OPINION OF ADVOCATE GENERAL GULMANN

delivered on 13 July 1994 *

Mr President,
Members of the Court,

1. The Verwaltungsgericht (Administrative Court) Mainz has referred to the Court a question on the validity 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. [1] The provisions of that article state that the designation 'méthode champenoise' may — after the expiry of a transitional period — be used only for sparkling wines which are entitled to the registered designation 'Champagne'. The Verwaltungsgericht has doubts as to the validity of those provisions in the light of the fundamental right freely to exercise a trade or profession and the principle of non-discrimination.

The dispute before the Verwaltungsgericht is between the Land Rheinland-Pfalz and SMW Winzersekt GmbH, an association of wine-growers which produces sparkling wines from wines of the Mosel-Saar-Ruwer region and markets its products as 'Sekt' under the description 'Flaschengärung im Champagnerverfahren' ('bottle-fermented by the champagne method') or 'klassische Flaschengärung — méthode champenoise' ('classical bottle fermentation — méthode champenoise'). I shall subsequently refer to these descriptions simply as 'méthode champenoise'. The effect of the provisions cited above is that Winzersekt will no longer be able to use those descriptions after 31 August 1994. The association has contested the legality of those provisions.

2. The background to and facts of the case are as follows. Since the 1920s German sparkling wines, which could previously be marketed under the name 'Champagner', have been unable to use that name owing to the protection accorded to the French designation 'Champagne', and were subsequently marketed under, in particular, the designation 'Sekt'. The protection accorded to 'Champagne', however, did not prevent German producers or other French producers from using the description 'méthode champenoise' for their own products.

3. That designation refers to a specific method of production, the exact parameters of which are not defined but which, according to the information to hand, may nor-

* Original language: French.
1 — OJ 1992 L 231, p. 9.

mally be distinguished from other forms of production of sparkling wine by the following two factors:

— the fermentation of the wine with a view to making it sparkling — what is referred to as the second fermentation — occurs in the bottle; and

— the lees are separated from the *cuvée* by disgorging.

4. In 1985 the Community legislature sought to regulate the description and presentation of sparkling wines by adopting Regulation No 3309/85, subsequently replaced by Regulation No 2333/92. The provisions of Article 6(5) of the 1985 regulation were practically identical to those which form the subject-matter of the present case and likewise had the effect of prohibiting, after a transitional period expiring on 1 September 1994, the use of the designation 'méthode champenoise' for sparkling wines not entitled to the designation 'Champagne'. A German producer, Deutz und Geldermann, which was in the same position as Winzersekt, sought to have those provisions annulled. In its judgment of 24 February 1987 in Case 26/86, [2] the Court dismissed that application as inadmissible.

2 — Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941.

5. Winzersekt initially brought proceedings before the Verwaltungsgericht Mainz for a declaration that the association was entitled until 31 August 1994 to use the designation 'méthode champenoise'. By judgment of 2 February 1989 the Verwaltungsgericht held that application to be well founded. Winzersekt then applied to the authorities of the Land Rheinland-Pfalz for a 'binding statement' on whether that designation could lawfully continue to be used even after 31 August 1994. By decision of 15 January 1992, the authorities notified Winzersekt that the association would not be entitled to use the designation in question after 31 August 1994. Winzersekt thereupon brought proceedings before the Verwaltungsgericht in which it sought a declaration that that decision was unlawful and that the association would accordingly still be entitled to use the designation 'méthode champenoise' after that date. Since it took the view that the outcome of the application hinged on the question whether Article 6(5) of Regulation No 2333/92 was lawful, the Verwaltungsgericht referred 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?'

6. Winzersekt, the Council, the French Government and the Commission have submitted observations to the Court.

7. As a preliminary point, it is necessary to consider briefly the reply proposed by the French Government as the primary submission in its written observations, to the effect that the Court should declare that there is no need to rule on the question. The reasoning underlying this proposal is that at the time of the facts material to the main proceedings the regulation in force was not that cited in the question submitted, but rather Regulation No 3309/85. The question in the reference, the French Government argues, thus lacks relevance. At the hearing, the French Government also expressed doubts as to whether the dispute underlying the main proceedings was real.

