JUDGMENT OF THE COURT
13 December 1994 *

In Case C-306/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Mainz (Germany) for a preliminary ruling in the proceedings pending before that court between

SMW Winzersekt GmbH

and

Land Rheinland-Pfalz

on the validity of the second and third subparagraphs of Article 6(5) of Council Regulation (EEC) No 2333/92 of 13 July 1992 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1992 L 231, p. 9),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida and J. L. Murray (Rapporteur), Judges,

* Language of the case: German.

Advocate General: C. Gulmann,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— SMW Winzersekt GmbH, by Gert Meier, Rechtsanwalt, Cologne,

— the French Government, by Jean-Louis Falconi, Secretary for Foreign Affairs in the Legal-Affairs Directorate of the Ministry of Foreign Affairs, and Catherine de Salins, Adviser for Foreign Affairs at the same Ministry, acting as Agents,

— the Council of the European Union, by Bernhard Schloh and Arthur Brautigam, Legal Advisers, acting as Agents,

— the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of SMW Winzersekt GmbH, the French Government, the Council of the European Union and the Commission of the European Communities at the hearing on 7 June 1994,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1994,

gives the following

Judgment

1 By order of 25 March 1993, received at the Court on 4 June 1993, the Verwaltungsgericht (Administrative Court) Mainz referred for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of the second and third subparagraphs of Article 6(5) of Council Regulation (EEC) No 2333/92 of 13 July 1992 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1992 L 231, p. 9) ('Regulation No 2333/92').

2 That question arose in a dispute between SMW Winzersekt GmbH ('Winzersekt') and the Land Rheinland-Pfalz concerning the use after 31 August 1994 of the term 'Flaschengärung im Champagnerverfahren' ('bottle-fermented by the champagne method') to describe certain quality sparkling wines produced in a specified region ('quality sparkling wines psr').

3 Regulation No 2333/92 was adopted following numerous amendments to Council Regulation (EEC) No 3309/85 of 18 November 1985 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1985 L 320, p. 9) ('Regulation No 3309/85').

4 According to the second recital in the preamble to Regulation No 2333/92, the purpose of description of sparkling wines and aerated sparkling wines is to provide potential final customers and public bodies responsible for organizing and supervising the marketing of the products concerned with sufficiently clear and accurate information to enable them to form an opinion of the products.

5 The tenth recital in the preamble to Regulation No 2333/92 states that the special provisions relating to the quality wines produced in specified regions ('quality wines psr') were laid down by Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions (OJ 1987 L 84, p. 59) and that those provisions establish precise rules for the use of names of specified regions in the description of quality wines psr, including quality sparkling wines psr. In accordance with those rules, only the geographical name of a wine-growing area which produces wine possessing special quality characteristics may be used to designate a quality sparkling wine psr.

6 Finally, the twenty-second recital in the preamble to Regulation No 2333/92 states that provision should be made for the adoption of transitional arrangements, in particular so that products which comply with the national rules on description and presentation applying before the entry into force of Regulation No 2333/92, but not with the new Community rules, may be marketed.

7 Those objectives were implemented by, in particular, Article 6 of Regulation No 2333/92, which corresponds in all essential respects to Article 6 of Regulation No 3309/85. Article 6 of Regulation No 2333/92 provides *inter alia* as follows:

'1. The name of a geographical unit other than a specified region, and smaller than a Member State or a third country, may be used only to supplement the description of:

— a quality sparkling wine psr,

...

Use of such a name shall be allowed only if:

(a) it conforms to the rules of the Member State or third country in which the sparkling wine was produced;

(b) the geographical unit in question is defined exactly;

(c) all the grapes from which the product was obtained came from that geographical unit, with the exception of the products contained in *tirage liqueur* or *expedition liqueur*;

(d) in the case of a quality sparkling wine psr, the geographical unit is situated within the specified region whose name the wine bears;

...

4. The expressions "bottle-fermented by the traditional method" or "traditional method" or "classical method" or "classical traditional method" and any expressions resulting from a translation of them may be used only to describe:

— a quality sparkling wine psr,

...

Use of one of the expressions referred to in the first subparagraph shall be allowed only if the product:

(a) was made sparkling by a second alcoholic fermentation in the bottle;

(b) stayed without interruption in contact with the lees for at least nine months in the same undertaking from the time when the *cuvée* was constituted;

(c) was separated from the lees by disgorging.

5. An expression relating to a method of production which includes the name of a specified region or of another geographical unit, or a term derived from either of these, may be used only to describe:

— a quality sparkling wine psr,

...

Such expressions may be used only to describe a product entitled to one of the geographical ascriptions referred to in the first subparagraph.

However, reference to the method of production known as "méthode champenoise" may, if such a usage were traditional, be used together with an equivalent expression relating to that method of production for five wine-growing years from

1 September 1989 for wines not entitled to the registered designation "Champagne".

Furthermore, use of an expression referred to in the third subparagraph shall not be permitted unless the conditions referred to in the second subparagraph of paragraph 4 are complied with.'

