' registered by virtue of Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation No 2081/92 (OJ 2001 L 182, p. 3).

Legal context

Regulation No 2081/92

- 3 Article 6 of Regulation No 2081/92 provides:

'1. Within a period of six months the Commission shall verify, by means of a formal investigation, whether the registration application includes all the particulars provided for in Article 4.

The Commission shall inform the Member State concerned of its findings.

2. If, after taking account of paragraph 1, the Commission concludes that the name qualifies for protection, it shall publish in the *Official Journal of the European Communities* the name and address of the applicant, the name of the product, the main points of the application, the references to national provisions governing the preparation, production or manufacture of the product and, if necessary, the grounds for its conclusions.

3. If no statement of objections is notified to the Commission in accordance with Article 7, the name shall be entered in a register kept by the Commission entitled "Register of protected designations of origin and protected geographical indications", which shall contain the names of the groups and the inspection bodies concerned.

4. The Commission shall publish in the *Official Journal of the European Communities*:

— the names entered in the Register,

— amendments to the Register made in accordance with Article 9 and 11.

5. If, in the light of the investigation provided for in paragraph 1, the Commission concludes that the name does not qualify for protection, it shall decide, in accordance with the procedure provided for in Article 15, not to proceed with the publication provided for in paragraph 2 of this Article.

Before publication as provided for in paragraphs 2 and 4 and registration as provided for in paragraph 3, the Commission may request the opinion of the Committee provided for in Article 15.’

4 Article 13(1) of Regulation No 2081/92 provides:

‘Registered names shall be protected against:

- (a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;
- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation” or similar;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the public as to the true origin of the product.

Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to (a) or (b) in the first subparagraph.’

5 Article 14 of Regulation No 2081/92 reads:

‘1. Where a designation of origin or geographical indication is registered in accordance with this Regulation, the application for registration of a trade mark corresponding to one of the situations referred to in Article 13 and relating to the same type of product shall be refused, provided that the application for registration of the trade mark was submitted after the date of the publication provided for in Article 6(2).

Trade marks registered in breach of the first subparagraph shall be declared invalid.

This paragraph shall also apply where the application for registration of a trade mark was lodged before the date of publication of the application for registration provided for in Article 6(2), provided that that publication occurred before the trade mark was registered.

2. With due regard for Community law, use of a trade mark corresponding to one of the situations referred to in Article 13 which was registered in good faith before the date on which application for registration of a designation of origin or geographical indication was lodged may continue notwithstanding the registration of a designation of origin or geographical indication, where there are no grounds for invalidity or

revocation of the trade mark as provided respectively by Article 3(1)(c) and (g) and Article 12(2)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks [OJ 1989 L 40, p. 1].

3. A designation of origin or geographical indication shall not be registered where, in the light of a trade mark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.'

6 Article 17 of Regulation No 2081/92 provides:

'1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.

3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.'

Regulation (EC) No 1107/96

- 7 The first and second recitals in the preamble to Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation No 2081/92 (OJ 1996 L 148, p. 1) read:

‘Whereas, pursuant to Article 17 of Regulation (EEC) No 2081/92, in the six months following the entry into force of that Regulation the Member States forwarded to the Commission the legally protected names or names established by usage they wished to register;

Whereas, following examination of those names in accordance with Regulation (EEC) No 2081/92, some of them were found to be in accordance with the provisions of that Regulation and eligible to be registered and protected at Community level as geographical indications or designations of origin.’

- 8 Article 1 of Regulation No 1107/96 provides:

‘The names listed in the Annex shall be registered as [PGI] or protected designations of origin (PDO) pursuant to Article 17 of Regulation (EEC) No 2081/92.

Names not included in the Annex which have been forwarded pursuant to Article 17 shall continue to be protected at national level until a decision has been reached on them.’

