OPINION OF ADVOCATE GENERAL JACOBS

delivered on 14 March 2002 [1]

1. In this case the Commission seeks a declaration pursuant to Article 226 EC that by granting the right to use the quality label 'Markenqualität aus deutschen Landen' to finished products of a specific quality produced in Germany, Germany has infringed Article 28 EC.

2. The case raises, in particular, the issue whether a measure, such as the establishment of a quality label scheme, adopted by a private body (a limited liability company) falls within the scope of Article 28 EC where (i) that company acts for a purpose which is broadly defined by provisions of national law, (ii) its activities are financed by a public body (Fund) which in turn is financed through a compulsory charge on producers of agricultural and food products and (iii) the Government exercises — directly or through the Fund — some degree of control over the activities of the company.

1 — Original language: English.

The quality label 'Markenqualität aus deutschen Landen'

3. At issue is the German Law on the creation of a central fund for the promotion of the German agricultural, forestry and food sector (*Gesetz über die Errichtung eines zentralen Fonds zur Absatzförderung der deutschen Land-, Forst- und Ernährungswirtschaft (Absatzfondsgesetz)* ('the AFG')). That Law was initially adopted in 1969. [2] It has been amended on several occasions, and consolidated versions of the Law were published in 1972, [3] 1976 [4] and 1993. [5] Following the entry into force of the latest consolidated version of the AFG, [6] its provisions no longer apply to the German forestry sector. It appears from the explanations given to the Court that the provisions laid down in that version of the AFG are still in force. I will accordingly refer to the provisions of the AFG as they appear in the consolidated version of 1993.

4. The AFG set up a central fund for the promotion of the German agricultural,

2 — AFG of 26 June 1969, *BGBl.* I, p. 635.
3 — AFG of 12 June 1972, *BGBl.* I, p. 1021.
4 — AFG of 8 November 1976, *BGBl.* I, p. 3109.
5 — AFG of 21 June 1993, *BGBl.* I, p. 998.
6 — Ibid.

forestry and food sector ('the Fund'). According to Paragraph 2(1) of the AFG, the Fund aims to promote the distribution and exploitation (*den Absatz und die Verwertung*) of products of the German agricultural and food sector. To that end it seeks to open up new markets and to develop existing markets, inside as well as outside Germany, by stimulating the use of modern technology by the sector, and by working for improvements in the quality of the relevant products.

5. Paragraph 2(2) of the AFG provides that the Fund is to carry out its task through a central body (*einer zentralen Einrichtung der Wirtschaft*). That body is to receive financing from the Fund. It is to promote the distribution and exploitation of products of the German agricultural and food sector, and it may not seek profit by the sale of goods.

6. The *Centrale Marketing-Gesellschaft der deutschen Agrarwirtschaft mbH* ('the CMA') acts as the central body responsible for carrying out the tasks of the Fund. In order to promote German agricultural and food products, the CMA has adopted a number of measures. At issue in the present case is a particular measure which is apparently aimed at improving the quality of German produce. The CMA has established quality requirements for a large number of different products. Producers of products which satisfy those requirement may, on application to the CMA, be licensed to affix to their products the quality label 'Markenqualität aus deutschen Landen' ('the CMA label'). The CMA verifies — with the help of independent laboratories — that products licensed to carry the label satisfy the relevant quality requirements. However, the CMA reserves the use of the label for products which are produced in Germany, either from German or from imported raw materials. The CMA label has, apparently, existed for approximately 30 years and it is according to the German Government currently used by 2 538 undertakings in respect of 11 633 different products.

Procedure and delimitation of the issues

7. The Commission takes the view that by granting the use of the CMA label to products *produced in Germany*, Germany has infringed Article 28 EC. It initially communicated that view to the German Government by letters dated 6 July 1994 and 18 October 1995. On 22 January 1998 the Commission issued a letter of formal notice. Having found the German Government's reply of 3 June 1998 unsatisfactory, the Commission issued on 11 December 1998 a reasoned opinion pursuant to Article 226(1) EC, to which the German

Government replied on 16 March 1999 that it considered the quality label scheme at issue to be compatible with Community law. In the light of that reply, the Commission lodged this application with the Court on 4 September 2000. An oral hearing was not requested by either of the parties.

