JUDGMENT OF THE COURT (Fourth Chamber)

2 July 2009 *

In Case C-343/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Corte d'appello di Torino (Italy), made by decision of 6 July 2007, received at the Court on 25 July 2007, in the proceedings

Bavaria NV,

Bavaria Italia Srl

v

Bayerischer Brauerbund eV,

* Language of the case: Italian.

THE COURT (Fourth Chamber),

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

Advocate General: J. Mazák,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 September 2008,

after considering the observations submitted on behalf of:

— Bavaria NV and Bavaria Italia Srl, by G. van der Wal and F. van Schaik, advocaten, and M. Sterpi and L. Ghedina, avvocati,

— Bayerischer Brauerbund eV, by R. Knaak, Rechtsanwalt, and L. Ubertazzi and B. Ubertazzi, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

— the Czech Government, by M. Smolek, acting as Agent,

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

— the Greek Government, by V. Kontolaimos and I. Chalkias, acting as Agents,

— the Netherlands Government, by C.M. Wissels and M. de Grave, acting as Agents,

— the Council of the European Union, by F. Florindo Gijón, A. Lo Monaco and Z. Kupčová, acting as Agents,

— the Commission of the European Communities, by C. Cattabriga and B. Doherty, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 December 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the validity and interpretation 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 Council Regulation (EEC) No 2081/92 (OJ 2001 L 182, p. 3) and 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).

2 The reference was made in the course of proceedings between Bayerischer Brauerbund eV ('Bayerischer Brauerbund') and Bavaria NV and Bavaria Italia Srl ('Bavaria' and 'Bavaria Italia' respectively), regarding Bavaria and Bavaria Italia's right to use certain trade marks which include the word 'Bavaria' in relation to the geographical indication of origin 'Bayerisches Bier'.

Legal context

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

'1. This Regulation lays down rules on the protection of designations of origin and geographical indications of agricultural products intended for human consumption

referred to in Annex II to the Treaty and of the foodstuffs referred to in Annex I to this Regulation and agricultural products listed in Annex II to this Regulation.

However, this Regulation shall not apply to wine products or to spirit drinks.

Annex I may be amended in accordance with the procedure set out in Article 15.'

4 Article 2(2) of Regulation No 2081/92 defines protected designation of origin ('PDO') and protected geographical indication ('PGI') as follows:

'2. For the purposes of this Regulation:

(a) *designation of origin:* means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

(b) *geographical indication:* means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.'

5 Article 3 of Regulation No 2081/92 provides:

'1. Names that have become generic may not be registered.

For the purposes of this Regulation, a "name that has become generic" means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff.

To establish whether or not a name has become generic, account shall be taken of all factors, in particular:

— the existing situation in the Member State in which the name originates and in areas of consumption,

— the existing situation in other Member States,

— the relevant national or Community laws.

Where, following the procedure laid down in Articles 6 and 7, an application [for] registration is rejected because a name has become generic, the Commission shall publish that decision in the *Official Journal of the European Communities*.

2. A name may not be registered as a designation of origin or a geographical indication where it conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the public as to the true origin of the product.

3. Before the entry into force of this Regulation, the Council, acting by a qualified majority on a proposal from the Commission, shall draw up and publish in the *Official Journal of the European Communities* a non-exhaustive, indicative list of the names of agricultural products or foodstuffs which are within the scope of this Regulation and are regarded under the terms of paragraph 1 as being generic and thus not able to be registered under this Regulation.'

6 Article 13(1) and (3) of Regulation No 2081/92 provides:

'1. 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.

…

3. Protected names may not become generic.'

7 In accordance with Article 14 of Regulation No 2081/92:

'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 …

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.'

8 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.'

9 Annexe I to Regulation No 2081/92 states:

'Foodstuffs referred to in Article 1(1)

— Beer,

— …'

10 Article 1 of Regulation No 1347/2001 registered the name 'Bayerisches Bier' as a PGI.

11 According to recitals 1 to 5 in the preamble to Regulation No 1347/2001:

‘(1) Additional information was requested for a name notified by Germany under Article 17 of Regulation (EEC) No 2081/92 in order to ensure that it complied with Articles 2 and 4 of that Regulation. That additional information shows that the name complies with the said Articles. It should therefore be registered and added to the Annex to Commission Regulation (EC) No 1107/96 …

(2) Following notification of the application by the German authorities to register the name “Bayerisches Bier” as a [PGI], the Dutch and Danish authorities informed the Commission of the existence of trade marks used for beer which include that name.

(3) The information provided confirms the existence of the name “Bavaria” as a valid trade mark. In view of the facts and information available, it was, however, considered that registration of the name “Bayerisches Bier” was not liable to mislead the consumer as to the true identity of the product. Consequently, the geographical indication “Bayerisches Bier” and the trade mark “Bavaria” are not in the situation referred to in Article 14(3) of Regulation (EEC) No 2081/92.

(4) The use of certain trade marks, for example, the Dutch trade mark “Bavaria” and the Danish trade mark “Høker Bajer” may continue notwithstanding the registration of the geographical indication “Bayerisches Bier” as long as they fulfil the conditions provided for in Article 14(2) of Regulation (EEC) No 2081/92.

(5) In accordance with Article 3 of Regulation (EEC) No 2081/92, the generic nature of a name hindering its registration must be assessed with regard to the Community situation as a whole. In this particular case, despite evidence to the effect that the terms "bajers" and "bajer", Danish translations of the name "Bayerisches", are becoming synonyms for the term "beer" and hence a common name, the generic nature of the name "Bayerisches" or its translations in other languages and Member States has not been demonstrated.'

12 Recital 13 in the preamble to Council Regulation (EC) No 692/2003 of 8 April 2003, amending Regulation No 2081/92 (OJ 2003 L 99, p. 1) reads:

'The simplified procedure provided for in Article 17 of Regulation (EEC) No 2081/92 for the registration of names already protected or established by usage in Member States does not provide for any right of objection. For reasons of legal security and transparency it should be deleted. For reasons of consistency the five-year transition period provided for in Article 13(2) in the case of names registered under Article 17 should also be deleted but without prejudice to exhaustion of that period in regard to the names already registered.'