Regulation (EC) No 2400/96

- 9 The first to the fourth recitals in the preamble to Commission Regulation (EC) No 2400/96 of 17 December 1996 on the entry of certain names in the ‘Register of protected designation of origin and protected geographical indications’ provided for in Regulation No 2081/92 (OJ 1996 L 327, p. 11) read:

‘Whereas, in accordance with Article 5 of Regulation (EEC) No 2081/92, Member States have forwarded to the Commission applications for the registration of certain names as geographical indications or designations of origin;

Whereas the applications have been found, in accordance with Article 6(1) of that Regulation, to comply with the Regulation, most notably in that they include all the particulars provided for in Article 4 of the Regulation;

Whereas no declaration of objection within the meaning of Article 7 of the Regulation has been forwarded to the Commission as a result of the publication in the *Official Journal of the European Communities* of the names in question;

Whereas, as a result, those names may be entered in the “Register of protected designations of origin and protected geographical indications” and therefore be protected throughout the Community as geographical indications or designations of origin.’

10 Article 1 of Regulation No 2400/96 reads:

‘The names in the Annex hereto are hereby entered in the “Register of protected designations of origin and protected geographical designations” as [PGI] or protected designations of origin (PDO) as provided for in Article 6(3) of Regulation (EEC) No 2081/92.’

Regulation (EC) No 692/2003

11 Article 1(13) of Council Regulation (EC) No 692/2003 of 8 April 2003 amending Regulation No 2081/92 (OJ 2003 L 99, p. 1) provides:

‘Article 14 [of Regulation No 2081/92] shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

“1. Where a designation of origin or geographical indication is registered under this Regulation, any application for registration of a trademark that is for a product of the same type and use of which will engender one of the situations indicated in Article 13 shall be refused if made after the date of submission to the Commission of the application for registration of the designation of origin or geographical indication.

Trademarks registered in breach of the first subparagraph shall be invalidated.”

...

Regulation No 510/2006

¹² Recitals 19 and 20 in the preamble to Regulation No 510/2006 read:

“The names already registered under ... Regulation (EEC) No 2081/92 ... on the date of entry into force of this Regulation should continue to be protected under this Regulation and automatically included in the register. Provision should also be made for transitional measures applicable to registration applications received by the Commission before the entry into force of this Regulation.

In the interests of clarity and transparency, Regulation (EEC) No 2081/92 should be repealed and replaced by this Regulation.’

¹³ Article 4 of Regulation No 510/2006, headed ‘Product specification’, provides:

‘1. To be eligible for a protected designation of origin (PDO) or a [PGI], an agricultural product or foodstuff shall comply with a product specification.

2. The product specification shall include at least:

...

14 Article 7 of that regulation is headed ‘Objection/decision on registration.’ Article 7(6) reads:

‘The Commission shall maintain updated a register of protected designations of origin and [PGI].’

15 Article 13 of that regulation is headed ‘Protection.’ Article 13(1) reads:

‘Registered names shall be protected against:

- (a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;
- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation” or similar;

- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the consumer as to the true origin of the product.

Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to points (a) or (b) in the first subparagraph.'

- ¹⁶ Article 14 of Regulation No 510/2006 is headed 'Relations between trademarks, designations of origin and geographical indications'. Article 14(1) reads:

'Where a designation of origin or a geographical indication is registered under this Regulation, the application for registration of a trademark corresponding to one of the situations referred to in Article 13 and relating to the same class of product shall be refused if the application for registration of the trademark is submitted after the date of submission of the registration application to the Commission.

Trademarks registered in breach of the first subparagraph shall be invalidated.'

17 Article 17 of that regulation, headed 'Transitional provisions,' states:

'1. The names that, on the date of entry into force of this Regulation, are listed in the Annex of ... Regulation No 1107/96 ... and those listed in the Annex of ... Regulation ... No 2400/96 ... shall be automatically entered in the register referred to in Article 7(6) of this Regulation. The corresponding specifications shall be deemed to be the specifications referred to in Article 4(1). Any specific transitional provisions associated with such registrations shall continue to apply.

2. In respect of pending applications, statements and requests received by the Commission before the date of entry into force of this Regulation:

(a) the procedures in Article 5 shall not apply, without prejudice to Article 13(3); and

(b) the summary of the specification drawn up in conformity with Commission Regulation (EC) No 383/2004 [of 1 March 2004 laying down detailed rules for applying Regulation No 2081/92 as regards the summary of the main points of the product specifications (OJ 2004 L 64, p. 16)] shall replace the single document referred to in Article 5(3)(c).

3. The Commission may adopt, if necessary, other transitional provisions in accordance with the procedure referred to in Article 15(2).'

18 Article 19 of Regulation No 510/2006 provides:

‘Regulation (EEC) No 2081/92 is hereby repealed.