The scope of Article 28 EC

The Court's case-law

8. The German Government resists the Commission's submissions. Before the Court it argues, essentially, that the activities of the Fund and the CMA are of a private nature and thus outside the scope of Article 28 EC, that it does not follow from the Court's case-law that reserving the use of the CMA label for German products infringes Article 28 EC and that in so far as the German quality label scheme at issue restricts the free movement of goods, that restriction is justified by, in particular, the difficulties inherent in verifying the quality of products produced outside Germany and the need to protect industrial property rights.

9. In the light of those arguments, it falls to be considered (i) whether the activities of the Fund and the CMA fall within the scope of Article 28 EC; if so (ii) whether the reservation of the use of the quality label at issue for products produced in Germany entails restrictions on the free movement of goods contrary to Article 28 EC; and, if so, (iii) whether those restrictions are justified.

10. According to the Court's case-law, Article 28 EC 'concern[s] only public measures and not the conduct of undertakings'. [7] It is however clear — as Germany also accepts in this case — that measures adopted by bodies, including companies constituted according to the rules of private law, which are not formally part of the State, may fall within the scope of Article 28 where, in brief, those measures are attributable to the State. [8]

11. Thus, in *Buy Irish* [9] the Court held that by adopting a series of measures designed to promote Irish products including, in particular, the encouragement of the use of a 'Guaranteed Irish' symbol and the organisation of a large advertising campaign Ireland had infringed Article 28 EC. The fact that those measures had been taken by a private company (the Irish Goods Council) was not decisive given that the Council

7 — Case 311/85 *VVR* [1987] ECR 3801, paragraph 30 of the judgment. See also Joined Cases 177/82 and 178/82 *Van de Haar* [1984] ECR 1797, paragraphs 11 and 12.

8 — See P. Oliver, *Free Movement of Goods in the European Community* (3rd ed., 1996), pp. 43 and 44 and 56 to 60.

9 — Case 249/81 *Commission* v *Ireland* [1982] 4005.

had been set up at the initiative of the Irish Government, [10] which appointed the members of its Management Committee, granted it public subsidies covering the greater part of its expenses and defined the aims and the broad outline of the advertising campaign conducted by it. [11] In those circumstances, the measures adopted were 'attributable as a whole to the [Irish] Government' and therefore not outside the scope of Article 28 EC. [12]

12. In *Apple and Pear Development Council* [13] the Court was asked, *inter alia*, whether the activities of a body (the Development Council), including in particular the organisation of advertising campaigns for varieties of apples and pears which were typical of English and Welsh production, infringed Article 28 EC. Having pointed out that the Development Council had been established by a statutory instrument made pursuant to national law, that it consisted of members appointed by the Government and that it was financed by a charge which the Council was empowered, under the statutory instrument, to impose on all growers of apples and pears in England and Wales, the Court held that 'a body such as the Development Council, which is set up by the Government of a Member State and is financed by a charge imposed on growers, cannot under Community law enjoy the same freedom as regards the methods of advertising used as that enjoyed by producers themselves or producers' associations of a voluntary character'. [14]

13. It emerges from that case-law that in order to determine whether a measure — such as the quality label scheme at issue in this case — may be regarded as a public measure within the scope of Article 28 EC, it is necessary to examine the functions, statutory basis, management and funding of respectively the Fund and the CMA.

The Fund

14. The Fund was set up, at the initiative of the German Government, in accordance with the provisions of the AFG. [15] It must — as Germany itself appears to accept — be regarded as a public body for the purposes of Article 28 EC. That is clear from Paragraphs 1(1) and 7(1) of the AFG according to which the Fund is subject to German public law (*Anstalt des öffentlichen Rechts*) and to the supervision (*Aufsicht*) of the German Federal Government. The public status of the Fund is moreover confirmed by an examination of the rules governing its financing and management.

10 — See paragraph 24 of the judgment.
11 — See paragraph 15 of the judgment.
12 — See paragraph 29 of the judgment.
13 — Case 222/82 [1983] ECR 4083.
14 — Paragraph 17 of the judgment.
15 — See above paragraph 4.