13 Point 15 of Article 1 of Regulation No 692/2003 states:

'Article 13(2) and Article 17 shall be deleted. However, the provisions of these Articles shall continue to apply to registered names or to names for which a registration application was made by the procedure provided for in Article 17 before this Regulation entered into force.'

14 Article 3(1) 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) provides:

'The following shall not be registered or if registered shall be liable to be declared invalid:

…

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods;

…

(g) trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service;

…'

15 Article 12(2) of First Directive 89/104 provides:

'A trade mark shall also be liable to revocation if, after the date on which it was registered,

…

(b) in consequence of the use made of it by the proprietor of the trade mark or with his consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.'

The main proceedings and the questions referred for a preliminary ruling

16 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 has been the proprietor of the registered collective trade marks Bayrisch Bier and Bayerisches Bier since 1968.

17 Bavaria is a Dutch 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 trade marks and figurative elements containing the word

'Bavaria'. The registration dates include 1947, 1971, 1982, 1991, 1992 and 1995. Some of the registrations have been renewed. Bavaria Italia belongs to the Bavaria group of companies.

18 The name 'Bayerisches Bier' was covered by bilateral agreements on the protection of geographical indications, appellations of origin and other geographic names between the Federal Republic of Germany and the French Republic (1961), the Italian Republic (1963), the Hellenic Republic (1964), the Swiss Confederation (1967) and the Kingdom of Spain (1970).

19 On 28 September 1993 Bayerischer Brauerbund, in agreement with the associations Münchener Brauereien eV and Verband Bayerischer Ausfuhrbrauereien eV, submitted to the German Government an application for registration of 'Bayerisches Bier' as a PGI pursuant to Article 17(1) of Regulation No 2081/92, which provides for the 'simplified' procedure.

20 On 20 January 1994 the German Government informed the Commission of the application for registration of the PGI 'Bayerisches Bier' pursuant to Article 17(1) of that regulation.

21 Numerous pieces of information were exchanged by the Commission and the German authorities with the aim of the supplementing the file and it was regarded as complete on 20 May 1997.

22 The final version of the specification was sent to the Commission by letter of 28 March 2000 and excluded five varieties of beer initially covered by the PGI concerned by the application on the ground that they did not comply with the description of that specification.

23 On 5 May 2000 the Commission, which regarded the application as well founded, submitted a draft regulation seeking the registration of 'Bayerisches Bier' as a PGI to the Regulatory Committee for geographical indications and appellations of origin ('the Committee').

24 A number of Member States objected to that registration. The discussions within the Committee related to two issues, namely, first, the existence of trade marks which also include the term 'Bayerisches Bier' or translations of it and, second, the view that the term 'Bayerisches' or translations of it had become generic.

25 After analysing the questions asked (this was even preceded by a formal inquiry in all the Member States as regards the second issue), the Commission concluded that the arguments submitted against the registration of the PGI 'Bayerisches Bier' were unfounded. A second draft regulation was therefore submitted to the Committee on 30 March 2001. The Committee did not, however, deliver an opinion, as the majority laid down in the second paragraph of Article 15 of Regulation No 2081/92 was not reached.

26 As the Committee did not deliver an opinion within the prescribed period, the Commission converted its draft into a proposed Council regulation. The Council then adopted Regulation No 1347/2001 which registers 'Bayerisches Bier' as a PGI.

27 Bavaria and Bavaria Italia did not bring an action against Regulation No 1347/2001.

28 By an action brought on 27 September 2004 before the Tribunale di Torino (District Court, Turin), following similar proceedings in other Member States, Bayerischer Brauerbund tried to stop Bavaria and Bavaria Italia from using the Italian parts of the marks referred to in paragraph 17 above, by seeking an interlocutory ruling declaring those marks invalid or revoking them, on the ground that they conflicted with the PGI 'Bayerisches Bier' for the purposes of Articles 13 and 14 of Regulation No 2081/92 or, in

any event, because they contained a geographical indication which was generic and misleading, as the beer was Dutch.

29 As the Tribunale di Torino, by judgment of 30 November 2006, allowed in part the application of Bayerischer Brauerbund, Bavaria and Bavaria Italia appealed against that judgment.

30 In those circumstances, the Corte d'appello de Torino (Appeal Court, Turin) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is Council Regulation (EC) No 1347/2001 … invalid, possibly as a consequence of the invalidity of other acts, in light of the following:

Breach of general principles

— the invalidity of Article 1(1) of Regulation No 2081/92, read in conjunction with Annex I thereto, in so far as it permits the registration of geographical indications relating to "beer", which is an alcoholic beverage listed (wrongly) in that Annex as one of the "foodstuffs" referred to in Article 1(1), but which is not one of the "agricultural products" listed in Annex I to the EC Treaty and referred to in Article 32 EC and Article 37 EC, which the Council took as the legal basis for its competence to adopt Regulation No 2081/92;

— the invalidity of Article 17 of Regulation No 2081/92 in so far as it provides for an accelerated registration procedure under which the rights of interested parties are substantially limited and impaired, in so far as it makes no provision for a right of opposition, in clear breach of the principles of transparency and legal certainty, as is evident in particular from the complexity of the procedure for registering "Bayerisches Bier", the [PGI] at issue, which took more than seven years from 1994 to 2001, and from the express acknowledgment to that effect in recital 13 in the preamble to Regulation No 692/2003, Article 15 of which repealed — for those reasons — Article 17 of Regulation No 2081/92;

Failure to comply with procedural requirements

— the failure of the indication "Bayerisches Bier" to satisfy the conditions laid down in Article 17 of Regulation No 2081/92 for eligibility for registration in accordance with the simplified procedure provided for therein, in that, at the time when the application for registration was submitted, that indication was not a "legally protected name" in Germany, nor had it been "established by usage" there;

