# ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)

3 July 2007 *

In Case T-212/02,

**Commune de Champagne,** Switzerland,

**Défense de l'appellation Champagne ASBL,** established in Champagne, Switzerland,

**Cave des viticulteurs de Bonvillars,** established in Bonvillars, Switzerland,

the other applicants whose names appear in the annex to this order, represented by D. Waelbroeck and A. Vroninks, Lawyers,

applicants,

v

**Council of the European Union,** represented initially by J. Carbery, and subsequently by F. Florindo Gijón and F. Ruggeri Laderchi, acting as Agents,

* Language of the case: French.

and

**Commission of the European Communities,** represented initially by J. Forman and D. Maidani, and subsequently by J. Forman and F. Dintilhac, acting as Agents,

defendants,

supported by

**French Republic,** represented by G. de Bergues and A. Colomb, acting as Agents,

intervener,

APPLICATION for annulment of Article 1 of Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1), in so far as it approves Article 5(8) of Title II of Annex 7 to the Agreement between the European Community and the Swiss Confederation on Trade in Agricultural Products, and for compensation for the damage allegedly caused to the applicants thereby,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Third Chamber),

composed of M. Jaeger, President, J. Azizi and E. Cremona, Judges,

Registrar: E. Coulon,

makes the following

**Order**

**Legal framework**

1 Sparkling wine produced in the French region of Champagne enjoys, within the Community, the protected designation 'quality wine produced in special regions' (quality wine psr), in accordance with 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), as amended, and with the list of quality wines psr published pursuant to Article 1(3) of that regulation (OJ 1999 C 46, p. 113).

2 Article 29(2) of Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13) provides:

'The name of a geographical unit used to describe a table wine or a quality wine psr or the name of a given region in the Community may not be used to describe an imported wine, whether in the language of the producing country in which that unit or region is situated, or in any other language.'

3 Under subparagraph 2 of Article 29(3), of that regulation:

'Exceptions from paragraph 2 may be allowed where the geographical name of a wine produced in the Community is the same as the name of a geographical unit situated in a third country, where such name is used in that country to describe a wine in accordance with traditional and consistent usage and on condition that its use is governed by rules in that country.'

4 Under Articles 81 and 82 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1), Regulation No 823/87 and Regulation No 2392/89 were repealed as from 1 August 2000. However, Commission Regulation (EC) No 1608/2000 of 24 July 2000 laying down transitional measures pending the definitive measures implementing Regulation No 1493/1999, as last amended by Commission Regulation (EC) No 699/2002 of 24 April 2002 (OJ 2002 L 109, p. 20), provided that, by derogation from certain provisions of Regulation No 1493/1999, the application of certain provisions of Regulation No 823/87 and Regulation No 2392/89 in its entirety was extended to 31 May 2002 pending the finalisation and adoption of measures to implement Regulation No 1493/1999.

5 On 29 April 2002, the Commission adopted Regulation (EC) No 753/2002 laying down certain rules for applying Regulation No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (OJ 2002 L 118, p. 1). That regulation, as amended by Commission Regulation (EC) No 2086/2002 of 25 November 2002 (OJ 2002 L 321, p. 8), has been applicable since 1 August 2003.

6 Article 48 of Regulation No 753/2002 repeals Regulation No 1608/2000. However, Article 47(2) of Regulation No 753/2002, as amended, provides that, by derogation from certain provisions of Regulation No 1493/1999, certain provisions of Regulation No 823/87 and also Regulation No 2392/89 in its entirety shall remain applicable until 31 July 2003.

7 Article 52 of Regulation No 1493/1999 provides:

'If a Member State uses the name of a specified region to designate a quality wine psr or, where appropriate, a wine intended for processing into such a quality wine psr, that name may not be used to designate products of the wine sector not produced in that region and/or products not designated by the name in accordance with the provisions of the relevant Community and national rules. This shall also apply if a Member State has used the name of a local administrative area or part thereof or a small locality solely to designate a quality wine psr or, where appropriate, a wine intended for processing into such a quality wine psr.

Without prejudice to the Community provisions concerning specific types of quality wine psr, Member States may, in the case of certain conditions of production which they shall determine, authorise the name of a specified region to be accompanied by details relating to the method of manufacture or the type or by the name of a vine variety or a synonym thereof.'

8 The name 'Champagne' for wines from the Champagne region of France is included in the list of quality wines psr published pursuant to Article 54(5) of Regulation No 1493/1999 (OJ 2006 C 41, p. 1, in its most recent version).

9 Article 36(1) of Regulation No 753/2002 provides:

'The labelling of an imported wine, including a wine made from overripe grapes or a grape must in fermentation for direct human consumption, from a third country that is a member of the World Trade Organisation may bear the name of a geographical area as referred to in Annex VII(A)(2)(d) to Regulation (EC) No 1493/1999 provided that it serves to identify a wine as originating in the territory of a third country or a region or locality of that third country, where a given quality, reputation or other characteristic of the product may be essentially attributable to that geographical origin.'

10 Article 36(3) states:

'Geographical indications as referred to in paragraphs 1 and 2 may not give rise to confusion with a geographical indication used to identify a quality wine psr, a table wine or another imported wine included in the lists in agreements concluded between the Community and third countries.

However, some third country geographical indications as referred to in the first subparagraph that are homonymous geographical indications for a quality wine psr, a table wine or an imported wine may be used subject to practical conditions under

which they will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

...

These indications, terms and practical conditions shall be as laid down in Annex VI.'

11 Under Article 36(5) of Regulation No 753/2002, as amended by Commission Regulation (EC) No 316/2004 of 20 February 2004 (OJ 2004 L 55, p. 16):

'A geographical indication of a third country, as referred to in paragraphs 1 and 2, may be used on the labelling of an imported wine even where only 85% of the wine in question was obtained from grapes harvested in the production area whose name it bears.'

12 The name 'Champagne' for wines from the commune of Champagne in the canton of Vaud, in Switzerland, is not included in Annex VI, entitled 'List of homonymous geographical indications and the practical conditions for their use as referred to in Article 36(3)'.

## Facts

13 The commune of Champagne is situated in the canton of Vaud in Switzerland, in the wine-producing region of Bonvillars. In the commune of Champagne, a white, non-sparkling wine is produced from the pure chasselas grape and marketed under the name 'Champagne'.

14 On 21 June 1999, the European Community and the Swiss Confederation concluded seven agreements, one of which was the Agreement between the European Community and the Swiss Confederation on Trade in Agricultural Products (OJ 2002 L 114, p. 132, 'the Agreement').

15 Article 5 of Annex 7 to the Agreement provides:

'1. The Parties shall take all necessary steps in accordance with this Annex to ensure mutual protection of the names referred to in Article 6 and used for the description and presentation of wine-sector products within the meaning of Article 2 originating in the territory of the Parties. To that end, each Party shall introduce the appropriate legal means to ensure effective protection and prevent geographical indications and traditional expressions from being used to describe wine-sector products not covered by the indications or descriptions concerned.

2. The protected names of the Parties shall be reserved exclusively for the products originating in the Party to which they apply and may be used only under the conditions laid down in the laws and regulations of that Party.

...

4. In the case of homonymous geographical indications:

(a) where two indications protected under this Annex are homonymous, protection shall be granted to both of them, provided the consumer is not misled as to the actual origin of the wine-sector products;

...