References made to the repealed Regulation shall be construed as being made to this Regulation and should be read in accordance with the correlation table in Annex III.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

19 Bayerischer Brauerbund is a German association with the objective of protecting the common interests of Bavarian brewers. According to a certificate from the Amtsgericht München (Local Court, Munich), its statutes date from 7 December 1917. Bayerischer Brauerbund is the proprietor of the registered collective trade marks ‘Genuine Bavarian Beer’ (since 1958), ‘Bayrisch Bier’ and ‘Bayerisches Bier’ (since 1968), and ‘Reinheitsgebot seit 1516 Bayrisches Bier’ (since 1985).

20 Bavaria is a Netherlands commercial company producing beer which operates on the international market. Formerly called ‘Firma Gebroeders Swinkels’, the company began to use the word ‘Bavaria’ in 1925, and it became part of its name in 1930. Bavaria was and is the proprietor of several registered trade marks and figurative elements containing the word ‘Bavaria’. The registration dates include 1947, 1971, 1982, 1991, 1992 and 1995. Protection in Germany of some of those trade marks was refused in 1973, 1992 and 1993.

- 21 The name 'Bayerisches Bier' was covered by bilateral agreements on the protection of indications of provenance, designations of origin and other geographic names between, on the one hand, the Federal Republic of Germany and, on the other hand, the French Republic (1961), the Italian Republic (1963), the Hellenic Republic (1964), the Swiss Confederation (1967) and the Kingdom of Spain (1970).
- 22 On 28 September 1993 Bayerischer Brauerbund, in agreement with two other Bavarian associations, submitted to the German Government an application for registration of a PGI pursuant to Article 17(1) of Regulation No 2081/92. On 20 January 1994 the German Government informed the Commission of the application for registration of 'Bayerisches Bier' as a PGI in accordance with the simplified procedure under that provision.
- 23 Numerous pieces of information were exchanged between the Commission and the German authorities for the purposes of supplementing the file, which was regarded as complete on 20 May 1997. The final version of the specification was sent to the Commission by letter of 28 March 2000.
- 24 The Regulatory Committee on Geographical Indications and Designations of Origin discussed on a number of occasions two draft Commission regulations for registration of 'Bayerisches Bier' as a PGI. The existence of marks which also include the words 'Bayerisches Bier' or translations of them was one of the issues discussed.
- 25 As the majority laid down in the second paragraph of Article 15 of Regulation No 2081/92 was not reached within that committee, the latter was unable to deliver an opinion within the prescribed period. The Commission therefore converted its last draft into a proposal for a Council regulation, and the Council then adopted

Regulation No 1347/2001 which registered ‘Bayerisches Bier’ as a PGI by including it among the names listed in the Annex to Regulation (EC) No 1107/96.

- 26 Following similar proceedings in other Member States, Bayerischer Brauerbund applied to the Landgericht München for an order requiring Bavaria to agree to renounce the protection of one of the trade marks cited in paragraph 20 above. The trade mark in question is the international trade mark registered under No 645 349, protected in Germany with priority from 28 April 1995.
- 27 The Landgericht München granted Bayerischer Brauerbund’s application by a judgment which was upheld on appeal by the Oberlandesgericht München (Higher Regional Court, Munich). Bavaria appealed on a point of law to the Bundesgerichtshof (Federal Court of Justice).
- 28 Against that background, the Bundesgerichtshof decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - ‘1. Does Article 14(1) of Regulation ... No 510/2006 apply in the case where the protected indication has been validly registered in accordance with the simplified procedure under Article 17 of Regulation ... No 2081/92 ...?
 2. (a) If the answer to Question 1 is in the affirmative, what date should be taken as the basis for determining the classification in time of the protected geographical indication for the purposes of Article 14(1) of Regulation ... No 510/2006?

(b) If the answer to Question 1 is in the negative, what provision governs the conflict between a geographical indication validly registered in accordance with the simplified procedure under Article 17 of Regulation ... No 2081/92 and a trade mark, and what determines the classification in time of the protected geographical indication?

3. May the national provisions on the protection of geographical designations be applied in the event that the indication “Bayerisches Bier” fulfils the conditions for registration under Regulation ... No 2081/92 and Regulation ... No 510/2006, but Regulation ... No 1347/2001 is invalid?’