8 Winzersekt is an association of wine-growers who produce sparkling wine from wines of the Mosel-Saar-Ruwer region using a process referred to as 'méthode champenoise', which means in particular that fermentation takes place in the bottle and the cuvée is separated from the lees by disgorging. The quality sparkling wines psr thus produced are marketed under the description 'Flaschengärung im Champagnerverfahren' ('bottle-fermented by the champagne method') or 'klassische Flaschengärung — méthode champenoise' ('classical bottle fermentation — méthode champenoise').

9 By a binding judgment of 2 February 1989, the Verwaltungsgericht Mainz held that Winzersekt was entitled until 31 August 1994 to use the designation 'méthode champenoise' in the above descriptions for its products which satisfied the requirements of traditional bottle fermentation.

10 On 7 January 1992 Winzersekt applied to the Ministry of Agriculture, Viticulture and Forests of the Land Rheinland-Pfalz for a 'binding statement' as to whether it would be lawfully entitled to continue to use the description 'Flaschengärung im Champagnerverfahren' after 31 August 1994. By decision of 15 January 1992 the

Ministry, referring to the judgment of the Verwaltungsgericht Mainz of 2 February 1989, stated that pursuant to Article 6(5) of Regulation No 3309/85 the use of that designation could not be permitted after 31 August 1994.

11 On 4 February 1992 Winzersekt brought proceedings in the Verwaltungsgericht Mainz for a declaration that it would still be entitled to use that designation after 31 August 1994. As it took the view that the outcome of the proceedings depended on the validity of the second and third subparagraphs of Article 6(5) of Regulation No 2333/92, the First Chamber of the Verwaltungsgericht Mainz decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Are the provisions of Article 6(5), second and third subparagraphs, of Council Regulation (EEC) No 2333/92 of 13 July 1992 invalid in so far as they provide that from September 1994, for quality sparkling wines produced in specified regions from wines not entitled to the registered designation of origin "Champagne", reference to the method of production known as "méthode champenoise" together with an equivalent expression relating to that method of production is not to be permitted?'

Admissibility of the question submitted

12 The French Government proposes that the reply to the national court should be that there is no need to rule on the question since the outcome of the main proceedings depends on the validity of Regulation No 3309/85, the interpretation of which formed the basis of the binding statement issued by the Ministry of Agriculture, Viticulture and Forests of the Land Rheinland-Pfalz, and not on the valid-

ity of Regulation No 2333/92, which was not in force at the material time. The question referred to the Court, it argues, is for that reason irrelevant. At the hearing, the French Government also expressed its doubts as to the reality of the dispute.

13 Those objections must be rejected.

14 In the first place, Regulation No 2333/92 codifies several amendments made to Regulation No 3309/85. With regard to Article 6 of Regulation No 2333/92 mentioned in the question in the reference, it should be pointed out that, apart from some minor textual differences, it is in essence identical to Article 6 of Regulation No 3309/85, which served as the basis for the decision of 15 January 1992 and against which Winzersekt brought proceedings before the Verwaltungsgericht Mainz following the adoption of Regulation No 2333/92. The Court's reply to the question submitted will therefore enable the national court to resolve the dispute pending before it.

15 So far as the French Government's second argument is concerned, it must be remembered that when a question on the validity of a measure adopted by the Community institutions is raised before a national court, it is for that court to decide whether a decision on the matter is necessary to enable it to give judgment and consequently whether it should request the Court to rule on that question. It is then a matter for the Court, within the framework of the close cooperation with national courts established by Article 177 of the Treaty, to reply to the question submitted by the national court, unless it should appear to it that the question submitted has no connection with the reality or subject-matter of the dispute in the main proceedings.

16 In the present case, there is nothing to cast doubt on the reality of the dispute in the main proceedings.

17 It is clear from the order for reference that the main action is designed to obtain a declaration that Winzersekt is entitled to use the term 'Flaschengärung im Champagnerverfahren' after 31 August 1994. Likewise, the question submitted has an incontrovertible connection with the subject-matter of that action. In this connection, no provision of the Treaty can oblige Winzersekt to await the expiry, on that date, of the transitional period before being able to plead the inapplicability of a provision such as that here under examination in proceedings before a national court.

18 It follows that the French Government's objections that there is no need to rule on the question referred by the Verwaltungsgericht Mainz must be rejected.

Substance

19 It follows from the documents on the case-file and the arguments before the Court that the validity of the second and third subparagraphs of Article 6(5) of Regulation No 2333/92 has been challenged in the light of two principles or groups of principles: on the one hand, the right to property and the freedom to pursue a trade or profession and, on the other, the general principle of equal treatment.