5. In the case of homonymous traditional expressions:

(a) where two expressions protected under this Annex are homonymous, protection shall be granted to both of them, provided the consumer is not misled as to the actual origin of the wine-sector products;

...

8. The exclusive protection provided for in paragraphs 1 to 3 shall apply to the name "Champagne" on the Community list in Appendix 2 hereto. However, for a transitional period of two years from the entry into force of this Annex, such exclusive protection shall not prevent the word "Champagne" from being used to describe and present certain wines originating in the Swiss canton of Vaud, provided

that such wines are not marketed in Community territory and that the consumer is not misled as to the real origin of the wine.'

16 Article 6 of Annex 7 to the Agreement provides:

'The following names shall be protected:

(a) as regards wine-sector products originating in the Community:

— terms referring to the Member State in which the product originates,

— the specific Community terms appearing in Appendix 2,

— the geographical indications and traditional expressions appearing in Appendix 2;

(b) as regards wine-sector products originating in Switzerland:

— the terms "Suisse", "Schweiz", "Svizzera", "Svizra" and any other name designating that country,

— the specific Swiss terms appearing in Appendix 2,

— the geographical indications and traditional expressions appearing in Appendix 2.'

17 The instrument of ratification of the Swiss Confederation was lodged on 16 October 2000, following approval of the Agreement by the Federal Assembly of the Swiss Confederation on 8 October 1999 and by the popular vote held on 21 May 2000.

18 By Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1, 'the contested decision'), the Agreement was approved on behalf of the European Community.

19 The Agreement came into force on 1 June 2002, in accordance with Article 17(1) thereof.

**Procedure**

20 By application lodged at the Court Registry on 1 July 2002, the applicants brought the present action.

21 By separate documents lodged at the Court Registry on 16 and 30 October 2002 respectively, the Council and the Commission raised a plea of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance.

22 On 25 October 2002, the French Republic applied for leave to intervene in the proceedings in support of the forms of order sought by the Council and the Commission. By order of 18 November 2002, the President of the Third Chamber of the Court of First Instance acceded to that request.

23 The French Republic lodged its statement in intervention, confined to admissibility, on 20 January 2003.

24 The applicants lodged their observations on the pleas of inadmissibility on 3 February 2003 and their observations on the statement in intervention on 24 March 2003. The Council and the Commission waived their right to submit observations on the statement in intervention.

25 By order of 17 June 2003, the Court of First Instance decided to reserve a decision on the plea of inadmissibility for the final judgment and, by way of measures of organisation of procedure provided for in Article 64 of the Rules of Procedure, asked the parties to reply to certain written questions in their written pleadings. They complied with that request within the time-limits set.

## Forms of order sought by the parties

26 The applicants claim that the Court should:

— declare the present action admissible;

— annul Article 1 of the contested decision in so far as the Council thereby approved Article 5(8) of Title II of Annex 7 to the Agreement;

— in so far as necessary, annul that decision inasmuch as the Council and the Commission approved the other articles of the Agreement, as well as the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, the Agreement between the European Community and the Swiss Confederation on Air Transport, the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road, the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment, the Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement, and the Agreement on Scientific and Technological Cooperation between the European Communities and the Swiss Confederation;

— declare that the Community, as represented by the Council and the Commission, is non-contractually liable, and order them to compensate the applicants for all damage arising from Article 5(8) of Title II of Annex 7 to the Agreement;

— order the parties to produce, within a reasonable period, the precise figures of the amount of the damage on which the parties are agreed or, failing that, order them to produce further proposals containing precise figures or, failing that, order the Council to pay the sum of CHF 1 108 108 to the applicant wine growers subject to details to be provided during the proceedings;

— order the Council and the Commission to pay the costs.

27 The Council contends that the Court should:

— dismiss the action as inadmissible;

— alternatively, dismiss it as unfounded;

— order the applicants to pay the costs.

28 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss it as unfounded;

— order the applicants to pay the costs.

29 The French Republic claims that the Court should:

— dismiss the action as inadmissible;

— alternatively, dismiss it as unfounded;

— order the applicants to pay the costs.

**Law**

30 Under Article 113 of the Rules of Procedure, the Court, giving its decision in accordance with Article 114(3) and (4), may at any time, of its own motion, after the parties have been heard, consider whether there exists any absolute bar to proceeding with an action, including, according to settled case-law, the conditions governing the admissibility of an action which are laid down in the fourth paragraph of Article 230 of the EC Treaty (Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 23; Case T-114/96 *Biscuiterie-confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraph 24; and Case T-194/95 *Area Cova and Others* v *Council* [1999] ECR II-2271, paragraph 22).

31 Moreover, under Article 111 of the Rules of Procedure, where it is clear that the Court of First Instance has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the Court of First Instance may, by reasoned order, without taking further steps in the proceedings, give a decision on the action.

32 In this instance, the Court considers that it has sufficient information from the documents submitted and the arguments presented by the parties during the written procedure. Since the documents before the Court contain all the evidence needed to give a ruling and the parties have been heard, the Court therefore considers that it is unnecessary to open the oral procedure.

1. *The claims for annulment*

*Admissibility*

Article 5(8) of Annex 7 to the Agreement, as an act having an adverse effect

— Arguments of the parties

33 The Council and the Commission submit that Article 5(8) of Annex 7 to the Agreement ('the Champagne Clause') does not adversely affect the applicants. The fact that the name 'Champagne' may not be used to describe and present the wines produced by some of the applicants is apparent merely from reading Article 5(1), (2) and (3), Article 6 and Appendix 2 of Annex 7 to the Agreement. Therefore, the only effect of the Champagne Clause is to introduce, for certain wines from the canton of

Vaud, a transitional period of two years during which use of the word 'Champagne' is authorised provided that such wines are not marketed in Community territory and that the consumer is not misled as to the real origin of the wine.

34 Accordingly, the Commission submits that, in so far as the applicants seek the annulment of the contested decision inasmuch as it approves the Champagne Clause, these claims for annulment should be rejected as inadmissible.

35 The applicants maintain that, although it is true that, in general, exclusive protection for the names of wine-sector products is provided by Article 5(1), (2) and (3) of Annex 7 to the Agreement, the Champagne Clause lays down stricter rules for the name 'Champagne'. Whereas for other wine products the exception for homonymy operates as provided in Article 5(4) and (5) of Annex 7 to the Agreement, the effect of the Champagne Clause, once the transitional period has elapsed, is to ban any marketing of products bearing the name 'Champagne' and therefore to preclude any exception for homonymy which might have applied to wines originating from the commune of Champagne.

36 Since the Champagne Clause denies the applicants the opportunity to claim an exception for homonymy in respect of wines from the commune of Champagne, the annulment of the contested provisions would have the effect, pursuant to Article 233 EC, of requiring the Community institutions to take the necessary measures to comply with the judgment of the Court of First Instance and, consequently, to open fresh negotiations with the Swiss Confederation in accordance with the requirements set out by the Court. Therefore, the applicants consider that the Champagne Clause has a direct effect on their situation.

— Findings of the Court

37 It should be pointed out that the express purpose of this application is the annulment of Article 1 of the contested decision inasmuch as it approves the Champagne Clause. It is only in the alternative and only if the seven sectorial agreements approved by that decision constitute an inseparable whole that the application also seeks the annulment of the contested decision in so far as it approves the Agreement in its entirety and also the other six sectorial agreements.