15. First, Paragraph 10 of the AFG (headed 'Financing') provides that the Fund is financed by compulsory contributions, which are to be paid — in accordance with the rules laid down in Paragraph 10(3) to (9) of the AFG and detailed implementing provisions to be adopted by the competent minister — by the undertakings (*den Betrieben*) in the German agricultural and food sector. The obligation to contribute to the Fund under Paragraph 10 of the AFG applies to all undertakings in the relevant sector, and is not conditional upon membership of any of the trade associations which exist in that sector. [16]

16. Second, the Fund is, according to Paragraphs 3 to 6 of the AFG, managed by a Board of Management (*Vorstand*), the members of which are appointed, subject to the approval of the German Government, by the Board of Directors (*Verwaltungsrat*). The Board of Directors has a total of 21 members all of which are appointed by the German Government. [17] Under Paragraph 5(1) of the AFG, five of those members are to be appointed on the proposal of the parties present in the Bundestag, 13 members on the proposal of the German agricultural and food sector and three members on the proposal of the bodies managing the CMA.

The CMA

17. Since the Fund was set up, the CMA has acted as the central body responsible for carrying out its tasks in accordance with Paragraph 2(2) of the AFG. [18] As envisaged by the provisions of the AFG, the Fund provides financing for the CMA. It appears from the file that the CMA receives no, or very little, funding from other sources.

18. The CMA is a private limited liability company (*GmbH*). Its capital is subscribed by the trade associations (*Spitzenverbände*) of the German agricultural and food sector. While it is unclear whether the CMA was created at the initiative of the German Government or the German agricultural, forestry and food sector, it is common ground that it was set up (in 1969) in order to assume the role of the central body envisaged by the provisions of the AFG. It appears moreover from an examination of the legislative history of the AFG that the original Articles of Association of the CMA were approved by the German Government. [19]

19. According to Article 2 of the Articles of Association (entitled 'Purpose'), the CMA is to assist the Fund in the execution of its

16 — See in that regard *Apple and Pear Development Council*, cited in note 13, paragraph 17 of the judgment.

17 — See in that regard *Commission* v *Ireland*, cited in note 9, paragraph 15 of the judgment.

18 — See above paragraph 6.

19 — Paragraph 2(2) of the AFG of 26 June 1969 provided, in substance, that the Articles of Association of the central body required the approval (*Genehmigung*) of the competent federal ministers.

tasks and shall aim to promote the distribution and exploitation of products of the German agricultural and food sector. [20] To that end it is to take all appropriate measures including 'promotion of the use of labels of origin and quality'. [21] The CMA must moreover take account of the general guidelines (*Richtlinien*) laid down by the Fund, and may not seek profit by the sale of goods. [22]

20. General guidelines were issued by the Fund on 12 June 1972. [23] They state, in so far as is relevant, that the Management of the Fund (*Vorstand*) supervises the activities of the CMA and the correct management of the finances provided to it by the Fund. [24] In order to carry out that task, the management of the Fund may, *inter alia*, demand access to all relevant business documents held by the CMA. [25]

21. The CMA is managed by a Board of Management (*Geschäftsführung*), [26] consisting of no more than three persons, who are appointed by the Supervisory Board (*Aufsichtsrat*). [27] The Supervisory Board has 26 members who are appointed by the General Meeting of the Members (*Gesellschaftsversammlung*). [28] While three of the members are, in accordance with Paragraph 2(2) of the AFG, appointed at the proposal of the Fund, the remaining 23 members are proposed by the relevant trade associations. [29]

22. It is on the basis of those facts that the German Government's submission — to the effect that the quality label scheme adopted and administered by the CMA falls outside the scope of Article 28 EC — must be assessed. The German Government stresses that the CMA is a private company which is not controlled by the German State, directly or through the Fund: the Fund proposes only three of the 26 members of the Supervisory Board and the competent German minister is empowered only to decide what level of contributions the undertakings in the sector are liable to pay under the AFG and to supervise how the CMA spends the funds it receives via the Fund.

23. I am not convinced by those arguments. While it may be true that the activities of the CMA are not entirely within the control of the Fund or the German Government, I consider that they are none the less attributable to the State and thus *prima facie* within the scope of Article 28 EC.

20 — Article 2(1) of the Articles of Association.
21 — Article 2(2)(d) of the Articles of Association.
22 — Article 2(3) of the Articles of Association.
23 — Annexed to the German Government's defence.
24 — Section IV of the guidelines headed 'Überwachung und Sicherung der Durchfuhrung der Absatzförderung'.
25 — Ibid.
26 — Article 6 of the Articles of Association.
27 — Article 7 of the Articles of Association.
28 — Article 9 of the Articles of Association.
29 — Article 9(1) of the Articles of Association.