8. In my view, that proposed reply should be rejected, since it is incontrovertible that the provisions at issue are, apart from some minor differences in drafting, identical in the two regulations, and no doubt has been expressed, whether by the French Government or anyone else, that the Court's reply to the question in the reference will enable the Verwaltungsgericht to reach a decision in the case before it. As to the reality of the dispute, I would merely point out that there is nothing to cast doubt on Winzersekt's interest in being able to continue to use the designation at issue and that there would accordingly be scarcely any sense in requiring the association to await the expiry of the transitional period in order to be able to have the legal position clarified. I therefore take the view that it is appropriate to examine the legality of Article 6(5) of Regulation No 2333/92.

9. So far as the substance is concerned, it may first be useful to set out the legal framework into which the provisions of Article 6(5) fit. Regulation No 2333/92, like its predecessor Regulation No 3309/85, lays down rules for the description and presentation of sparkling wines, the Community rules on definition and production having been laid down by, in particular, Regulation No 822/87 [3] and Regulation No 2332/92. [4] A fundamental distinction is drawn between three types of sparkling wine: 'quality sparkling wine produced in a specified region' ('quality sparkling wine psr'), which is regarded as being of the highest quality, and 'quality sparkling wine', the quality of which is considered to be higher than that of 'sparkling wine'.

10. The first two articles of Regulation No 2333/92 contain definitions, while the rest of the regulation is divided into three titles. The first title deals with description, the second with presentation, while the third contains general provisions. The first title covers Articles 3 to 8. Articles 3 to 5 contain provisions on the information which must be given on labelling. Article 5(2) provides, *inter alia*, that the descriptions 'Sekt' and 'Sekt bestimmter Anbaugebiete' are reserved for quality sparkling wines and quality sparkling wines psr respectively. Article 6 concerns optional information, Article 7 deals with the lan-

3 — OJ 1987 L 84, p. 1.
4 — OJ 1992 L 231, p. 1.

guages in which the information must be given, and Article 8 sets out requirements concerning the maintenance of registers and various documentation. Article 13, which features in the third title, provides in general that the description, presentation and any form of advertising for sparkling wines must not be incorrect, likely to cause confusion or to mislead.

11. Article 6(1) deals with the use of geographical names, Article 6(2) deals with the names of vine varieties and Article 6(3) concerns use of the expression 'bottle-fermented'. Article 6(4) deals with the expressions 'bottle-fermented by the traditional method', 'traditional method', 'classical method' and 'classical traditional method' — in what follows I shall refer to these solely by the expression 'traditional method'. Article 6(5) deals with the use of designations derived from geographical names in conjunction with expressions relating to a method of production and provides that the name 'Champagne' is reserved for wines entitled to use that registered designation, while Article 6(6) deals with the designation 'Winzersekt' — which is reserved for quality sparkling wines psr produced in Germany and satisfying a number of conditions — and the designation 'crémant', which was reserved for quality sparkling wines psr produced in France or Luxembourg and satisfying a number of conditions laid down by the respective national legislatures. [5] Finally, the provisions of Article 6(7) to (11) deal with other designations and Article 6(12) concerns the other matters which may be the subject of subsequent rules under the implementing provisions.

12. The rules forming the framework for Article 6(5) are thus quite detailed and it ought to be pointed out that the designations permitted refer to quite specific factors enabling them to be of considerable informative value for interested parties. It should also be noted that the designations Champagne, Winzersekt and Crémant are specific in so far as the quality of sparkling wines which may bear those designations is regarded as being particularly high in view of the fact that they must satisfy additional conditions to those governing designation as a quality sparkling wine psr.

13. Article 6(5) provides as follows:

'An expression relating to a method of production which includes the name of a specified region or of another geographical unit,

5 — So far as the designation 'crémant' is concerned, the Court, in its judgment in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, annulled the corresponding provision in Regulation No 3309/85 on the ground that it infringed the principle of non-discrimination.

or a designation derived from either of these, may be used only to describe:

— a quality sparkling wine psr,

— a quality sparkling wine, ...

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.'

14. The second subparagraph of Article 6(4) provides that quality sparkling wines and quality sparkling wines psr may use the expression 'traditional method' under certain conditions, namely that the wine in question

'(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.'