38 Therefore the applicants, at least formally, in the words of their forms of order, identify the Champagne Clause as the provision adversely affecting them, and it is only to the extent that the contested decision approves that clause that they are seeking its annulment, and what is considered to be the principle claim for partial annulment of the decision or the subsidiary claim for annulment of that decision in its entirety. Indeed, the matter of the scope of the annulment sought is described by the applicants as depending only on whether or not the seven agreements approved by the contested decision are separable and therefore has no bearing on the identification of the provision by which the applicants consider themselves adversely affected.

39 According to settled case-law, an action for annulment brought by a natural or legal person is admissible only in so far as the applicant has an interest in the annulment of the contested measure (Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 59; Case T-102/96 *Gencor* v *Commission* [1999] ECR II-753, paragraph 40; Case T-212/00 *Nuove Industrie Molisane* v *Commission* [2002] ECR II-347). In order for such an interest to be present, the annulment of the measure must of itself be capable of having legal consequences (see Case T-310/00 *MCI* v *Commission* [2004] ECR II-3253, paragraph 44, and the case-law cited therein) or, in accordance with a different form of words, the action must be liable, if successful, to procure an advantage for the party who has brought it (Case T-28/02 *First Data and Others* v *Commission* [2005] ECR II-4119, paragraph 34).

40 It is therefore necessary to determine whether the Champagne Clause adversely affects the applicants' rights, in order to establish whether they have an interest in obtaining the annulment of the contested decision inasmuch as it approves the aforesaid clause, since their applications seeks that annulment.

41 In that regard, it should be pointed out that, under Article 5(2) of Annex 7 to the Agreement, the protected names of the parties are to be reserved for the products originating in the party to which they apply. The protected names within the meaning of that Annex are listed in Article 6.

42 As regards wine-sector products originating in the Community, Article 6(a) of Annex 7 to the Agreement covers:

— terms referring to the Member State in which the product originates,

— the specific Community terms appearing in Appendix 2,

— the geographical indications and tradition expressions appearing in Appendix 2;

43 According to the provisions of Article 6(b) of Annex 7, as regards wine-sector products originating in Switzerland, the following are covered:

— the terms 'Suisse', 'Schweiz', 'Svizzera', 'Svizra' and any other name designating that country,

— the specific Swiss terms appearing in Appendix 2,

— the geographical indications and traditional expressions appearing in Appendix 2.

44 The French registered designation of origin 'Champagne' appears in Appendix 2 as a geographical indication within the meaning of Article 6(a), third indent, of Annex 7 to the Agreement.

45 However, the name 'Champagne' does not appear among the protected names for wine-sector products originating in Switzerland mentioned in Appendix 2, either as a geographical indication or as a Swiss traditional expression; furthermore, that appendix does not refer to any of the specific terms mentioned in Article 6(b), second indent, of Annex 7 to the Agreement. Moreover, since the name 'Champagne' does not designate Switzerland, it must therefore be held that it is not a protected Swiss name within the meaning of Annex 7 to the Agreement.

46 It should be pointed out, however, that Article 5(4)(a) of Annex 7 to the Agreement provides that 'where two indications protected under this Annex are homonymous, protection shall be granted to both of them, provided the consumer is not misled as to the actual origin of the wine-sector products'. Similarly, Article 5(5)(a) of Annex 7 provides that 'where two expressions protected under this Annex are homonymous, protection shall be granted to both of them, provided the consumer is not misled as to the actual origin of the wine-sector products'.

47 Accordingly, the exceptions for homonymy provided for in Article 5(4) and (5) of Annex 7 to the Agreement, which the applicants consider are unavailable to them by reason of the Champagne Clause, are designed to apply only where two homonymous indications or expressions are protected under Annex 7 to the Agreement.

48 However, it has been stated previously that the name 'Champagne' was not a Swiss name protected under Annex 7 to the Agreement.

49 It follows that the fact that the applicants are unable to invoke one of the exceptions for homonymy provided for in Article 5(4) and (5) of Annex 7 to the Agreement stems from the arrangement of those provisions and from the fact that the name 'Champagne' is not a protected Swiss name within the meaning of Annex 7 to the Agreement.

50 The applicants are therefore wrong to claim that the Champagne Clause prevents them from invoking one of the exceptions for homonymy provided for in Article 5(4) and (5) of Annex 7 to the Agreement.

51 It should be pointed out that, under that clause:

'The exclusive protection provided for in paragraphs 1 [to] 3 shall apply to the name "Champagne" on the Community list in Appendix 2 hereto. However, for a transitional period of two years from the entry into force of this Annex, such exclusive protection shall not prevent the word "Champagne" from being used to describe and present certain wines originating in the Swiss canton of Vaud, provided that such wines are not marketed in Community territory and that the consumer is not misled as to the real origin of the wine.'

52 Therefore, the only effect of the Champagne Clause is to authorise, for a transitional period of two years, the marketing outside the Community, under the name 'Champagne', of certain wines originating in the canton of Vaud. The Champagne Clause is therefore an arrangement, for the benefit of certain wines originating in the canton of Vaud, of the exclusive protection, afforded under Article 5(1), (2) and (3) of Annex 7 to the Agreement, to the name 'Champagne' included in the Community list appearing in Appendix 2 of Annex 7; indeed, this is clear from the first sentence of that clause and from the adverb 'however' at the beginning of the second sentence.

53 Therefore, the inevitable conclusion is that not only would the annulment of the contested decision inasmuch as it approves the Champagne Clause not be of any advantage to the applicants, but it would even be to their detriment in that it would remove the transitional period which the decision prescribes for their benefit. To that extent, the applicants have no legal interest in bringing proceedings against the Champagne Clause and, on that ground their application must be rejected as inadmissible.

54 However, it should be pointed out that, over and above the strict wording of their forms of order, it is apparent from the pleas in law which they raise that the applicants are challenging, in essence, the ban imposed on them under the Agreement prohibiting them from marketing the wines originating in the commune of Champagne in the canton of Vaud under the name 'Champagne' at the end of the two-year transitional period laid down by the Champagne Clause.

55 Now, although it is true, as has already been stated, that the Champagne Clause does not provide the legal basis for that ban, the fact remains that the Agreement, under Article 5(1) to (6) of Annex 7 and Appendix 2 of Annex 7, effectively requires the Swiss Confederation to ensure the exclusive protection of the Community name 'Champagne' and excludes any possibility of an exception for homonymy for the wines originating in the commune of Champagne in the canton of Vaud. Moreover, it should be pointed out that the Champagne Clause makes express reference to this

fact in its first sentence, which states: '[t]he exclusive protection provided for in paragraphs 1 [to] 3 shall apply to the name "Champagne" on the Community list in Appendix 2 hereto'; it therefore constitutes an express statement of the rules stemming from the inclusion of the name 'Champagne' on the only list of protected names for wine-sector products originating in the Community.

56 It follows that the application should in fact be regarded as brought against the rules for the exclusive protection of the Community name 'Champagne' as they follow from Article 5(1) to (6) and Appendix 2 of Annex 7 of the Agreement and which the Champagne Clause, particularly the first sentence thereof, expressly states. Moreover, it must be stated that, apart from their lawful objections to the argument that the Champagne Clause adversely affects the applicants, it is clear from the submissions of the Council and the Commission that they have interpreted the application in this way; therefore, the exchange of arguments has not been affected by the applicants' lack of precision when identifying the measure adversely affecting them.