24. First, it is clear that the CMA acts for a purpose — namely the promotion of German agricultural and food products — which has been broadly defined by the German Government and laid down in provisions of national law. That consideration is not, in my view, affected by the fact that the AFG neither lays down in detail what measures the central body (the CMA) must adopt to achieve that purpose nor explicitly provides for the adoption of a quality label scheme such at the one at issue in the present case.

25. Second, I attach importance to the fact that the activities of the CMA, including the quality label scheme at issue, are financed by a public body (the Fund) which is in turn financed through a *compulsory* charge on producers of agricultural and food products. The system of financing of the CMA thus distinguishes it from private undertakings and trade associations of a voluntary character. [30]

26. Third, the CMA is — as the German Government itself points out — not completely outside the control of the Fund. The CMA must respect the general guidelines laid down by the Fund, and the Fund supervises the activities of the CMA and its financial management. Moreover, Paragraph 7(5) of the AFG provides, essentially, that the Fund may itself exercise the tasks entrusted to it, or agree with a body to do so on its behalf, if the central body (the CMA) does not fulfil its obligations. It cannot be denied that the Fund would, by threatening to take such a step, be capable of influencing the conduct of the CMA to some degree.

27. For those reasons, I conclude that the measures adopted by the CMA, which are supported financially by the public authorities and given statutory recognition by the AFG, are not outside the scope of Article 28 EC.

The existence of restrictions on the free movement of goods

28. The next question to be considered is whether a quality label scheme such as that operated by the CMA creates restrictions on intra-Community trade contrary to Article 28 EC.

29. In its application, referring to the judgments in *Eggers* [31] and *Pistre*, [32] the Commission contends that that question must

30 — See in that regard *Apple and Pear Development Council*, cited in note 13, paragraph 17 of the judgment.

31 — Case 13/78 [1978] ECR 1935.

32 — Joined Cases C-321/94 to C-324/94 [1997] ECR I-2343.

clearly be answered in the affirmative. At issue in *Eggers* were provisions of German law according to which spirits could be designated as 'Qualitätsbranntwein aus Wein' or 'Weinbrand' only if (i) at least 85% of the alcoholic content was derived from wine distillate produced in Germany and (ii) the whole of the distillate used had been kept for at least six months at the factory in Germany where home-produced distillate was extracted by distillation. The Court stressed that although the Member States are 'empowered to lay down quality standards for products marketed on the territory and may make the use of designations of quality subject to compliance with such standards', it follows from Article 28 EC that the right to use designations of quality cannot be linked to a requirement that the products in question are produced within the relevant Member State. [33] The right to use designations of quality may be made 'dependent solely on the existence of the intrinsic objective characteristics which give the products the quality required by law'. [34] In *Pistre* the Court held that provisions of French law which reserved the use of the description 'mountain' for food products manufactured within certain French regions were contrary to Article 28 EC since, essentially, those rules discriminated against imported goods. [35]

30. The German Government submits that the case-law cited by the Commission is not relevant, since the CMA label cannot be regarded as a product designation. The label is, in substance, a form of advertising and its lawfulness therefore falls to be considered in the light of the Court's judgments in *Buy Irish* [36] and *Apple and Pear Development Council*. [37] In its view, it follows from those judgments — and from certain passages in two communications issued by the Commission [38] — that national quality labels are compatible with Community law so long as they genuinely seek to improve the quality of agricultural products, and do not serve as a pretext for 'chauvinist tendencies'.

31. I agree with the German Government that the lawfulness of the scheme at issue in the present case cannot be decided by a simple transposition of the judgments in *Eggers* and *Pistre*. While the product designations at issue in those cases were apt to describe products independently of their origin, the CMA label states, in essence, that a product on which it appears is made in Germany and is of a certain quality. Such a label cannot logically be regarded as a generic product designation which ought to be open to all quality products independently of their origin.

33 — See paragraph 25 of the judgment.

34 — Ibid.

35 — See paragraph 49 of the judgment, where the Court cited the judgment in *Eggers*.