²⁹ By decision of the President of the Court of Justice of 8 May 2008, the present proceedings were stayed pending delivery of the judgment in Case C-343/07 *Bavaria and Bavaria Italia* [2009] ECR I-5491. That case was a reference for a preliminary ruling from the Corte d’appello di Torino (Appeal Court, Turin) (Italy) in a dispute which concerned, inter alia, the validity of Regulation No 1347/2001 and was also between Bavaria and Bayerischer Brauerbund.

Consideration of the questions referred

³⁰ As a preliminary point, it should be noted that while the first and second questions assume that Regulation No 1347/2001 is valid, the third question is based on the premiss that it is invalid.

³¹ The third question should therefore be dealt with before the first and second questions.

The third question

- ³² By its third question, the referring court seeks to ascertain whether Regulation No 1347/2001 is valid and, if the answer is negative, whether the national provisions on the protection of geographical designations may be applied in the event that the PGI 'Bayerisches Bier' fulfils, despite the invalidity of that regulation, the conditions for registration under Regulations Nos 2081/92 and 510/2006.
- ³³ It is clear from the order for reference that this question was raised in respect of the same factors which might affect the validity of Regulation No 1347/2001 as were raised by the Corte d'appello di Torino in *Bavaria and Bavaria Italia*, which was pending before the Court of Justice at that time.
- ³⁴ As the answer given by the Court in that case was that consideration of the question referred did not disclose any factor liable to affect the validity of Regulation No 1347/2001, it is unnecessary to answer the third question.

The first and second questions

- ³⁵ By its first and second questions, which it is appropriate to consider together, the referring court asks the Court, in essence, which provision and which reference date are applicable for resolving the conflict between a name validly registered as a PGI in accordance with the simplified procedure under Article 17 of Regulation No 2081/92 and a trade mark the application for registration of which was submitted

both before the registration of that name and before the entry into force of Regulation No 692/2003.

Inapplicability *ratione temporis* of Article 14(1) of Regulation No 510/2006 or of Regulation No 2081/92, as amended by Regulation No 692/2003, to the main proceedings

- ³⁶ Both Article 14(1) of Regulation No 2081/92, in its original version and as amended by Regulation No 692/2003, and Article 14(1) of Regulation No 510/2006 are designed to resolve a conflict between a name registered as a PGI and an application for registration of a trade mark corresponding to one of the situations referred to in Article 13 of Regulation No 2081/92 and Article 13 of Regulation No 510/2006 respectively, and relating, as the case maybe, to the same type or the same class of product.
- ³⁷ The solution provided for in the case of such a conflict is refusal of the application for registration of the trade mark at issue, or, in the alternative, invalidation of the trade mark registered, where that application was submitted after the date respectively provided for in those various provisions.
- ³⁸ Thus, under both Article 14(1) of Regulation No 510/2006 and the version of Article 14(1) of Regulation No 2081/92 resulting from Regulation No 692/2003, the application for registration of the trade mark must be rejected or, as the case may be, the trade mark must be declared invalid where that application was submitted after the date on which the application for registration of the name concerned as a PGI was lodged with the Commission.

39 However, the provisions cited in the preceding paragraph cannot be applied retroactively in order to govern a conflict, such as that giving rise to the dispute in the main proceedings, between a name validly registered as a PGI in accordance with the simplified procedure under Article 17 of Regulation No 2081/92 and a trade mark the application for registration of which was submitted before the entry into force of Regulation No 692/2003.

40 It is settled case-law that, as a general rule, the principle of legal certainty precludes a European Union measure from taking effect from a point in time before its publication, but it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected. In that regard, in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, the substantive rules of European Union law must be interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them (see Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano v Commission* [2002] ECR I-7869, paragraph 119 and the case-law cited).

41 Whilst the principle of legal certainty precludes a regulation from being applied retroactively, irrespective of whether such application might produce favourable or unfavourable effects for the person concerned, the same principle requires that any factual situation should normally, in the absence of any express contrary provision, be examined in the light of the legal rules existing at the time when the situation obtained. However, if the new law is thus valid only for the future, it also applies, save for derogation, to the future effects of situations which came about during the period of validity of the old law (see Case C-154/05 *Kersbergen-Lap and Dams-Schipper* [2006] ECR I-6249, paragraph 42 and the case-law cited).