57 In those circumstances, the Court of First Instance will also examine the admissibility of the application inasmuch as it seeks the annulment of Article 1 of the contested decision in so far as it approves the rules for the exclusive protection of the Community name 'Champagne' as they follow from Article 5(1) to (6) and from Appendix 2 of Annex 7 of the Agreement ('the contested provisions of the Agreement').

58 In that regard, a distinction should be drawn between the consequences of the contested provisions of the Agreement for the applicants' position in Switzerland, on the one hand, and within the Community, on the other.

The consequences of the contested decision for the applicants in Switzerland

— Arguments of the parties

59 The Council points out that the Swiss Confederation does not form part of the Community and that, therefore, no Community act or decision is applicable to it, in accordance with Article 299(1) EC. The contested decision cannot therefore result in the incorporation of the Agreement into the Swiss legal system given that the decision produces no effects in that respect.

60 The Council points out that, under Article 26 of the Convention of the Law of Treaties concluded in Vienna on 23 May 1969 ('the Vienna Convention') every treaty in force is binding upon the parties to it and must be performed by them in good faith and that, under Article 29 of the Convention, unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory. Therefore, as regards the seven agreements signed on 21 June 1999 between the Swiss Confederation, on the one hand, and the European Community and its Member States, on the other, each party is bound to observe and implement the said agreements and the Swiss authorities have exclusive responsibility for implementing them in Switzerland.

61 In that regard, the Council points out that Article 16 of the Agreement states that the Agreement shall apply, on the one hand, to the territories to which the Treaty establishing the European Community is applied and, on the other, to the territory of Switzerland, and that Article 5(1) of Annex 7 to the Agreement provides that 'each Party shall introduce the appropriate legal means to ensure effective protection and prevent geographical indications and traditional expressions from being used to describe wine-sector products not covered by the indications or descriptions concerned'.

62 The Council concludes that the aforesaid Agreement becomes applicable in the territory of Switzerland only pursuant to the Swiss decision ratifying the Agreement, in accordance with Swiss constitutional provisions, and in compliance with the conditions and procedures of the Swiss legal system. The Swiss authorities alone have jurisdiction and responsibility for introducing appropriate legal means to implement in Swiss territory the rights and obligations referred to in Article 5 of Annex 7 to the Agreement which may apply to the applicants' situation. The Council points out that although the Swiss Confederation has, like the Community, a system for incorporating monist international agreements, that State nevertheless has autonomous rules for determining to what extent an agreement to which it is party confers rights on individuals, so that its courts are likely to adopt decisions which are different from those of the Community courts as regards the direct applicability of the provisions of agreements concluded by the Community. The Council cites, as an example of such divergence, the judgment of the Swiss Federal Court of 25 January 1979 in *Bosshard Partners Intertrading* v *Sunlight AG.*

63 Finally, the case-law invoked by the applicants as regards whether a provision of an agreement concluded by the Community with non-member countries should be regarded as directly applicable is irrelevant to this case since the contested decision does not apply to the applicants' situation. The Council also points out that, in accordance with Article 46 of the Vienna Convention, the possible annulment of the contested decision by the Court of First Instance would not result in the invalidation of the Agreement; therefore, the Swiss authorities would still be bound to comply with the Agreement and the steps taken by the Swiss authorities pursuant to that agreement would remain in force.

64 The Commission points out that the purpose of the contested decision is to approve on behalf of the Community the seven agreements signed on 21 June 1999 with the Swiss Confederation and, accordingly, to render them applicable in the Community.

65 In that regard, it is apparent from settled case-law that an agreement concluded by the Council and/or by the Commission under the provisions of the Treaty is, as far as the Community is concerned, an act of one of the institutions of the Community and, as from its entry into force, the provisions of such an agreement form an integral part of the Community legal system (Case 181/73 *Haegeman* [1974] ECR 449, paragraphs 4 and 5, and Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7).

66 However, in principle, the acts of the institutions have the same scope as the founding treaty on which they are based. Thus, under Article 299(1) of the Treaty, an act of a Community institution is not applicable in the territory of a non-member State and cannot affect rights arising and exercised in the territory of that State, in accordance with the legislation of that State.

67 The contested provisions of the Agreement are therefore not applicable and may be applied to the applicants only pursuant to the act of ratification adopted by the Swiss Authorities by which they officially consent to be bound by the Agreement and undertake to take the steps necessary to implement it in Swiss territory, in accordance with Articles 14 and 16 of the Agreement.

68 The Commission concludes that the contested decision, namely the instrument of ratification adopted on behalf of the Community, is not applicable in Switzerland, and that it is not intended — and cannot be intended — to govern the business activities of the applicants in Switzerland or, therefore, to impose any ban whatsoever on them. Therefore, the possible annulment of the contested decision would have no effect on their situation in Switzerland, which would continue to be governed only by the decisions of the Swiss authorities; accordingly, the applicants do not have a legal interest in bringing proceedings against the contested decision.

69 The French Republic, the intervener, points out that the contested decision is the decision by which the seven agreements signed on 21 June 1999 were concluded on behalf of the Community. Its purpose is to render them applicable in Community territory. It is clear from Article 299(1) EC, that a measure adopted by a Community institution is applicable only in the territory of the Member States of the Community, not in that of non-member States. Such a measure is therefore not applicable in Switzerland and, consequently, the applicants' rights cannot be affected by the contested decision. Before those agreements could become applicable in Switzerland, the authorities of that State would actually have to ratify them.

70 Furthermore, as regards geographical indications, Article 5(1) of Annex 7 to the Agreement states that 'each Party shall introduce the appropriate legal means to ensure effective protection and prevent geographical indications and traditional expressions from being used to describe wine-sector products not covered by the indications or descriptions concerned'. Therefore, only a decision of the Swiss authorities may affect the rights and obligations of the applicants in Switzerland.

71 The applicants maintain that, according to the case-law, any act of the Council concluding an international agreement is in itself an act subject to judicial review pursuant to Article 230 EC (Case C-327/91 *France* v *Commission* [1994] ECR I-3641, paragraph 16; Case C-122/95 *Germany* v *Council* [1998] ECR I-973, paragraphs 41 and 42; Opinion of the Court 3/94 [1995] ECR I-4577, paragraph 22, delivered pursuant to Article 228 of the EC Treaty).

72 They submit that the arguments of the Council and the Commission are based on the incorrect assumption that a Community measure cannot, by its very nature, produce effects outside the Community. In reality, the measure by which the Community concludes an agreement with a non-member State affects the very existence of that agreement at international level. In the present case, the Agreement

therefore becomes binding only after the ratification decision of the Swiss Federal Council of 16 October 2000, on the one hand, and the Council Decision of 4 April 2002 approving that Agreement, on the other. It is therefore inaccurate to assert that the applicants are affected only by the ratification by the Swiss Confederation of the contested provisions of the Agreement since, in the absence of the contested decision, the applicants would not have been deprived of their right to market the wine which they produce under the name 'Champagne'.

73 The applicants point out, in that regard, that the contested decision is subsequent to ratification of the Agreement by the Swiss Confederation. Before that decision was adopted, the Swiss Confederation was therefore unaffected by the obligation arising from the contested provisions of the Agreement, and it was only after the adoption of that decision, which sets the framework for the entry into force of the Agreement, that that obligation arose. The contested decision is therefore the direct source of the ban on the continued use by the applicants of the municipal designation 'Champagne'.