— the fact that the question whether the preconditions had been met for registration of the indication "Bayerisches Bier" was not given due consideration either by the German Government before submitting the application or by the Commission itself after receiving that application, contrary to the requirements established by the case-law of the Court of Justice (Case C-269/99 *Carl Kühne and Others* [2001] ECR I-9517);

— the fact that the application for registration of the indication "Bayerisches Bier" was not submitted in good time by the German Government in accordance with Article 17(1) of Regulation No 2081/92 (six months after the date of entry into force of the Regulation, which took place on 24 July 1993), it being also the case that the subject-matter of the application initially submitted by the applicant company envisaged eight varying indications — with a reservation as to the

possibility of later variations of an unspecified nature — which did not coalesce to form the current single indication "Bayerisches Bier" until well after the deadline on 24 January 1994;

Failure to comply with substantive requirements

— failure of the indication "Bayerisches Bier" to satisfy the substantive requirements laid down in Article 2(2)(b) of Regulation No 2081/92 for registration as a [PGI], given the generic nature of that indication, which has historically designated beer produced in accordance with a particular method of production which originated during the 19th century in Bavaria, whence it spread throughout Europe and the rest of the world (the method known as "the Bavarian method", based on bottom-fermentation), and which even today in a number of European languages (Danish, Swedish, Finnish) is used as a generic term for beer and which, in any case, can at most identify, solely and generically, from among the numerous varieties of beer in existence any type of "beer produced in the German *Land* of Bavaria", there being no "direct link" (Case C-312/98 *Warsteiner Brauerei* [2000] ECR I-9187) between a specific quality, reputation or other characteristic of the product (beer) and its specific geographical origin (Bavaria), nor evidence that this is one of the "exceptional cases" required under Article 2(2)(b) of Regulation No 2081/92 in order for it to be permissible to register a geographical indication containing the name of a country;

— the fact that, as emerges from the preceding paragraph, the indication "Bayerisches Bier" is a "generic" indication, and as such ineligible for registration pursuant to Articles 3(1) and 17(2) of Regulation No 2081/92;

— the fact that registration of the indication "Bayerisches Bier" should have been refused pursuant to Article 14(3) of Regulation No 2081/92, since, in the light of

the "reputation and renown" of the Bavaria marks and "the length of time [they have] been used", registration was "liable to mislead the consumer as to the true identity of the product"?

2. In the alternative, if Question [1] is held inadmissible or unfounded, should … Regulation No 1347/2001 … be construed as meaning that recognition of the [PGI] "Bayerisches Bier" is to have no adverse effects on the validity or usability of pre-existing marks of third parties in which the word "Bavaria" appears?'

Procedure before the Court

31 By letter lodged at the Court Registry on 21 January 2009, Bavaria and Bavaria Italia made observations on the Opinion of the Advocate General and requested the Court's leave to lodge a reply to that opinion.

32 It must be pointed out at the outset that neither the Statute of the Court of Justice nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion. The Court has therefore held that applications to that effect must be rejected (see, in particular, the order in Case C-17/98 *Emesa Sugar* [2000] ECR I-665, paragraphs 2 and 19, and Case C-292/05 *Lechouritou and Others* [2007] ECR I-1519, paragraph 18).

33 It must be added that the same conclusion would necessarily follow if the application of the applicants in the main proceeding were to be regarded as seeking a reopening of the oral procedure.

34 The Court may, of its own motion, on a proposal from the Advocate General or at the request of the parties, reopen the oral procedure, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, inter alia, Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraph 42, and Case C-210/06 *Cartesio* [2008] ECR I-0000, paragraph 46).

35 However, the Court, after hearing the Advocate General, takes the view that, in the present case, it has all the information necessary to reply to the questions referred by the national court and that that information has been the subject of argument before it.

The questions referred for a preliminary ruling

The first question

36 By its first question, which is divided into sub-questions, the referring court asks, in essence, whether Regulation No 1347/2001 is valid in the light of a possible breach of general principles of Community law or of formal or substantive conditions laid down in Regulation No 2081/92. The sub-questions concerning compliance with the general principles of Community law relate to Regulation No 2081/92, as the legal basis for Regulation No 1347/2001.

Admissibility

37 In the observations submitted to the Court the question arose whether the grounds of invalidity referred to in the first question may be pleaded before a national court. In some of those observations it is claimed that such grounds cannot be pleaded because of the fact that Bavaria and Bavaria Italia are directly and individually concerned by Regulation No 1347/2001 and did not bring an action under Article 230 EC for its annulment.

38 In that regard, it must be borne in mind that, according to settled case-law, it is a general principle of Community law that an applicant, in proceedings brought under national law against the rejection of his application, is entitled to plead the unlawfulness of a Community measure on which the national decision taken in his regard is based, and the question of the validity of that Community measure may thus be referred to the Court in proceedings for a preliminary ruling (Case C-239/99 *Nachi Europe* [2001] ECR I-1197, paragraph 35, and Case C-441/05 *Roquette Frères* [2007] ECR I-1993, paragraph 39).

39 However, this general principle, which has the effect of ensuring that every person has or will have had the opportunity to challenge a Community measure which forms the basis of a decision adversely affecting him, does not in any way preclude a regulation from becoming definitive as against an individual with respect to whom it must be regarded as an individual decision whose annulment he could undoubtedly have sought under Article 230 EC, a fact which prevents that individual from pleading the unlawfulness of that regulation before the national court (*Nachi Europe*, paragraph 37, and *Roquette Frères*, paragraph 40).

40 Therefore, the question arises as to whether an action for annulment by Bavaria or Bavaria Italia challenging Regulation No 1347/2001 under the fourth paragraph of

Article 230 EC would undoubtedly have been admissible on the ground that that regulation was of direct and individual concern to them (see, to that effect, Case C-241/95 *Accrington Beef and Others* [1996] ECR I-6699, paragraph 15; *Nachi Europe*, paragraph 40; and *Roquette Frères*, paragraph 41).