42 It must be held that the circumstances giving rise to the conflict between the name and the trade mark at issue in the main proceedings predate not only the entry into force of Regulation No 510/2006, but also the entry into force of Regulation No 692/2003

which amended Regulation No 2081/92. That conflict relates to the fact that, first, the name 'Bayerisches Bier', following an application lodged by the German Government with the Commission on 20 January 1994, was registered in accordance with the simplified procedure under Regulation No 2081/92 as a PGI by virtue of Regulation No 1347/2001 and, second, the trade mark 'Bavaria' which was the subject of international registration No 645 349 has enjoyed a right of priority and hence protection *inter alia* in Germany since 28 April 1995.

⁴³ Since it is not apparent from the terms, objectives or general scheme of Regulations Nos 692/2003 and 510/2006, in particular the provisions examined above, that they should be given retroactive effect, a conflict such as that between the PGI and the trade mark at issue in the main proceedings must be governed by Article 14(1) of Regulation No 2081/92 in its original version.

⁴⁴ In the present case it is a matter of establishing whether, when the trade mark 'Bavaria' at issue was registered in 1995, the PGI 'Bayerisches Bier' already enjoyed priority which could justify invalidation of that mark. That question must be answered in the light of the rule which governed the conflict at issue at the time when it arose.

⁴⁵ It is immaterial in that regard that, according to recital 19 in the preamble to Regulation No 510/2006 and under Article 17 of that regulation, names registered as a PGI under Regulation No 2081/92 are entitled to protection under Regulation No 510/2006.

Applicability *ratione materiae* of Article 14(1) of Regulation No 2081/92 to the main proceedings

- ⁴⁶ As a preliminary point, it should be noted that under the system established by Regulation No 2081/92 names could be registered either in accordance with the normal procedure under Article 5 et seq. or in accordance with the simplified procedure under Article 17. Whilst the names registered in accordance with the normal procedure were listed in the Annex to Regulation No 2400/96, the names registered in accordance with the simplified procedure were listed in the Annex to Regulation No 1107/96.
- ⁴⁷ The conflict that gave rise to the dispute in the main proceedings is governed by Article 14(1) of Regulation No 2081/92.
- ⁴⁸ Article 14(1) is the only provision governing conflicts between names and applications for registration of trade marks; Article 14(2) and Article 14(3) relate to different situations.
- ⁴⁹ According to the conflict rule laid down in Article 14(1) of Regulation No 2081/92, the application for registration of the trade mark at issue is to be refused, or, if it has not been refused, the registered trade mark is to be declared invalid, if the application was submitted after the date of the publication provided for in Article 6(2) of that regulation. The application for registration is also to be refused or the trade mark declared invalid if the application was lodged before publication but publication occurred before the trade mark was registered.

- 50 That conflict rule therefore prescribes a ground for refusal of the application for registration of the mark at issue, or, in the alternative, for the invalidity of that mark, under which the reference date for application of the conflict rule is the date of the publication provided for in Article 6(2) of Regulation No 2081/92.
- 51 According to the Commission, establishing such a reference date means that Article 14(1) of Regulation No 2081/92 was not applicable to names registered in accordance with the simplified procedure, since the publication provided for in Article 6(2) of that regulation applied only to the normal registration procedure.
- 52 That interpretation cannot be accepted.
- 53 First, Article 14(1) of Regulation No 2081/92 concerns designations of origin and geographical indications registered 'in accordance with this Regulation', without a distinction being drawn on the basis of the registration procedure used.
- 54 Second place, it should be noted that the objective of Article 17 of Regulation No 2081/92 was to register in accordance with a simplified procedure names existing in the Member States which, whilst fulfilling the substantive conditions of that regulation, were already legally protected or established by usage.
- 55 In that regard, it must be held that the system introduced by Regulation No 2081/92, in particular that provided for in Article 17, was intended to afford to names registered in accordance with the simplified procedure the same level of protection as afforded to names registered in accordance with the normal procedure.

56 Furthermore, as is apparent from the second recital in the preamble to Regulation No 1107/96 and the fourth recital in the preamble to Regulation No 2400/96, registration, whether in accordance with the simplified procedure or in accordance with the normal procedure, implied that the names at issue were in accordance with Regulation No 2081/92 and therefore warranted protection at European Union level.