74 The fact that a measure may be unlawful owing to a combination of two factors, namely the ratification decisions of the Community and the Swiss Confederation, does not mean that neither one of those two factors may be challenged by an action for annulment, the consequence to which the Council's view would lead.

75 Indeed, the Court of Justice has accepted that actions for annulment brought against acts approving international treaties are admissible, without drawing a distinction according to whether their effects are external or internal (*France* v *Commission*, cited in paragraph 71 above; *Germany* v *Council*, cited in paragraph 71 above; Case C-29/99 *Commission* v *Council* [2002] ECR I-11221; and Case C-281/01 *Commission* v *Council* [2002] ECR I-12049).

76 Furthermore, if we accept the Council's view, the Community institutions are at liberty to infringe the rules of Community law, inter alia the fundamental rights, provided that they act within the framework of their external competence and that the measure concerned produces effects on the territory of only one non-member State.

77 In respect of the Council's interpretation of Article 299 EC, the applicants maintain that it overlooks the fact that the territorial scope of the Community legal order transcends the combined territories of the Member States and extends to any place in which the Member State acts in any capacity within the scope of the powers conferred on the Community. The Community therefore has jurisdiction to penalise concerted practices and to prohibit extra-Community concentrations (Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others* v *Commission* [1988] ECR 5193; Case C-306/96 *Javico* [1998] ECR I-1983; and *Gencor* v *Commission*, cited in paragraph 39 above).

78 In this instance, the wording of the Champagne Clause makes it expressly clear that the clause is designed to produce effects both in the territory of the Community and in the territory of Switzerland. Indeed, it prohibits the use in the latter of the name 'Champagne' which is nevertheless reserved, under Swiss law, for the wine-producers from Champagne in the Canton of Vaud. In that regard, the applicants point out that the Treaty between the Swiss Confederation and the Republic of France on the protection of indications of source, appellations of origin and other geographic names, signed in Berne on 14 May 1974 ('the Franco-Swiss Treaty'), authorised, in accordance with the exception for homonymy provided for in Article 2(3), the use of that name for wines originating in Champagne in the canton of Vaud. Indeed, this fact has not been challenged by the champagne producers.

79 Moreover, Article 46 of the Vienna Convention, on which the Council relies in support of its arguments, merely provides that a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its

consent. However, that situation in no way applies to the circumstances of the present case, in which a fundamental right is infringed. In any event, Article 46 of the Vienna Convention expresses a reservation where the violation is manifest, as it is in the present case, since the contested provisions of the Agreement constitute a manifest and serious violation of the applicants' right to property and right to the freedom to pursue professional activities. Furthermore, the annulment of the contested decision would deprive the Agreement of any force and it would no longer be necessary for the parties to the Agreement to implement them, in accordance with Articles 60 et seq. of the Vienna Convention.

80 Finally, the applicants point out, as regards the Council's argument alleging that the contested provisions of the Agreement are not of direct concern to them, that, according to the case-law of the Court of Justice and of the Court of First Instance, an applicant is directly concerned if the Community measure which has been adopted has an immediate effect on him, without any subsequent discretionary intervention by a national or Community authority. However, the interposition of a measure which merely gives effect to it does not break the direct link between the Community measure and the applicant (Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411).

81 It is therefore apparent from settled case-law that, for a person to be directly concerned by a contested Community measure, the latter must directly affect the legal situation of the individual and leave no discretion to the addressees of that measure 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 (Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, paragraph 43).

82 The applicants therefore concede that, where a measure gives considerable latitude to the States entrusted with transposing it into their national law, only the implementing measures which are adopted can affect the position of the parties.

83 However, that does not apply in the present case since the Champagne Clause is clear and precise and stated in unequivocal terms, leaving no discretion in the adoption of the measures for introducing and effectively implementing the contested provisions of the Agreement. Indeed, the Council and the Commission themselves emphasise the fact that the Swiss Confederation is required, under Article 14 of the Agreement, to take all steps, whether general or specific, to ensure the performance of the Agreement, in order not to incur liability at international level.

84 Furthermore, the source of the infringement of Community law is not in any action which Switzerland may take but in the contested provisions of the Agreement, which require Switzerland to take the necessary steps to ensure proper implementation, a situation analogous to that in Case C-476/98 *Commission* v *Germany* [2002] ECR I-9855.

85 The applicants therefore consider that the contested decision produces legal effects in their regard and that the Court of First Instance has jurisdiction over the application, since the international contractual context is irrelevant in that regard, the Court of Justice having held that exercise of the powers delegated to the Community in international matters cannot escape judicial review as provided for in Article 230 EC (*France* v *Commission*, cited in paragraph 71 above, and *Germany* v *Council*, cited in paragraph 71 above).

— Findings of the Court

86 First of all, it should be pointed out that, for an action to be admissible pursuant to the first paragraph of Article 230 EC, the contested measure must be a measure of an institution which produces binding legal effects such as to affect the interests of the applicant by bringing about a distinct change in his legal position (Joined Cases

C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375, paragraph 62; Case T-87/96 *Assicurazioni Generali and Unicredito* v *Commission* [1999] ECR II-203, paragraph 37; see also, to that effect, Case 22/70 *Commission* v *Council* [1971] ECR 263 (the 'ERTA' case), and *France* v *Commission,* cited in paragraph 71 above, paragraph 14).

87 Although an agreement between the Community, on the one hand, and a non-member State or an international organisation, on the other, as an instrument expressing the joint intention of those bodies, cannot be regarded as an act of an institution, and is not, therefore, actionable pursuant to Article 230 EC, it is settled case-law that the act whereby the competent Community institution sought to conclude the agreement is an act of an institution within the meaning of that article and may, therefore, be susceptible to an action for annulment (see, to that effect, *France* v *Commission,* cited in paragraph 71 above, paragraph 17; Opinion 3/94, cited in paragraph 71 above, cited in paragraph 22, and *Germany* v *Council,* cited in paragraph 71 above, paragraph 42).

88 It follows that the applicants' action may seek only the annulment of the contested decision and that it is admissible only in so far as that decision produces binding legal effects such as to affect the interests of the applicants by bringing about a distinct change in their legal position.

89 In that regard it should be pointed out that the principle of sovereign equality enshrined in Article 2(1) of the United Nations Charter means that it is, as a rule, a matter for each State to legislate in its own territory and, accordingly, that generally a State may unilaterally impose binding rules only in its own territory. Similarly, it should be pointed out, as regards the Community that, under Article 299 EC and the specific arrangements concerning certain territories listed in that provision, the EC Treaty applies only to the territory of the Member States.

90 It follows that an act of an institution adopted pursuant to the Treaty, as a unilateral act of the Community, cannot create rights and obligations outside the territory thus defined. Therefore, the scope of the contested decision is limited to that territory and it has no legal effect in the territory of Switzerland. Only the Agreement, which is not susceptible to an action, as has already been stated, is designed to produce legal effects in Switzerland, in accordance with the rules specific to the legal system of that State and once it has been ratified in accordance with the procedures which are applicable there.