15. The reference in the final subparagraph of Article 6(5) to the second subparagraph of Article 6(4) indicates that the use of the designation 'méthode champenoise' is subject, during the transitional period, to the same conditions as the use of the designation 'traditional method', that is to say the two designations refer to one and the same method of production. This is precisely the point underlying the reasoning of the Verwal-

tungsgericht and the argument of Winzersekt.

16. Winzersekt set out at length the importance of the designation 'méthode champenoise' for its commercial activity in so far as that designation enables it to make the public aware of its method of production. The association pointed out that this method distinguishes it from the vast majority of German producers of sparkling wine, whose production process is either that of closed-tank fermentation or that of racking. Of these two, the method of closed-tank fermentation is by far the more common in Germany.

In the first of those methods, the fermentation designed to make the wine sparkling takes place in a tank. In the second, like the *méthode champenoise*, this fermentation takes place in the bottle, while, in contrast to the *méthode champenoise*, the wine is separated from the lees through transfer and filtration in a tank.

17. Winzersekt has pointed out that in tank fermentation the production process is much shorter, less onerous and rather more industrial than the *méthode champenoise* and that producers who use the method of closed-tank fermentation are for that reason able to offer their products to consumers at much more attractive prices than Winzersekt. The association's method of drawing consumer attention to its sparkling wines — which are characterized by, *inter alia*, the fineness of their sparkle and reach consumers through a different commercial network from that of tank-produced sparkling wines — is to use the designation 'méthode champenoise'. The association claims that it would be placed at a competitive disadvantage and even that its existence would be brought into jeopardy if it were unable to continue to use that designation. In its opinion, the designation 'traditional method' — which is intended under the rules to replace and be equivalent to the designation at issue — has nothing approaching the same attraction, and that the only way in which to impose order within competitive relations would be to require producers of sparkling wine obtained by tank fermentation to include on their products the words 'obtained by tank fermentation'.

18. According to Winzersekt, it is cannot be argued that 'the "méthode champenoise", as a method of production, refers to Champagne'; the notion of 'méthode champenoise', it contends, 'has become absolutely and 100% separated from the concept of the geographical area'. The use of a designation which merely refers to the process for the production of sparkling wine and which cannot in any way mislead consumers cannot be anything other than lawful. The prohibition of the use of such a designation would for

those reasons adversely affect the economic freedom of Winzersekt to market and sell its products. [6]

19. The reasons which led the Verwaltungsgericht to entertain doubts as to the legality of the provisions in question in the light of the principle of free exercise of a trade or profession are set out in the following terms in the order for reference:

The provisions of Article 6(5) 'restrict the plaintiff's [Winzersekt's] exercise of commercial activity, as they lay down a binding rule that in future it will not be allowed to market its products under the description hitherto permitted ...

The purpose of the provisions in question is ... to prevent the incorrect impression that a sparkling wine originates from a geographical unit, if such a unit is referred to together with designations relating to the production method.

However, there appear to be no grounds for supposing such a risk of confusion to exist in the case of the designations "méthode champenoise" and "Champagnerverfahren". They have been used for about a hundred years exclusively to describe a method of production, and they have by now acquired independent significance, so that their use does not imply the suggestion that the sparkling wine thus described originates from Champagne. ...

A risk of deception is all the less likely since the origin of the sparkling wines produced by the plaintiff is made clear by the reference to the Mosel-Saar-Ruwer region.

It follows from all this that the provisions of Article 6(5), second and third subparagraphs, of Regulation (EEC) No 2333/92 are evidently, to the extent stated above, not necessary with respect to the objective of the regulation. To this extent they therefore constitute a disproportionate and hence unlawful interference with the freedom to exercise a trade or profession.'

20. The Council, the French Government and the Commission submit that the provisions in question are lawful and argue in essence that they are necessary to guarantee protection of consumers and fair competition, as well as to safeguard the reputation of a prestige product such as champagne. The use of a delocalizing designation such as 'method', they argue, is not sufficient to pre-

6 — Winzersekt also argues that the provisions at issue infringe the fundamental right to the protection of property in so far as they involve expropriation of the designation which lies at the centre of the association's commercial success and forms part of its assets.
I need not enter into a discussion of this argument since an examination of the legality of the provisions in question in the light of this fundamental right was not requested by the national court, before which the association had in any event already set out this line of argument, which, prima facie, is not well founded.

vent consumers, when faced with a product bearing the designation 'méthode champenoise', from being misled as to the origin of the product, and, in any event, the designation is liable to create the impression that the inherent qualities of the product are on a par with those of champagne.