41 In that regard, it must be observed that Bavaria and Bavaria Italia may not be regarded, for the purpose of the fourth paragraph of Article 230 EC, as undoubtedly 'directly and individually concerned' by Regulation No 1347/2001.

42 That regulation seeks to confer on the product 'Bayerisches Bier' the protection for PGIs provided for by Regulation No 2081/92 by granting to all operators whose goods comply with the requirements laid down the right to market them under that PGI.

43 Even if Regulation No 1347/2001 were capable of affecting Bavaria and Bavaria Italia's legal position, that effect could not be regarded as resulting directly from that regulation. In accordance with settled case-law, the condition that the Community legislation forming the subject-matter of the proceedings must be of direct concern to a natural or legal person means that that legislation must affect directly the legal situation of the individual and leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see Case C-404/96 P *Glencore Grain* v *Commission* [1998] ECR I-2435, paragraph 41; Case C-486/01 P *Front National* v *Parliament* [2004] ECR I-6289, paragraph 34; and Case C-15/06 P *Regione Siciliana* v *Commission* [2007] ECR I-2591, paragraph 31).

44 As is apparent from a mere reading of recitals 3 and 4 in the preamble to Regulation No 1347/2001, that regulation considers the pre-existing mark Bavaria to be valid and permits its use to be continued in compliance with the conditions provided for in Article 14(2) of Regulation No 2081/92, notwithstanding the registration of the PGI

'Bayerisches Bier'. A possible effect on the legal position of Bavaria and Bavaria Italia cannot therefore be regarded as resulting in a purely automatic way from that regulation.

45 Accordingly, it cannot be claimed that Bavaria and Bavaria Italia are undoubtedly directly affected by Regulation No 1347/2001.

46 Bavaria and Bavaria Italia did not undoubtedly have standing to bring an action for annulment against Regulation No 1347/2001 on the basis of Article 230 EC. Consequently, they are entitled, in an action brought in accordance with national law, to plead the invalidity of that regulation even though they did not bring an action for its annulment before the Community judicature within the period laid down in Article 230 EC.

Alleged infringement of general principles of Community law by Regulation No 2081/92 as regards its scope and legal basis

47 By this sub-question, the referring court queries the validity of Regulation No 2081/92 on the ground that its scope extends to beer. It takes the view that, since beer is an alcoholic beverage, it cannot be regarded as a 'foodstuff' within the meaning of Article 1(1) of that regulation or, consequently, be included in Annex I thereto. Furthermore, the referring court also questions the validity of Regulation No 2081/92 on the ground that, since beer is not among the 'agricultural products' included in Annex I to the Treaty, Articles 32 EC and 37 EC do not constitute the appropriate legal basis for the adoption of that regulation.

48 In the first place, as regards equating beer with a foodstuff, it must be stated that the abovementioned Community legislation does not define the term 'foodstuff'. There is however no reason why beer should be excluded from that term.

49 First, it is indisputable that beer is food, in the ordinary sense of the term 'food'. Second, as the German Government and the Council correctly pointed out, beer is covered by the definition of 'foodstuff' in other Community legislation, such as Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

50 In the second place, as regards the argument that Articles 32 EC and 37 EC do not constitute the appropriate legal basis for the adoption of Regulation No 2081/92, on the ground that beer is not one of the 'agricultural products' mentioned in Annex I to the Treaty, it must be borne in mind that the Court has already held that legislation which contributes to the achievement of one or more of the objectives mentioned in Article 33 EC must be adopted on the basis of Article 37 EC, even though, in addition to applying essentially to products falling within Annex I to the Treaty, it also covers incidentally other products not included in that annex (see, to that effect, Case C-11/88 *Commission* v *Council*, paragraph 15, and Case C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265, paragraph 134).

51 In the present case, it is established that the primary purpose of Regulation No 2081/92, as is pointed out in the second recital in the preamble to that regulation, is the achievement of the objectives mentioned in Article 33 EC, and that that regulation covers principally products included in Annex I to the Treaty. Furthermore, although it is true that beer is not expressly mentioned in that annex, the fact remains that most of its ingredients are, and that its inclusion in the scope of Regulation No 2081/92 is consonant with the purpose of that regulation and in particular with the achievement of the objectives mentioned in Article 33 EC.

52 Consequently, consideration of this part of the first question has not disclosed any factor liable to affect the validity of Regulation No 2081/92.

Alleged infringement of general principles of Community law by Regulation No 2081/92 as regards the registration procedure in Article 17 of that regulation

53 By this sub-question the referring court seeks to ascertain whether Article 17 of Regulation No 2081/92 is invalid in so far as the procedure which it sets out makes no provision for a right of objection.

54 It must be noted at the outset that, even though Article 17(2) of Regulation No 2081/92 expressly provided that Article 7 of that regulation was not applicable in the simplified registration procedure, and therefore, in the context of that procedure, excluded the right of objection by legitimately concerned third parties provided for in Article 7(3) of the regulation, a registration under that procedure also presupposed that the names conformed with the substantive requirements of the regulation (see Joined Cases C-289/96, C-293/96 and C-299/96 *Denmark and Others* v *Commission ('Feta I')* [1999] ECR I-1541, paragraph 92).

55 In any event, the Court has already held that the interpretation to be given to Article 17 of Regulation No 2081/92 certainly did not mean that interested third parties who considered their legitimate interests infringed by the registration of a name could not obtain a hearing and state their objection before the Member State requesting that registration, inter alia in accordance with the principles relating to judicial protection, as results from the system of Regulation No 2081/92 (see *Carl Kühne and Others*, paragraph 41).

56 Therefore, those interested parties could also state their objection with regard to the application for registration concerned in the simplified procedure under Article 17 of that regulation.