91 It must therefore be held that the contested decision, adopted by the Council and the Commission on behalf of the Community, does not bring about a change in the applicants' legal position in Switzerland, such position being governed only by the provisions adopted by that State in the exercise of its sovereign power. The sole cause of the allegedly harmful effects produced by the Agreement in respect of the applicants in Switzerland is the fact that the Swiss Confederation, in deciding at its absolute discretion to ratify the Agreement, agreed to be bound by it and undertook, in accordance with Article 14 thereof, to take the steps necessary to ensure the performance of the obligations arising from it, including those stemming from the contested provisions of the Agreement.

92 Indeed, that is consistent with Article 16 of the Agreement, which provides that the Agreement shall apply, on the one hand, to the territories to which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other, to the territory of Switzerland, read in conjunction with the first sentence of Article 17(1), which provides that the Agreement shall be ratified or approved by the Parties in accordance with their respective procedures.

93 The mere fact that, pursuant to the procedural rule for entry into force laid down in the second sentence of Article 17(1) of the Agreement, which provides that the Agreement shall enter into force on the first day of the second month following the final notification of the deposit of the instruments of ratification or approval of the

seven sectorial Agreements, the contested decision triggered its entry into force can have no effect whatsoever on the general principle stated above, that in theory each State has exclusive jurisdiction unilaterally to impose binding rules in its territory. Even if it were conceded that, in accordance with Article 17 of the Agreement, the annulment of the contested decision would lead to its suspension, it must be stated, on the one hand, that the same would apply if the decision taken by the Swiss Confederation to ratify the Agreement were annulled, and above all, on the other hand, that that possibility is merely the consequence of the express procedural conditions for entry into force of the Agreement and clearly cannot lead to the conclusion that the scope of the contested decision extends to the territory of Switzerland.

94 Finally, although it has been held that exercise of the powers delegated to the Community institutions in international matters cannot escape judicial review under Article 230 EC (*France* v *Commission*, cited in paragraph 71 above, paragraph 16), it should be pointed out that, in the present case, to allow that the action is admissible in so far as it concerns the effects of the contested provisions of the Agreement in the territory of Switzerland would mean that the Community court would rule on the legality, in the light of Community law, of rights conferred on a non-member State, or obligations assumed by it, under an international agreement to which it has subscribed freely and at its absolute discretion in the course of conducting its external relations. Such a review clearly lies outside the jurisdiction of the Court of First Instance as defined by the EC Treaty.

95 It is apparent from all the foregoing that the contested decision does not produce any binding legal effect such as to bring about a change in the legal position of the applicants in Switzerland and, on that basis, is not a an act subject to judicial review pursuant to Article 230 EC. On those grounds, the arguments put forward by the applicants to establish that they are directly concerned by that decision, within the meaning of the fourth paragraph of Article 230 EC, must be rejected as irrelevant, since a prerequisite is that the contested measure should produce binding legal effects in their regard.

96 This application must therefore be dismissed as inadmissible in so far as it seeks the annulment of the contested decision so far as concerns the territory of Switzerland.

The consequences of the contested decision for the applicants in the Community

— Arguments of the parties

97 The Council maintains that the wine originating in the French region of Champagne enjoys exclusive protection in the Community as a quality wine psr, and the contested provisions of the Agreement do not alter that in any way.

98 In its defence, the Council adds, in response to the written questions put by the Court, that, under Article 36 of Regulation No 753/2002, which lays down the circumstances in which the name of a geographical indication may appear on the label of a wine imported into the Community, such geographical indication may not give rise to confusion with a geographical indication used to identify a quality wine psr, a table wine or another imported wine included in the lists in agreements concluded between third countries and the Community.

99 In the present case, the Council considers that the exception for homonymy provided for in the second subparagraph of Article 36(3) of Regulation No 753/2002 cannot apply to the wines originating in the Vaud commune of Champagne because of the obvious risk of confusion which that homonymy would create in the minds of consumers. Moreover, the far superior status and reputation of the French registered designation of origin would make sharing that name particularly inequitable, which is contrary to the requirements of that provision.

100 The Council also points out that authorisation has not been granted, pursuant to Article 36(3), for any third country geographical indication to be used in the territory of the Community. Indeed, Annex VI to Regulation No 753/2002, which lists the geographical indications and traditional expressions granted exceptions for homonymy, is empty. Therefore, the Swiss geographical indication 'Champagne' does not enjoy any exception for homonymy provided for by that regulation and, accordingly, the applicants are not authorised to market the wines originating in the commune of Champagne under that name.

101 The Council maintains, therefore, that both before and after the Agreement, the protection to be granted and the rules for using the registered designation of origin 'Champagne' in the Community are governed by Regulation No 1493/1999 and Regulation No 753/2002. Furthermore, even if those regulations did provide the opportunity for the applicants to use the name 'Champagne' for wines originating in the Vaud commune of Champagne, that opportunity was not altered by the Agreement, which does not establish rules concerning the protection to be granted by each party to its own geographical indications in its territory. Consequently, the contested decision does not introduce any new provision relating to the marketing in Community territory of wines imported from Switzerland under the name 'Champagne'; therefore, that decision is not of direct concern to the applicants.

102 That conclusion is unaffected by the Franco-Swiss Treaty, which recognises only one designation 'Champagne', namely that which designates the sparkling wines originating in the French region of Champagne. The third paragraph of Article 2 of that treaty establishes a derogation from the obligations laid down in the first paragraph, which states as follows:

'If one of the names protected under the first paragraph is the same as the name of a region or place situated outside the territory of the French Republic, the first

paragraph does not preclude the use of the name for products or goods manufactured in that region or in that place. However, additional requirements may be laid down by a protocol.'

103 The effect of that provision is therefore to enable the Swiss Confederation to disregard the obligation laid down in its first paragraph, according to which the name 'Champagne' is reserved, 'in the territory of the Swiss Confederation, to French products or goods'. However, the purpose of that provision is not to determine the protection to be afforded to the name 'Champagne' in France and, consequently, it does not interfere with the Community legislation concerning wine-producing, which reserves that registered designation of origin, in the territory of the Community, to certain wines from the French region of Champagne.

104 Moreover, in response to the written questions put by the Court of First Instance, the Council maintained that the applicants do not prove to the required legal standard that the name 'Champagne' was protected as a registered designation of origin under Swiss law.

105 The ordonnance du Conseil fédéral suisse du 7 décembre 1998 sur la viticulture et l'importation de vin (order of the Swiss Federal Council of 7 December 1998 on wine production and importation) refers to three kinds of name: the designation of origin, the registered designation of origin and the indication of source. Under that legislation, the designation of origin is reserved to wines made from grapes harvested in the geographical area concerned and which have minimum natural sugar content. On the other hand, the registered designation of origin, as well as satisfying that sugar content, established for the designation of origin, meets 'additional requirements laid down by the canton' which must relate at least to 'the delimitation of production areas ..., grape varieties ..., methods of cultivation ..., natural sugar content ... the maximum yield per unit of surface area ..., wine production methods [and] analysis and organoleptic investigation'.

106 The Council concedes that, under Article 16 of the Règlement du 19 juin 1985 sur les appellations d'origine des vins vaudois (Regulation on the designations of origin of wines from the canton of Vaud, hereinafter 'the regulation on the designations of origin of wines from the canton of Vaud'), 'the wine harvested in the territory of a commune is entitled to the designation of that commune'. However, that entitlement conflicts with the order of the Swiss Federal Council of 7 December 1998 on wine production and importation, issued subsequent to that regulation, which reserves registered designations of origin to wines which satisfy quality criteria stricter than the straightforward condition, relating to commune designations, that 51% of the wine must have been harvested in the territory of the commune in question.