21. The Council and Commission referred in particular, as justification for the provisions in question, to the thirteenth recital in the preamble to Regulation No 2333/92, which is worded as follows:

'..., bearing in mind the international obligations of the Community and the Member States regarding protection of registered designations of origin or geographical descriptions of wines, it should be laid down that the use of designations relating to a production method may not refer to the name of a geographical unit unless the product concerned may be designated by that name;'.

The two institutions submit that the provisions in question fit perfectly into the scheme of international multilateral or bilateral agreements for the protection of registered designations of origin and geographical descriptions and are consistent with the other Community rules designed to secure the same objective, in so far as registered designations of origin and geographical descriptions are protected not merely against designations which are directly misleading but also against designations which include delocalizing terms such as 'style', 'type', 'brand' and 'method'. Designations of this kind are intended to take advantage of the prestige of a designation of origin or geographical description.

22. The Council also points out that, in its judgment in *Exportur*,[7] the Court has already accepted that a policy designed to protect designations of origin and geographical descriptions is well founded in Community law.

The Council finally argues that it did not exceed the bounds of its discretion by adopting the rules in question.

23. I consider it appropriate to cite the Court's case-law, according to which

'... both the right to property and the freedom to pursue a trade or profession form part of the general principles of Community law. However, those principles do not constitute an unfettered prerogative, but must be viewed in the light of the social function of

7 — Case C-3/91 *Exportur SA* v *LOR SA and Confiserie du Tech* [1992] ECR I-5529.

the activities protected thereunder. Consequently, the right to property and the freedom to pursue a trade or profession may be restricted, particularly in the context of a common organization of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and that they do not constitute a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed.' [8]

24. It is clear that the provisions in question do not infringe upon the very substance of the right freely to exercise a trade or profession. The question which arises is thus whether the provisions pursue objectives of general interest and whether they interfere with Winzersekt's position in a disproportionate manner.

25. There can be no doubt that the protection of consumers and the safeguarding of fair competition are objectives of general interest. The same goes for the protection of registered designations.

26. The crux of this case is therefore to determine whether the prohibition of the designation 'méthode champenoise' is necessary to secure those objectives and is thus not a disproportionate measure. The Council and Commission take the view that this question must be addressed in the light of the international obligations assumed by the Community and the Member States and other Community rules.

27. Neither the Council nor the Commission, however, has been able to point to any multilateral agreement which obliges the Community or the Member States to prohibit use of the designation 'méthode champenoise'. The two institutions referred in particular to a resolution of the General Assembly of the International Wine Office. [9] The reference is to Resolution No 7 of the 61st General Assembly of the Office of 7 September 1981, in which the Commission took part. [10] Although this resolution addresses delocalizing terms, it also provides

8 — Judgment in Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 15. See also the judgment in Case 234/85 *Staatsanwalt Freiburg* v *Keller* [1986] ECR 2897, paragraphs 8 and 9.

9 — The two institutions also cited the Paris Convention for the Protection of Industrial Property of 20 March 1883 (revised at Stockholm on 14 July 1967), the Madrid Arrangement for the Repression of False or Deceptive Indications of Source (revised at Lisbon on 31 October 1958) and the Lisbon Arrangement for the Protection of Appellations of Origin and their International Registration of 31 October 1958 (revised at Stockholm on 14 July 1967).

10 — That resolution is worded as follows:
'In the interest of safeguarding the effective application of designations of origin and geographical descriptions, the General Assembly has decided that the protection of designations of origin and geographical descriptions of wines fixed and determined by the competent national authorities requires discontinuation of the use of designations or designations of origin used to identify products from the wine sector or similar products not originating in the areas indicated or which do not satisfy the conditions governing the use of those names, even if those names are accompanied by delocalizing terms or by words such as style, type, manner, taste or other similar expression, without, however, excluding arrangements to regulate certain individual customary cases; likewise, brand-names which include those names (specific designations or designations of origin) or words, parts of words, signs or illustrations liable to create a risk of confusion as to the geographical origin of a product may not be used for those products.'

for the possibility of finding 'arrangements to regulate certain individual customary cases'. It can scarcely be argued that the resolution gives rise to specific and precise obligations, quite apart in any case from the fact that, according to the available information, undertakings assumed within the context of the International Wine Office can hardly be described as international-law obligations.