57 It was for the national courts to rule on the lawfulness of an application for registration of a designation under Article 17 of Regulation No 2081/92 on the same terms as those by which they review any definitive measure adopted by the same national authority which is capable of adversely affecting the rights of third parties under Community law, and, consequently, to regard an action brought for that purpose as admissible, even if the domestic rules of procedure do not provide for this in such a case (see, to that effect, Case C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313, paragraph 13, and *Carl Kühne and Others*, paragraph 58).

58 In any event, in the main proceedings most of the objections to registration raised by Bavaria and Bavaria Italia in their observations before the Court were discussed within the Committee, mainly upon proposal of the Netherlands Government, during the procedure for registration of the PGI 'Bayerisches Bier'.

59 Lastly, it cannot reasonably be argued that the abolition of the simplified procedure by Regulation No 692/2003 amounts, in the light of the wording of recital 13 in the preamble to that regulation, to an implicit acknowledgement of the invalidity of Article 17 of Regulation No 2081/92.

60 As stated in that recital, the simplified procedure provided for in that article was, in the original version of Regulation No 2081/92, for the registration at Community level of names already protected or established by usage in Member States. That procedure was thus provided for on a purely transitional basis.

61 In the light of the foregoing, consideration of this part of the first question has not disclosed any factor liable to affect the validity of Regulation No 2081/92.

Alleged failure to comply with procedural requirements during the procedure for registration of the PGI 'Bayerisches Bier'

62 By these sub-questions, which it is appropriate to examine together, the referring court asks whether Regulation No 1347/2001 is invalid because, first, the conditions for registration of the PGI 'Bayerisches Bier' were not given due consideration by the German Government, the Council or the Commission and, second, that, given the amendments which took place subsequently, the application for registration of that PGI was not submitted in good time.

63 First, the referring court takes the view that, during the procedure for the registration of the PGI 'Bayerisches Bier', neither the German Government nor the Council or the Commission properly carried out their task of verifying the conditions set out in Regulation No 2081/92.

64 In that regard, it must be borne in mind that there is, in the system established by Regulation No 2081/92, a division of powers between the Member State concerned and the Commission. Whether a registration under the normal procedure or the simplified procedure is concerned, the registration can only take place if the Member State concerned has made an application in that regard and has forwarded a specification and the necessary information for registration, in accordance with Article 4 of Regulation No 2081/92 (see *Carl Kühne and Others*, paragraphs 50 and 51).

65 Under Article 5(5) of Regulation No 2081/92, it is for the Member States to check whether the application for registration under the normal procedure is justified with regard to the conditions laid down by that regulation. That provision provides that a Member State to which an application for registration is submitted under the normal procedure must check that the application is justified and, if it considers that the requirements of Regulation No 2081/92 are satisfied, forward it to the Commission. Furthermore, it follows from the very terms of Article 6(1) of Regulation No 2081/92 that, before proceeding with the registration, as provided for by Article 6(2) to (4) and Article 7 of that regulation, the Commission undertakes only a simple formal

examination to check whether those requirements are satisfied. There is no ground for applying other principles in the context of the simplified procedure (see *Carl Kühne and Others*, paragraph 52).

66 It follows that the decision to register a designation as a PDO or as a PGI may only be taken by the Commission if the Member State concerned has submitted to it an application for that purpose and that such an application may only be made if the Member State has checked that it is justified. That system of division of powers is attributable particularly to the fact that registration assumes that it has been verified that a certain number of conditions have been met, which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check (see *Carl Kühne and Others*, paragraph 53).

67 Under that system of division of powers, it is for the Commission, before registering a designation in the category applied for, to verify, in particular, first, that the specification which accompanies the application complies with Article 4 of Regulation No 2081/92, that is to say that it contains the required information and that that information does not appear to contain obvious mistakes, and, second, on the basis of the information contained in the specification, that the designation satisfies the requirements of Article 2(2)(a) or (b) of Regulation No 2081/92 (see *Carl Kühne and Others*, paragraph 54).

68 The same is true where, under Article 15 of Regulation No 2081/92, the measures envisaged by the Commission are not in accordance with the opinion of the Committee established by that article or there is no such opinion, and the decision on registration is adopted by the Council on a proposal from the Commission.

69 The points raised by the referring court must be examined in the light of the foregoing.

70 It must be stated at the outset that, while the Court has jurisdiction to analyse whether a name registered under Regulation No 2081/92 complies with the conditions set out in that regulation, it is for the national courts alone to review the verification of that compliance initiated by the competent national authorities, as was pointed out in paragraphs 55 and 57 above.

71 By contrast, it is for the Court to review whether the Council and the Commission properly carried out their task of verifying compliance with the conditions set out in Regulation No 2081/92.

72 In the present case, it is apparent from the documents before the Court that the Council and the Commission properly carried out their task of verifying compliance, in so far as the indication 'Bayerisches Bier' was registered only after a lengthy procedure during which there was extensive assessment regarding the compliance of that indication with the conditions in Regulation No 2081/92. Consequently, the objection raised by the referring court cannot be accepted.

73 Second, the referring court calls into question the validity of Regulation No 1347/2001 on the ground that, given the amendments which took place subsequently, the application for registration of the PGI at issue was not submitted in good time.

74 It must be stated as the outset that, as was pointed out in paragraph 20 above, the application for registration from the German Government was sent to the Commission on 20 January 1994 and therefore before the expiry of the six-month period provided for in Article 17 of Regulation No 2081/92.

75 Consequently, it must be examined whether, as the referring court submits, the validity of Regulation No 1347/2001 may be called in question by the fact that the original application was significantly amended over a period of several years after the expiry of the six-month period.