107 The Council adds that, under Article 3 of the Regulation of 28 June 1995 on the registered designations of origin of wines from the canton of Vaud, the designations of origin of wines from the canton of Vaud are reserved only to wines of registered designation of origin and that registered designation of origin means the geographical traditional names and not category 1 wines, within the meaning of Articles 1 to 4 of the Règlement du 26 mars 1993 sur la qualité des vin vaudois (Regulation on the quality of wines from the canton of Vaud).

108 In that regard, the Council points out that, under Article 1 of the Regulation of 26 March 1993 on the quality of wines from the canton of Vaud, only wines made from grapes which have achieved a certain minimum natural sugar content, fixed by grape variety and designation, may bear a designation of origin of a wine-producing region, place of production or subdivision of the place of production (commune, vineyard, château, abbey, estate, land registry or locality designation). The Council draws attention to the fact that, although the designation 'Bonvillars' is included in the list of designations, the same is not true of the designation 'Champagne'.

109 The Council therefore considers that the name 'Champagne' is neither a registered designation of origin nor a designation of origin, but merely a geographical indication wholly unconnected with quality or reputation. That name, under Swiss law, signifies only a purely geographical requirement, namely, that at least 51% of the wine be made from grapes harvested in the commune of Champagne.

110 This interpretation is confirmed by the Règlement du canton de Vaud du 16 juillet 1993 sur la limitation de la production et le contrôle officiel de la vendange (Regulation on production limits and official control of the grape harvest). The Council points out that, under Article 1 of that regulation, the cantonal register of vineyards gives the status of the wine-growing plots of each owner, which must indicate the designation, within the meaning of the Regulation on the designations of origin of wines from the canton of Vaud. The cantonal register of vineyards produced by the applicant's shows clearly that the designation used by all the applicants is 'Bonvillars'.

111 As for the Commission, it maintains that the use of the name 'Champagne' in the Community territory has for a long time been reserved to wine originating in the French region of Champagne, and the contested provisions of the Agreement in no way not alter that situation.

112 In reply to the written questions posed by the Court, the Commission pointed out that the exception for homonymy provided for in the final subparagraph of Article 29(3) of Regulation No 2392/89, in force until 1 August 2003, could be granted by decision of the Commission following a request for derogation from the provisions of Article 29(2). No such request has been made in respect of the wine originating in the commune of Champagne in Switzerland.

113 Furthermore, the exception for homonymy provided for in the second subparagraph of Article 36(3) of Regulation No 753/2002, in force since 1 August 2003, is intended to apply only on condition that the geographical indication concerned is recognised and protected as such by the third country, in accordance with Article 24(9) of the Agreement on Trade-related Aspects of Intellectual Property Rights of 15 April 1994 (OJ 1994 L 336, p. 214, 'the TRIPs Agreement'), which provides that 'there shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country'.

114 Therefore, since the Swiss Confederation did not intend to protect the geographical indication 'Champagne' in the canton of Vaud within the framework of the Agreement, the exception for homonymy provided for by Regulation No 753/2002 is not intended to apply. Furthermore, Annex VI to that regulation, which lists the indications and the practical conditions of the homonymous geographical indications of third countries, is empty, since no homonymy request has yet been made.

115 Moreover, the Commission, in response to a written question from the Court concerning the existence of a registered municipal designation of origin for the commune of Champagne, stated that it was apparent from the Regulation on the designations of origin of wines from the canton of Vaud that the name 'Champagne' was merely an indication of source which did not constitute an industrial and commercial property right in the absence of any recognition and identification, in the applicable Swiss legislation, of the inherent qualities of the wines produced in the territory of that commune.

116 Finally, the Commission points out that the applicants themselves admit that they have never marketed the wine they produce under the name 'Champagne' in the Community, but that they export about a thousand bottles a year to the Community under the name 'Arquebuse', which shows that the exception for homonymy provided by the Community legislation has never been applied in their regard.

117 The Commission infers from all the foregoing that the contested measure does not bring about a change in the legal position of the applicants in the territory of the Community; accordingly, they have no legal interest in bringing proceedings against that measure.

118 The French Republic, the intervener in the proceedings, points out that the French wine from Champagne is protected in the Community as a quality wine psr and, as such, enjoys the exclusive use of the designation 'Champagne'. The contested measure therefore does not directly affect the legal position of the applicants and, accordingly, the action is inadmissible.

119 The French Republic also considers that, under the applicable Swiss legislation, the reference to the commune corresponds to the indication of a detail concerning the source of the wine within the production area which is a single entity and that such a reference cannot be treated in the same way as a designation of origin. A designation of origin indicates that certain conditions have been met regarding the characteristics of the product, which exist in the case of the designation 'Bonvillars', but not in the case of the commune of Champagne. The French Republic points out in that regard that, if it were otherwise, that commune would have been specifically mentioned in the Regulation on the designations of origin of wines from the canton of Vaud, which is not the case. It therefore considers that the existence of a registered designation of origin 'Champagne' protected under Swiss law is not established.

120 The applicants dispute the assertion made by the Council, the Commission and the French Republic that their legal position in the Community is not altered by the contested provisions of the Agreement. They point out in that regard that, if the name 'Champagne' is indeed a registered designation of origin within the meaning of Community law, that fact has not prevented the wine from the commune of Vaud which they produce being marketed in the Community. On the basis of letters from the representatives of the producers from the Champagne region, the applicants maintain that those producers certainly do not object to the wine produced in the territory of the Vaud commune of Champagne being marketed under the name 'Champagne'.

121 In response to a written question from the Court, the applicants stated that, on investigation, it had been found that the export, at the rate of about 1 000 bottles a year, of wine produced in the commune of Champagne to Belgium, which was mentioned in the application, had not been carried out under the name 'Champagne', but under the name 'Arquebuse'.

122 However, the applicants point out that, under Article 26(1), and Article 29 of Regulation No 2392/89, in the event of homonymy, the name of a wine originating in a third country may be used where such name is used in that country to describe a wine in accordance with traditional and consistent usage and on condition that its use is governed by rules in that country, which is clearly the position in the present case. The fact that Article 29(3) of that regulation allows for the adoption of derogating decisions providing exceptions for homonymy is irrelevant in the present case since the third paragraph of Article 2 of the Franco-Swiss Treaty confers an exception for homonymy as of right. It is evident from that provision that if one of the names protected under the first paragraph is the same as the name of a region or place situated outside the territory of the French Republic, the first paragraph does not preclude the use of the name for products or goods manufactured in that region or in that place. Indeed, that is confirmed by the Opinion of the Conseil d'État (Council of State) of the canton of Vaud of 22 December 2003.