36 — Cited in note 9.

37 — Cited in note 13.

38 — The German Government refers to the Communication concerning State involvement in the promotion of agricultural and fisheries products, OJ 1986 C 272, p. 3 and the Framework for national aids for the advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fisheries products, OJ 1987 C 302, p. 6.

32. In order to determine whether the CMA label scheme is contrary to Article 28 EC, it is therefore necessary to examine whether it creates restrictions on intra-Community trade, taking account of the Court's case-law on the interpretation on that notion. According to that case-law the prohibition laid down in Article 28 EC covers all measures which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade. [39] It is moreover, as the German Government itself points out, well established that Article 28 EC covers measures which may restrict trade by encouraging the purchase of domestic products only. [40]

33. In my view, the CMA label scheme is capable, at least potentially, of hindering intra-Community trade. By explicitly linking the quality of the products concerned with their national (German) origin, the scheme is liable to create the impression in the minds of consumers that German products are of a higher quality than other products. German products thus benefit, as the Commission points out, from a positive characterisation which may encourage consumers to purchase them to the exclusion of imported goods.

34. That conclusion is not, in my view, affected by the German Government's assertion that it is difficult or impossible to verify whether products produced outside Germany comply with the quality requirements laid down by the CMA. In the absence of detailed information about the specific nature of those difficulties, that assertion cannot be upheld. In that regard, it may be recalled that in *Eggers* the German Government argued that supervision of the quality of spirits, which it considered essential for the information of consumers, could be achieved only if there were 'undivided responsibility', that is to say if the final distillation and storage were undertaken in the same factory in Germany. [41] The Court rejected that argument on the basis that 'such controls may be carried out just as effectively by means which are less restrictive of trade between Member States'. [42]

35. Nor is it relevant that it is not mandatory for traders, whose products satisfy the quality requirements laid down by the CMA, to use the CMA label. As the Court stated in *Eggers*, '[t]he fact that the use of [a] designation of quality is optional does not mean that it ceases to be an unjustified obstacle to trade if the use of that designation promotes or is likely to promote the marketing of the product concerned as

39 — Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5 of the judgment.

40 — See, in particular, *Buy Irish*, cited in note 9. See also Article 2(3)(k) of Commission Directive 70/50/EEC of 22 December 1969 based on the provisions of Article 33(7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty, OJ 1970 L 13, p. 29.

41 — See paragraph 13 of the judgment.

42 — Paragraph 25 of the judgment.

compared with products which do not benefit from its use'.[43]

36. Finally, it may be noted that the CMA label differs from the advertising schemes at issue in *Buy Irish* and *Apple and Pear Development Council* in one essential respect. While the schemes considered in those cases were aimed exclusively at promoting national products, or products typical of certain national regions, the CMA label scheme has a dual aim: it seeks to enhance the quality of German agricultural products and — through the ensuing improvements in quality — to promote the sale of those products. The fact that the scheme at issue pursues a quality policy cannot, however, bring it outside the scope of Article 28 EC. The existence of an infringement of Article 28 EC must be determined by reference to the effect on trade of the measure at issue, not by reference to the aims pursued by the German authorities.

Justification

Regulation No 2081/92

37. It is common ground in this case that the CMA label has not been, and could not have been, registered as a designation of origin or a geographical indication under the provisions 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.[44] The restrictions on the free movement of goods caused by the operation of the CMA label scheme cannot, therefore, be justified by reference to the provisions of that Regulation.

Article 30 EC

38. According to the German Government, the scheme at issue is however justified under Article 30 EC. Article 30 EC permits restrictions on imports which are justified on various grounds including the protection of industrial and commercial property, provided that the restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. The German Government submits that the quality label scheme at issue falls within that derogation, citing in support of its view the judgment in *Exportur*[45] in which the Court appeared to accept that the protection of simple geo-

43 — Paragraph 26 of the judgment.

44 — OJ 1992 L 208, p. 1.