76 In that regard, it should be observed that, unlike Article 5 of Regulation No 2081/92, which provides expressly that, in the normal procedure, the application for registration is to be accompanied by the specification, Article 17 of the regulation is confined to requiring the Member States to notify 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'. In those circumstances, Article 17 of Regulation No 2081/92 cannot be interpreted as requiring the Member States to communicate, within the six months' time-limit, the final version of the specification and the other relevant documents, so that any amendment of the specification originally submitted would lead to the application of the normal procedure (see *Carl Kühne and Others*, paragraph 32).

77 That interpretation of Article 17 of Regulation No 2081/92 is further supported by the fact that the northern Member States have not historically had registers of protected designations, protection having been afforded by laws against misleading practices. It was only when Regulation No 2081/92 entered into force that it became necessary for those Member States to draw up a list of existing designations and determine whether they were PDOs or PGIs. It would therefore have been unrealistic to require those Member States to provide the Commission, within six months from the entry into force of Regulation No 2081/92, with all the information and documents necessary for a decision on registration, especially given the time needed for interested parties to exercise their procedural rights at the national level (see *Carl Kühne and Others,* paragraph 33).

78 It must therefore be held that, in a case such as that in the main proceedings, the amendment of the original application for registration after the expiry of the six-month

period provided for in Article 17 of Regulation No 2081/92 did not make the application of the simplified procedure unlawful.

79 In the light of the foregoing, consideration of this part of the first question has not disclosed any factor liable to affect the validity of Regulation No 2081/92.

Alleged failure of the registration of the PGI 'Bayerisches Bier' to comply with substantive requirements of Regulation No 2081/92

80 By these sub-questions, which it is appropriate to examine together, the referring court calls into question the validity of Regulation No 1347/2001 on the ground that the registration of the PGI 'Bayerisches Bier' fails to comply with a number of substantive conditions laid down by Regulation No 2081/92. First, the name at issue was not legally protected or established by usage within the meaning of Article 17(1) of Regulation No 2081/92. Second, it does not satisfy the conditions laid down in Article 2(2)(b) of that regulation and is, in actual fact, a 'generic name' within the terms of Articles 3(1) and 17(2) of that regulation. Third, the situation provided for in Article 14(3) of Regulation No 2081/92 applies to that name.

81 It should be noted at the outset, first, that in matters concerning the common agricultural policy the Community legislature has a broad discretion which corresponds to the political responsibilities given to it by Articles 34 EC and 37 EC and that the Court has, on several occasions, held that the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate,

having regard to the objective which the competent institution is seeking to pursue (see Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraphs 89 and 90, and Case C-306/93 *SMW Winzersekt* [1994] ECR I-5555, paragraph 21).

82 Consequently, review by the Court must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion (Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80; C-304/01 *Spain* v *Commission* [2004] ECR I-7655, paragraph 23; and Case C-535/03 *Unitymark and North Sea Fishermen's Organisation* [2006] ECR I-2689, paragraph 55).

83 Second, when they are taking a decision on an application for registration on the basis of Regulation No 2081/92, the Community institutions are called upon to evaluate a complex economic and social situation.

84 When implementation by the Council or the Commission of the Community's agricultural policy necessitates the evaluation of a complex economic or social situation, their discretion is not limited solely to the nature and scope of the measures to be taken but also, to some extent, to the finding of basic facts. In that context, it is open to the Council or the Commission to rely if necessary on general findings (see, to that effect, Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 18; Case C-4/96 *NIFPO and Northern Ireland Fishermen's Federation* [1998] ECR I-681, paragraphs 41 and 42; Case C-179/95 *Spain* v *Council* [1999] ECR I-6475, paragraph 29; and Case C-120/99 *Italy* v *Council* [2001] ECR I-7997, paragraph 44).

85 It is in the light of the above that the questions raised by the referring court must be examined.

— Article 17(1) of Regulation No 2081/92

86 The referring court takes the view that the registration procedure provided for in Article 17(1) of Regulation No 2081/92 was not applicable to the name 'Bayerisches Bier' because that name was neither 'legally protected' nor 'established by usage' within the meaning of that provision.

87 In that regard, it must be pointed out that that assessment is based on the checks which must be made by the competent national authorities, subject to review by the national courts if appropriate, before the application for registration is notified to the Commission (see *Carl Kühne and Other*s, paragraph 60).

88 As was pointed out in paragraph 66 above, verification that the name 'Bayerisches Bier' was either legally protected or established by usage requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check.

89 In the main proceedings, first, such a verification was carried out by the German authorities and its correctness was not challenged before a national court.

90 Second, the existence of the five bilateral agreements mentioned in paragraph 18 above, which seek to protect the indication 'Bayerisches Bier', in conjunction with the other items in the file, inter alia certain labels and publications, made it possible validly to draw the conclusion that that name was legally protected or, at the very least, established by usage. Given that the assessment made by the competent German authorities does not appear to be vitiated by manifest error, the Council or the

Commission could rightly assume that the PGI in question satisfied the conditions set out in Article 17(1) of Regulation 2081/92 for registration under the simplified procedure.

91 Consequently, it must be held that consideration of the conditions in Article 17(1) of Regulation No 2081/92 has not disclosed any factor liable to affect the validity of Regulation No 1347/2001.

— Articles 2(2)(b), 3(1) and 17(2) of Regulation No 2081/92

92 The referring court expresses doubt that the name 'Bayerisches Bier' complies with the conditions in Article 2(2)(b) of Regulation No 2081/92 on account of, first, an alleged absence of a direct link between the beer originating in Bavaria and a specific quality, reputation or other characteristics of that beer attributable to that origin and, second, the fact that the present case does not constitute an exceptional case justifying registration of the name of a country. Furthermore, it enquires whether that name is not, in actual fact, a 'generic name' within the terms of Articles 3(1) and 17(2) of Regulation No 2081/92.

93 In that regard, it must be borne in mind that as an assessment of the abovementioned conditions requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, which the competent authorities of that State are best placed to check, that assessment is also part of the checks which must be made by those authorities, subject to review by the national courts if appropriate, before the application for registration is notified to the Commission. It must also be pointed out that in the main proceedings such a verification was carried out by the German authorities and its correctness was not called into question before a national court.