28. With regard to bilateral agreements entered into by the Community, these involve general provisions which do not justify the conclusion that the Community intended to prohibit the designation 'méthode champenoise' in order to protect consumers in the non-member countries concerned. [11]

29. Among the bilateral agreements concluded by Member States, the Council and Commission have referred in particular to the Agreement of 8 March 1960 between the Federal Republic of Germany and the French Republic on the protection of descriptions of origin, designations of origin and other geographical designations. [12] Articles 2 and 3 of that Agreement provide that the designations contained in Annexes A and B thereto are reserved exclusively for French or German products. Article 4 provides that the use of those designations otherwise than in accordance with Articles 2 and 3 is to be prohibited. The two institutions referred to Article 4(2) of the Agreement, which provides that the use of designations containing delocalizing terms is also to be prohibited, and the Commission submits on that basis that the designation 'méthode champenoise' would appear to be at variance with that Agreement. The Commission then goes on to state in its written observations that 'this contention is confirmed by Article 5 of the Agreement, in conjunction with Article 3(c) of the annexed protocol, which treats the expression "méthode champenoise" as indicating the essential characteristics of French products alone; here, the prohibition of misleading indications refers only to the use of such designations on French products, which is the sole authorized use.'

30. I find it difficult to go along with that reading of the Agreement. Although the abovementioned provision in the protocol annexed to the Agreement includes the 'méthode champenoise' in its list of indications relating to substantive qualities in respect of French wines, Article 5 of the Agreement does not ban the use of that designation but limits itself to prohibiting '*false* or *misleading* indications as to ... the substantive qualities of the products or goods' (emphasis added). Since it is not disputed that prior to regulation by Community rules the only legal definition of the production method referred to by the designation 'méth-

11 — The Council and Commission referred in particular to the agreements concluded with Austria, Bulgaria, Hungary, Romania and Australia. Of these, account need be taken only of that concluded with Austria, since it is common ground that the other agreements were concluded after the adoption of the regulation here at issue, which in any event is no more than a consolidation of Regulation No 3309/85, the recitals in the preamble to which already contained the reference to international obligations. The text of the Agreement of 23 December 1988 between the European Economic Community and the Republic of Austria on the control and reciprocal protection of quality wines and 'retsina' wine is published at OJ 1989 L 56, p. 2.

12 — The text of the agreement can be found in the *Bundesgesetzblatt* 1961 II, p. 23, and in the *Journal Officiel de la République Française* of 3 June 1961, p. 5022.

ode champenoise' was that contained in Article 161 of the French Wine Code, which, to justify use of the designation, required merely that the wines had been 'made sparkling by natural fermentation in the bottle', and since for that reason the designation was also widely used by French producers outside the Champagne region, I am inclined to take the view — like the Verwaltungsgericht Mainz in its above judgment of 2 February 1989 — that German producers who employed that production method and designation cannot be accused of having used false or misleading indications within the meaning of Article 5 of the Agreement.

31. So far as concerns the reference by the Council and Commission to the other Community rules, it cannot be disputed that there are Community provisions on the use of designations which include delocalizing terms, such as Article 40 of Regulation (EEC) No 2392/89 laying down general rules for the description and presentation of wines and grape musts [13] and Article 13 of Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. [14] Those provisions, which are couched in general terms and prohibit in a general manner delocalizing expressions within their scope, are similar to those of Article 13 of Regulation No 2333/92, which is worded as follows:

'1. The description and presentation of the products referred to in Article 1(1) and any form of advertising for such products must not be incorrect or likely to cause confusion or to mislead the persons to whom they are addressed, particularly as regards:

— the information laid down in Articles 3 and 6; this shall also apply if the information is used in translation or with a reference to the actual provenance or with additions such as "type", "style", "method", "imitation", "brand" or similar,

32. In my view, the reference to similar provisions in other Community regulations does little to advance discussion on the proportionality of Article 6(5) of Regulation No 2333/92, since it would be necessary in any event to examine the proportionality of those other provisions. Moreover, I consider that the existence of a provision such as Arti-

13 — OJ 1989 L 232, p. 13.
14 — OJ 1992 L 208, p. 1.

cle 13 in the regulation in question is rather an argument against the views espoused by the Council and Commission. If the designation 'méthode champenoise' had been understood as referring to something other than a method of production, the designation would have been more likely to be covered by the general prohibition laid down in Article 13 and there would have been no need for the specific provisions of Article 6(5).