The right to property and the freedom to pursue a trade or profession

20 Winzersekt takes the view that the contested provision adversely affects both its right to property and its right freely to pursue a trade or profession, which form

part of the general principles of Community law. It submits in that connection that the designation 'méthode champenoise' is of fundamental importance for its commercial activity in so far as that designation enables it to make the public aware of its method of production. That method distinguishes it from the vast majority of German producers of sparkling wine, whose production method is either that of closed-tank fermentation or that of racking, two methods which are less onerous than the 'méthode champenoise' and which enable those producers to offer their products to consumers at much more attractive prices than Winzersekt. Winzersekt also submits that the designation forms part of its assets and should benefit from the protection granted to property rights. If Winzersekt were unable to continue to use the designation 'méthode champenoise', it would be placed at a competitive disadvantage and its very existence might be jeopardized.

21 It should be pointed out in this respect 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 40 and 43 of the Treaty 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, most recently, the judgment of 5 October 1994 in Case C-280/93 *Germany* v *Council*, paragraphs 89 and 90).

22 Account must also be taken of the Court's case-law to the effect that the right to property and the freedom to pursue a trade or business are not absolute but must be viewed in relation to their social function. Consequently, the exercise of the right to property and the freedom to pursue a trade or profession may be restricted, particularly in the context of the common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see, most recently, the judgment in Case C-280/93 *Germany* v *Council*, cited above, paragraph 78).

23 With regard to the infringement of the right to property alleged by Winzersekt, the designation 'méthode champenoise' is a term which, prior to the adoption of the regulation, all producers of sparkling wines were entitled to use. The prohibition of the use of that designation cannot be regarded as an infringement of an alleged property right vested in Winzersekt.

24 So far as concerns the impairment of the freedom to pursue a trade or profession, the second and third subparagraphs of Article 6(5) of Regulation No 2333/92 do not impair the very substance of the right freely to exercise a trade or profession relied on by Winzersekt since those provisions affect only the arrangements governing the exercise of that right and do not jeopardize its very existence. It is for that reason necessary to determine whether those provisions pursue objectives of general interest, do not affect the position of producers such as Winzersekt in a disproportionate manner and, consequently, whether the Council exceeded the limits of its discretion in this case.

25 It should be noted in this regard that among the objectives pursued by Regulation No 2333/92, that of the protection of registered designations or indications of the geographical origin of wines is an objective of general interest. In order to achieve that objective, the Council was entitled to regard it as essential, on the one hand, that the final consumer should receive sufficiently accurate information to enable him to form an opinion of the products in question and, on the other hand, that the producer should not derive advantage, for his own product, from a reputation established for a similar product by producers from a different region. This implies that a wine producer cannot be authorized to use, in descriptions relating to the method of production of his products, geographical indications which do not correspond to the actual provenance of the wine.

26 That objective is implemented in particular by Article 6 of Regulation No 2333/92, which provides that the use of terms relating to a production method may refer to

the name of a geographical unit only where the wine in question is entitled to use that geographical indication.

27 It follows that the prohibition laid down in that provision is not manifestly inappropriate in relation to the objective of the regulation at issue.

28 Furthermore, by adopting transitional arrangements such as those set out in the third subparagraph of Article 6(5) of the regulation and by allowing producers who, like Winzersekt, used the designation 'méthode champenoise' to have recourse to the alternative expressions contained in Article 6(4) of Regulation No 2333/92, such as 'bottle-fermented by the traditional method', 'traditional method', 'classical method' or 'classical traditional method' and any expressions resulting from a translation of those terms, the Council took account of the position of those producers. In those circumstances, the contested provision cannot be regarded as disproportionate.

29 It follows that the second and third subparagraphs of Article 6(5) of Regulation No 2333/92 pursue objectives of general interest and cannot be regarded as constituting a disproportionate interference with the position of producers such as Winzersekt. In those circumstances, it must be held that the Council did not exceed the limits of its discretion in adopting those provisions.

The general principle of equal treatment

30 In this regard, the Court has consistently held that the principle of equal treatment requires that similar situations should not be treated differently and that different

situations should not be treated identically unless such differentiation is objectively justified (see judgment in Case C-217/91 *Spain* v *Commission* [1993] ECR I-3923, paragraph 37).

31 In the present case, the second and third subparagraphs of Article 6(5) of Regulation No 2333/92 apply to all producers of sparkling wines in the Community with the exception of those who are entitled to use the registered designation 'Champagne'. The fact of entitlement to use that registered designation is an objective matter which can justify a difference in treatment. In those circumstances, a difference in the treatment of each of those two groups of producers is justified.

32 The reply to the national court must accordingly be that examination of the question submitted has not revealed any factor of such a kind as to affect the validity of the second and third subparagraphs of Article 6(5) of Council Regulation No 2333/92.

Costs

33 The costs incurred by the French Government, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT,

in answer to the question referred to it by the Verwaltungsgericht Mainz, by order of 25 March 1993, hereby rules:

Examination of the question submitted has not revealed any factor of such a kind as to affect the validity of the second and third subparagraphs of Article 6(5) of Council Regulation (EEC) No 2333/92 of 13 July 1992 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines.

Rodríguez Iglesias Schockweiler Kapteyn Mancini

Kakouris Moitinho de Almeida Murray

Delivered in open court in Luxembourg on 13 December 1994.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President