94 As regards the conditions in Article 2(2)(b) of Regulation No 2081/92, it must be pointed out at the outset that it is apparent from the wording of that provision and the scheme of that regulation that the term 'country' refers to either a Member State or a non-member country. Therefore, as Bavaria is an infra-State body, the question of whether this is 'an exceptional case' within the meaning of that provision does not even arise in the main proceedings.

95 As regards the direct link required by that provision, the registration of the name 'Bayerisches Bier' as a PGI was based, as the Council and the Commission submitted before the Court, on such a link between the reputation and the Bavarian origin of the beer.

96 Such a finding on the part of the Community institutions cannot be rebutted, as the referring court, Bavaria and Bavaria Italia suggest, on the ground that the Law on beer purity of 1516 ('Reinheitsgebot') as well as the traditional bottom-fermentation brewing method, both of which are of Bavarian origin, have spread, the first throughout Germany since 1906 and the second throughout the world in the course of the 19th century.

97 Neither purity nor the traditional bottom-fermentation brewing method were in themselves the bases for the registration of the PGI 'Bayerisches Bier'. As pointed out in paragraph 95 above, it was rather the reputation of beer originating in Bavaria that was determinative.

98 It is true that there is no doubt that the 'Reinheitsgebot' and the traditional bottom-fermentation brewing method have contributed to such a reputation. However, it cannot reasonably be maintained that that reputation could disappear solely because the 'Reinheitsgebot' began to apply in the rest of the German territory as from 1906 or because that traditional method spread to other countries in the course of the 19th century. Furthermore, such details, on the contrary, give an indication of the reputation of Bavarian beer, which had a decisive influence on the spread both of the Law on purity

and of the method of brewing and therefore constitute indicia capable of showing that there is, or at least was, a direct link between Bavaria and the reputation of its beer.

99 Consequently, the establishing of such a direct link between Bavarian beer and its geographical origin cannot be regarded as manifestly inappropriate on the basis of the factors put forward by the referring court, Bavaria and Bavaria Italia.

100 Those factors really relate more to the argument that the name 'Bayerisches Bier' is a 'generic name' within the meaning of Articles 3(1) and 17(2) of Regulation No 2081/92 and should not therefore have been registered. In the light of what has just been stated, what must be ascertained is, in particular, whether the name at issue had become generic at the time when the application for registration was lodged.

101 In that regard, it must be borne in mind that when assessing the generic character of a name, it is necessary, under Article 3(1) of Regulation No 2081/92, to take into account the places of production of the product concerned both inside and outside the Member State which obtained the registration of the name at issue, the consumption of that product and how it is perceived by consumers inside and outside that Member State, the existence of national legislation specifically relating to that product, and the way in which the name has been used in Community law (see Case C-132/05 *Commission* v *Germany* [2008] ECR I-957, paragraph 53).

102 The referring court, Bavaria and Bavaria Italia submit that the fact that the name 'Bayerisches Bier' has become generic is established, inter alia, by the use of the word 'Bayerisches' or translations of it as synonyms for 'beer' in at least three Member States

(Denmark, Sweden and Finland) and as synonyms for the old Bavarian bottom-fermentation brewing method in names, trade marks and labels of commercial companies the world over, including in Germany.

103 Such an objection cannot be accepted in the main proceedings either.

104 First, as regards the use of the name 'Bayerisches' or translations as synonyms for the word 'beer', it must be pointed out that the Commission requested additional information from the Member States in that regard and that that information showed, as stated in recital 5 in the preamble to Regulation No 1347/2001, that that name has not become generic in Community territory despite evidence to the effect that the Danish translation of that name is becoming a synonym for the term 'beer' and hence a common noun.

105 Second, as regards the presence on the market of trade marks and labels of commercial companies including the word 'Bayerisches' or translations as synonyms for the old Bavarian bottom-fermentation brewing method, that too does not lead to the conclusion that the name in question had become generic at the time when the application for registration was lodged.

106 Furthermore, the registration of a PGI under Regulation No 2081/92 is designed, among other objectives, to prevent the improper use of a name by third parties seeking to profit from the reputation which it has acquired and, moreover, to prevent the disappearance of that reputation as a result of popularisation through general use outside its geographical origin or detached from a specific quality, reputation or other characteristic which is attributable to that origin and justifies registration.

107 Therefore, as regards a PGI, a name becomes generic only if the direct link between, on the one hand, the geographical origin of the product and, on the other hand, a specific quality of that product, its reputation or another characteristic of the product, attributable to that origin, has disappeared, and that the name does no more than describe a style or type of product.

108 In the present case, the Community institutions found that the PGI 'Bayerisches Bier' had not become generic and, consequently, that the direct link between the reputation of Bavarian beer and its geographical origin had not disappeared, and such a finding cannot be considered to be manifestly inappropriate by the mere fact of the presence on the market of trade marks and labels of commercial companies including the term 'Bayerisches' or translations of it as synonyms for the old Bavarian bottom-fermentation brewing method.

109 What is more, the existence between 1960 and 1970 of the collective marks Bayrisch Bier and Bayrisches Bier and of five different bilateral agreements relating to the protection of the name 'Bayerisches Bier' as a geographical name shows that that name has no generic character.

110 In the light of the foregoing, it must be held that the Council was right to find, in Regulation No 1347/2001, that the name 'Bayerisches Bier' satisfied the conditions in Article 2(2)(b) of Regulation No 2081/92 and that it did not constitute a 'generic name' within the meaning of Articles 3(1) and 17(2) of that regulation.

— Article 14(3) of Regulation No 2081/92

111 The referring court asks whether the registration of the name 'Bayerisches Bier' ought not to have been refused in accordance with Article 14(3) of Regulation No 2081/92, since, in the light of the reputation, renown and length of time for which the marks including the word 'Bavaria' have been used, that name is liable to mislead the consumer as to the true identity of the product.