33. The need to suppress the designation 'méthode champenoise' is thus not derived from either international obligations or other Community provisions. What we have here, rather, is a 'new' prohibition introduced by the Council with a view to reinforcing the protection hitherto accorded to champagne and eliminating all risk of misleading consumers with regard to the qualities of sparkling wine; the question thus remains as to whether it is disproportionate to suppress, on those grounds, a designation which has been the subject of traditional usage.

34. I need not consider at length the risk that consumers may be misled as to the origin of a sparkling wine by the fact that the designation 'méthode champenoise' appears on the bottle. I take the view that this risk is generally minimal and even less so in the case of Winzersekt, whose bottles bear labels which make it clear, *inter alia*, that the sales description is 'Sekt' and that the wine originates in the Mosel-Saar-Ruwer region and is produced in Trier, Germany.

35. On the other hand, there does not appear to be any clear ground on which to dismiss the argument that the designation 'méthode champenoise' may mislead consumers as to the characteristics of the product in question, just as it is also not possible to state that this designation does not take undue advantage of the reputation of champagne. Although prudent consumers will be aware that the designation refers only to a method of production, there is a real risk that less well-informed consumers will believe, by reason of the designation, that the sparkling wine is of the same standard as champagne, quite irrespective of its actual quality. In this connection, significance should also be attached to the fact that the regulation in question establishes a strict scheme of permitted designations and conditions under which they may be used, and that the designation 'méthode champenoise' may be regarded as misleading in view of the fact that the production method used in the Champagne region includes several other factors (which probably even have a decisive bearing on the production of champagne) in addition to those covered by the designation in question.

36. Another important point is that the legislation provides a substitute designation ('traditional method') for producers who hitherto have used the designation 'méthode champenoise' and that this substitute designation will enable them to inform their market — which, to judge from the information supplied by Winzersekt, appears to be separate from that for wines produced by tank fermentation — of the process by which they produce their sparkling wines. Moreover, Winzersekt has had the opportunity, during a transitional period of eight years, to habituate its customers to the fact that the

'traditional method' is equivalent to the 'méthode champenoise' and thereby avoid potential losses.

The Council has thus endeavoured to strike an equitable balance between the interests of producers who have traditionally used the designation in question and the desire to strengthen the protection accorded to the registered designation 'Champagne' and to consumers.

37. On that basis I take the view that the effort to strike such a balance has not resulted in a disproportionate interference with the position of Winzersekt.

38. It remains to consider whether the provisions in question infringe the principle of non-discrimination.

39. The Court has consistently held that this principle requires that similar situations should not be treated differently unless such differentiation is objectively justified. [15]

It is common ground that the prohibition of the use of the designation in question applies to all Community producers of sparkling wine with the exception of those producers who are entitled to use the designation of origin 'Champagne'. The question whether a producer is or is not entitled to use that designation of origin appears to be a perfectly objective matter which may justify a difference in treatment. For that reason, the provisions at issue do not infringe the principle of non-discrimination.

40. The judgment in *Codorniu* cannot affect this assessment. [16] That case concerned a designation which had been reserved for a particular group among all the producers who traditionally used it and the Community legislature was unable to explain satisfactorily why other traditional users had been prohibited from using it. In the present case, no traditional user of the designation 'méthode champenoise' will in future be able to use it.

Furthermore, the fact that some types of cognac will still be able to bear designations including the word 'Champagne', such as 'Fine Champagne', 'Petite Champagne' and so forth, cannot affect the outcome.

15 — See, *inter alia*, the judgment in Joined Cases 124/76 and 20/77 *Moulins Pont-à-Mousson* v *Office Interprofessionnel des Céréales* [1977] ECR 1795, paragraph 17.

16 — Judgment in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853.

41. I therefore propose that the Court should reply as follows to the question referred to it by the Verwaltungsgericht Mainz:

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.