57 It must therefore be held that Article 14(1) of Regulation No 2081/92 is also applicable to conflicts involving names registered as a PGI in accordance with the simplified procedure.

The reference date, under Article 14(1) of Regulation No 2081/92, in a conflict involving a name registered as a PGI in accordance with the simplified procedure

58 The reference date referred to in Article 14(1) of Regulation No 2081/92 is the date of the publication provided for in Article 6(2) of that regulation, whereas such publication did not exist under the simplified procedure. It is necessary therefore to establish the relevant reference date in the case of a conflict involving a name registered as a PGI in accordance with that procedure.

59 Since the system introduced by Regulation No 2081/92 is a uniform and exhaustive system of protection (see Case C-478/07 *Budějovický Budvar* [2009] ECR I-7721, paragraphs 114 and 115), it must be regarded as forming a complete system that does not leave the Member States the power to fill a lacuna by resorting to their national law. It is thus proper to seek a solution in the light of the scheme and also the aims

and objectives of the provision and of the regulation at issue (see, to that effect, Case 159/73 *Hannoversche Zucker* [1974] ECR 121, paragraph 4).

- ⁶⁰ First, it should be noted in that regard that, in the case of the normal procedure, Article 14(1) of Regulation No 2081/92 provides for protection of names at European Union level in relation to a competing trade mark which begins on a date prior to the registration of the names.
- ⁶¹ In this context, establishing that date by reference to publication at European Union level, such as the publication provided for in Article 6(2) of that regulation, satisfies the requirements of the principle of legal certainty.
- ⁶² However, the first time the names registered in accordance with the simplified procedure were published at European Union level was when they were registered.
- ⁶³ Second, under Article 17(3) of Regulation No 2081/92, the Member States could maintain national protection of the names communicated in accordance with Article 17(1) until such time as a decision on registration had been taken. Under Article 1 of Regulation No 1107/96, names forwarded pursuant to Article 17 of Regulation No 2081/92 continued to be protected at national level until a decision had been reached on them.
- ⁶⁴ Given that national protection for the names to be registered in accordance with the simplified procedure was maintained until the date of registration, to establish the date of the entry into force of that registration as the reference date for those names

for the purposes of the protection granted by Article 14(1) of Regulation No 2081/92 is consistent with the general scheme of the system introduced by that regulation.

- ⁶⁵ Moreover, as emerges from Regulation No 1347/2001, concerning the PGI at issue in the main proceedings, the publication of the registration also includes the date of the entry into force of that registration and therefore satisfies the requirements of legal certainty.
- ⁶⁶ It must therefore be held that, in the case of names registered in accordance with the simplified procedure under Article 17 of Regulation No 2081/92, the entry into force of the registration satisfies both the objectives of the reference date provided for in Article 14(1) of Regulation No 2081/92 and the general scheme of that regulation.
- ⁶⁷ That date therefore constitutes the reference date for the purposes of resolving, under Article 14(1) of Regulation No 2081/92, a conflict involving a name registered as a PGI in accordance with the simplified procedure.
- ⁶⁸ In the light of the foregoing, the answer to the first and second questions is that Article 14(1) of Regulation No 2081/92 is applicable for resolving the conflict between a name validly registered as a PGI in accordance with the simplified procedure under Article 17 of that regulation and a trade mark corresponding to one of the situations referred to in Article 13 of that regulation relating to the same type of product, the application for registration of which was submitted both before the registration of that name and before the entry into force of Regulation No 692/2003. The date of the entry into force of the registration of that name constitutes the reference date for the purposes of Article 14(1) of Regulation No 2081/92.

Costs

- ⁶⁹ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 14(1) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs is applicable for resolving the conflict between a name validly registered as a protected geographical indication in accordance with the simplified procedure under Article 17 of that regulation and a trade mark corresponding to one of the situations referred to in Article 13 of that regulation relating to the same type of product, the application for registration of which was submitted both before the registration of that name and before the entry into force of Council Regulation (EC) No 692/2003 of 8 April 2003 amending Regulation No 2081/92. The date of the entry into force of the registration of that name constitutes the reference date for the purposes of Article 14(1) of Regulation No 2081/92.

[Signatures]