112 In that regard, it is apparent from recital 3 in the preamble to Regulation No 1347/2001 that the Council found, on the basis of the facts and information available, that registration of the name 'Bayerisches Bier' was not liable to mislead the consumer as to the true identity of the product and that, consequently, the geographical indication 'Bayerisches Bier' and the trade mark 'Bavaria' were not in the situation referred to in Article 14(3) of Regulation No 2081/92.

113 First, the Council's finding does not appear to be manifestly inappropriate and, second, neither the referring court nor Bavaria and Bavaria Italia put forward any argument questioning such a finding.

114 Accordingly, it must be held that the Council was right to find in Regulation No 1347/2001 that the name 'Bayerisches Bier' was not in the situation covered by Article 14(3) of Regulation No 2081/92.

115 Consequently, it must be held that consideration of the first question asked by the referring court has not disclosed any factor liable to affect the validity of Regulation No 1347/2001.

The second question

116 By this question, the referring court asks, in essence, whether the fact that Article 1 of Regulation No 1347/2001 registered the name 'Bayerisches Bier' as a PGI and that recital 3 in the preamble to that regulation states that that PGI and the trade mark Bavaria are not in the situation referred to in Article 14(3) of Regulation No 2081/92 has an effect on the validity or usability of pre-existing marks of third parties in which the word 'Bavaria' appears.

117 In that regard it must be pointed out that Article 14 of Regulation No 2081/92 specifically governs the relationship between names registered under that regulation and trade marks by setting out, in respect of the various situations referred to, rules of conflict the scope, consequences and addressee of which are different.

118 First, Article 14(3) of Regulation No 2081/92 refers to a situation of conflict between a PDO or a PGI and a pre-existing trade mark where registration of the name at issue would, in the light of the trade mark's reputation, renown and the length of time for which it has been used, be liable to mislead the consumer as to the true identity of the product. The consequence provided for in the event of such a conflict is that registration of the name must be refused. This is therefore a rule which implies that there must be an analysis, intended inter alia for the Community institutions, prior to registration of the PDO or PGI.

119 Second, Article 14(2) of Regulation No 2081/92 refers to a situation of conflict between a registered PDO or a PGI and a pre-existing trade mark where the use of that trade mark corresponds to one of the situations referred to in Article 13 of Regulation No 2081/92 and the trade mark was registered in good faith before the date on which the application for registration of the PDO or PGI was lodged. The consequence provided for in that situation is that use may continue notwithstanding the registration of the name, 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 Directive

89/104. This is therefore a rule which implies that there must be an analysis, intended inter alia for the authorities and courts called upon to apply the provisions in question, after registration.

120 The analysis arising out of Article 14(3) of Regulation No 2081/92 is confined to the possibility of a mistake on the part of the consumer as to the true identity of the product as a result of registration of the name at issue, and is based on an examination of the name to be registered and the pre-existing mark having regard to that mark's reputation, renown and the length of time for which it has been used.

121 By contrast, the analysis arising out of Article 14(2) of Regulation No 2081/92 involves ascertaining whether the use of the trade mark corresponds to one of the situations referred to in Article 13 of Regulation No 2081/92; whether the trade mark was registered in good faith before the date on which the application for registration of the name was lodged; and, if appropriate, whether there are 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 Directive 89/104.

122 That analysis thus calls for an examination of the facts and of national, Community or international law, which it is for the national court alone to carry out, if necessary making a reference for a preliminary ruling under Article 234 EC (see, to that effect, Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraphs 28, 35, 36, 42 and 43).

123 It follows that Article 14(2) and Article 14(3) of Regulation No 2081/92 each have separate objectives and functions and are subject to different conditions. Thus, the fact that Article 1 of Regulation No 1347/2001 registered the name 'Bayerisches Bier' as a PGI and that recital 3 in the preamble to that regulation states that that PGI and the trade mark Bavaria are not in the situation referred to in Article 14(3) of Regulation No 2081/92 cannot affect the examination of the conditions which make it possible for the mark and the PGI to co-exist as set out in Article 14(2) of that regulation.

124 In particular, the fact that there is no likelihood of confusion on the part of the consumer, for the purposes of Article 14(3) of Regulation No 2081/92, between the name at issue and the pre-existing mark does not preclude the use of the mark from being covered by a situation referred to in Article 13(1) of that regulation or the possibility that the mark may be subject to one of the grounds for invalidity or revocation as provided for by Article 3(1)(c) and (g) and Article 12(2)(b) respectively of First Directive 89/104. Furthermore, the fact that there is no likelihood of confusion does not mean that it is not necessary to ascertain that the trade mark in question was registered in good faith before the date on which the application for registration of the PDO or PGI was lodged.

125 In the light of the foregoing, the answer to the second question is that Regulation No 1347/2001 must be interpreted as having no adverse effects on the validity and the possibility of using, in one of the situations referred to in Article 13 of Regulation No 2081/92, pre-existing trade marks of third parties in which the word 'Bavaria' appears and which were registered in good faith before the date on which the application for registration of the PGI 'Bayerisches Bier' was lodged, provided that those marks are not affected by the grounds for invalidity or revocation as provided for by Article 3(1)(c) and (g) and Article 12(2)(b) of First Directive 89/104.

Costs

126 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 (Fourth Chamber) hereby rules:

1. **Consideration of the first question asked by the referring court has not disclosed any factor liable to affect the validity 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 Council Regulation (EEC) No 2081/92.**

2. **Regulation No 1347/2001 must be interpreted as having no adverse effects on the validity and the possibility of using, in one of the situations referred to in Article 13 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, pre-existing trade marks of third parties in which the word 'Bavaria' appears and which were registered in good faith before the date on which the application for registration of the protected geographical indication 'Bayerisches Bier' was lodged, provided that those marks are not affected by the grounds for invalidity or revocation as provided for 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.**

[Signatures]