45 — Case C-3/91 [1992] ECR I-5529.

graphical indications of source[46] falls within the scope of 'the protection of industrial and commercial property' within the meaning of Article 30.[47]

39. The German Government's submissions should not, in my view, be accepted.

40. First, and most importantly, it may be recalled that the Court held in *Sekt*[48] that '[a]n area of origin which is defined on the basis... of the extent of national territory... cannot constitute a geographical area... capable of justifying an indication of origin...'.[49] However, the CMA label scheme defines the area of origin as the whole of the German territory, and it applies to a vast range of agricultural products. A measure of such broad application cannot, as the Commission points out, be regarded as an indication of source capable of justification under the provision in Article 30 EC on the protection of industrial and commercial property. It may be noted in that regard that Article 2(2)(b) of Regulation No 2081/92[50] provides for the possibility, in exceptional cases, of registration of geographical indications referring to a whole country. However, that provision must be understood as applying essentially where the Member State in question is particularly small (e.g. Luxembourg) and, perhaps, where registration is sought for a whole Member State in respect of a particular product the quality or reputation of which is attributable to that Member State.

41. Second, this case differs in any event from *Exportur* in a critical respect. In that case, the Court appeared to accept that indications of source were entitled to protection because they 'may... enjoy a high reputation amongst consumers and constitute for producers established in the places to which they refer an essential means of attracting custom'.[51] Protection of such indications of source was therefore justified because of the risk that their reputation might otherwise be exploited by another. In this case, however, the CMA refuses to license the use of the quality label in respect of *all* products produced outside Germany whether or not there is, for each product or category of products, any reputation linked to the geographical indication 'aus deutschen Landen'.

46 — By 'simple geographical indications of source', the German Government appears to mean a place name designating a product where, first, there is no link between the characteristics of the product and its geographical provenance and, secondly, use of the name may or may not lead consumers to think that the product originates in that place.

47 — See paragraph 37 of the judgment.

48 — Case 12/74 *Commission* v *Germany* [1975] ECR 181.

49 — Paragraph 8 of the judgment.

50 — Cited in note 44.

51 — See paragraph 28 of the judgment.

42. Moreover, I disagree with the defendant's interpretation of the judgment in *Exportur*. In that case the Court was considering a Convention with a much broader aim than that of the quality label scheme at issue in this case: the Convention sought to protect designations of origin, indications of source and names of certain products, none of which at the time of the facts giving rise to the main proceedings was protected at Community level. [52] I am not persuaded that the Court's general statement that the objective of that Convention 'may be regarded as falling within the sphere of the protection of industrial and commercial property within the meaning of Article 36' should apply to the much narrower field of simple geographical indications of source, all the more so now that designations of origin are within the scope of Regulation No 2081/92 [53] and protected at Community level pursuant thereto.

43. Finally, it appears from the Commission's explanations in the present case that simple geographical indications are protected, as a matter of German law, only by Paragraph 127(1) of the *Markengesetz* (Trade Marks Law), which provides that '[g]eographical indications of source may not be used commercially for goods or services which do not come from the place, area, region or country which they designate, if with the use of such names, indications or signs for goods or services of other origin there is a risk of misleading as to the geographical provenance'. The object of such a provision is manifestly not to safeguard rights which constitute the specific subject-matter of intellectual property; [54] indeed in the absence of an allocation of the indication of source to a specified exclusive holder, it is — as the Bundesgerichtshof (Federal Court of Justice, Germany) noted in its order for reference in *Warsteiner* [55] — inappropriate to speak in terms of intellectual property rights. In my view, the principles developed by the Court in the context of industrial and commercial property in the strict sense of alienable rights such as patents, trade marks and copyright are thus an inherently inappropriate framework for assessing the lawfulness of national legislation on simple geographical indications of source.

44. I accordingly conclude that a national quality label scheme such as that at issue in the present case does not fall within the derogation for measures for the protection of industrial and commercial property within the meaning of Article 30 EC.

52 — Although the judgment was given some months after Regulation No 2081/92 had entered into force, the facts arose before that date.

53 — Cited in note 44.

54 — Case 78/70 *Deutsche Gramophone* v *Metro* [1971] ECR 487, paragraph 11 of the judgment; frequently affirmed since.

55 — Case C-312/98 [2000] ECR I-9187.

Conclusion

45. On the basis of the above considerations, I am of the opinion that the Court should:

(1) declare that by granting the right to use the quality label 'Markenqualität aus deutschen Landen' to finished products of a specific quality produced in Germany, the Federal Republic of Germany has infringed Article 28 EC;

(2) order the Federal Republic of Germany to pay the costs.