123 As regards Regulation No 753/2002, the applicants point out that Article 36 thereof also provides that some homonymous indications of geographical indications used to identify a quality wine psr may be used subject to practical conditions under which they will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. The name 'Champagne' for the wines produced by the applicants unquestionably constitutes a geographical indication within the meaning of Article 22 of the TRIPs Agreement, to which Article 3 of Annex 7 to the Agreement refers. Moreover, the use of that name by the applicants fulfils the conditions laid down in Article 36 of Regulation No 753/2002; that name is therefore entitled to the exception for homonymy. It is immaterial, in that regard, that Annex VI to that regulation lists no names, since any other interpretation would render Article 36 of that regulation completely meaningless and would be in breach of the Community's obligations under Article 23(3) of the TRIPs Agreement. In any event, Regulation No 753/2002 became applicable only from 1 January 2003, that is, after the Agreement entered into force. Since the Agreement excludes the exception for homonymy for wine from the commune of Champagne, the Swiss Confederation cannot be required to seek the benefit of that exception within the framework of Regulation No 753/2002.

124 In so far as concerns the protection of the name 'Champagne' under the applicable Swiss law, the applicants contend that, under Article 16 of the Regulation of 28 June 1995 on the registered designations of origin of wine from the canton of Vaud, the wine harvested in the territory of a commune is entitled to the designation of that commune.

125 They point out in that regard that the canton of Vaud is composed of six wine-producing regions. Their geographical area is defined in Article 2 of that regulation, which states that the region of Bonvillars includes all the wine-producing communes in the district of Grandson as well as the communes of Montagny and Valuyres-sous-Montagny in the district of Yverdon. Those six regions are made up of 26 production areas covering 148 wine-producing communes. Under Articles 13 to 15 of that regulation, three of those regions each constitute a single production area. As regards the three regions constituting a single production area, one of which is the region of Bonvillars, there can be no doubt that the communes situated in their territory belong to one production area or the other, because the wine-producing region and the production area are the same. That explains why the Regulation of 28 June 1995 on the registered designations of origin of wine from the canton of Vaud does not expressly mention those communes. However, under Article 16 of that regulation, the producers of wine originating in those communes are entitled to use the names of the communes to identify their products.

126 The applicants point out that the Conseil d'État of the canton of Vaud confirmed, by two decisions of 8 January and 22 December 2003, that, under Swiss law, the name 'Champagne' was a registered municipal designation of origin. In that regard, the applicants consider that, in any event, the Council's claim that the Swiss name 'Champagne' does not constitute a registered designation of origin but merely a designation of origin is irrelevant. Indeed, since that name constitutes a specific right of the applicants, it is immaterial, for the purposes of applying the exception for homonymy provided by Regulation No 2392/1989 and by Regulation No 753/2002, whether, under Swiss law, that designation is superior, inferior or equal to the French designation 'Champagne'.

— Findings of the Court

127 The Council and the Commission, supported by the French Republic, maintain, in essence, that the protection granted, under Community law, to the wines produced in the French region of Champagne precludes the applicants from marketing their wine under the designation 'Champagne' in the territory of the Community. Therefore, the contested provisions of the Agreement do not bring about a change in the applicants' position in that territory.

128 In that regard, it should be pointed out that, in accordance with the case-law cited in paragraph 86 above, an applicant is entitled to bring an action pursuant to Article 230 EC only if the contested measure produces binding legal effects such as to affect his interests by bringing about a distinct change in his legal position.

129 It is therefore important to determine whether, as the Council, the Commission and the French Republic claim, the applicants were prevented under the applicable Community law, before the contested provisions of the Agreement came into force, from marketing the wine they produce under the name 'Champagne' in the Community, so that the contested provisions of the Agreement do not bring about a distinct change in their legal position.

130 From that point of view, it should be pointed out that, as stated in paragraphs 4, 5 and 6 above, on the date on which the action was brought, 10 July 2002, the regulation in force applicable to the applicants' position was Regulation No 2392/89.

131 Under Article 29(2) of that regulation, the name of a geographical unit used to describe a table wine or a quality wine psr or the name of a given region in the

Community may not be used to describe an imported wine, whether in the language of the producing country in which that unit or region is situated, or in any other language.

132 As stated in paragraph 1 above, at the time the action was brought, wine produced in the French region of Champagne under the registered designation of origin 'Champagne' enjoyed, within the Community, the designation 'quality wine psr'; that is not disputed by the applicants.

133 It follows that, in accordance with Article 29(2) of Regulation No 2392/89, when the action was brought, the name 'Champagne' could not, in theory, be used to describe any imported wine, inter alia wine produced in the Vaud commune of Champagne.

134 It should also be pointed out that, under Article 29(3) of Regulation No 2392/89, exceptions from paragraph 2 may be allowed where the geographical name of a wine produced in the Community is the same as the name of a geographical unit situated in a third country, where such name is used in that country to describe a wine in accordance with traditional and consistent usage and on condition that its use is governed by rules in that country.

135 The exception for homonymy for which that provision provides does not apply as of right, therefore, but following an express derogating decision. In that regard, in response to a written question from the Court, the Commission pointed out, firstly, that such a decision had to be preceded by a request to that effect, and, secondly, that no request for derogation had been made in respect of the wines originating in the Vaud commune of Champagne.

136 Moreover, it must be stated that, although the applicants claimed initially that they had never been prevented, under the applicable Community law, from marketing their wine in the Community under the name 'Champagne', they have not, subsequently, either disputed the fact that the exception for homonymy provided by Regulation No 2392/89 required the adoption of a derogating decision, or claimed that any decision had been taken in that regard, or even that a request for derogation concerning the wines produced in the Vaud commune of Champagne had been submitted.

137 Furthermore, although the applicants originally claimed that each year they sold approximately one thousand bottles in Belgium under the name 'Champagne', they stated, in response to a written question from the Court, that, on investigation, it was found that those bottles had in fact been marketed under the name 'Arquebuse'. Moreover, the applicants have not adduced proof of other exports to the Community, whether under the name 'Champagne' or under another name.

138 Apart from the fact that it is clear from the foregoing that the applicants' arguments seem confused, not to say contradictory, it should be stated that they were unable to deny the Commission's claim that, on the day the application was lodged, the wine produced in the territory of the Vaud commune of Champagne was not the subject of any decision derogating from the prohibition laid down in Article 29(2) of Regulation No 2392/89, so that the applicants were legally prevented from marketing their products under the name 'Champagne'. Indeed, according to the checks made by the applicants themselves, and contrary to their initial claims, it appears that they have not, in fact, marketed their wine under the name 'Champagne' in the Community.

139 It follows that although, in accordance with what has been stated in paragraphs 41 to 49 above, the contested provisions of the Agreement reserve the exclusive right to the name 'Champagne' in the territory of the Community to certain wines produced

in the French region of Champagne, thus prohibiting the marketing under that name in the same territory of certain wines from the canton of Vaud produced in the territory of the commune of Champagne, it should be stated that that legal situation already prevailed, in regard to the applicants, when the Agreement came into force on 1 June 2002 and when the application was lodged on 10 July 2002.

140 As regards Regulation No 753/2002, without its even being necessary to determine whether, in the light of the fact that that regulation, although applicable only as from 1 August 2003 (after the application was lodged), came into force on 11 May 2002 (before the application was lodged), the applicants may establish a legal interest in bringing proceedings on the basis of the legal situation arising from the application of that regulation, it should be pointed out that, in any event, under that regulation, they are still not entitled to market under the name 'Champagne' the wines that they produce in the Vaud commune of Champagne.

141 Indeed, it should be pointed out that, under Article 36(1) of Regulation No 753/2002, '[t]he labelling of an imported wine ... from a third country that is a member of the World Trade Organisation may bear the name of a geographical area ... provided that it serves to identify a wine as originating in the territory of a third country or a region or locality of that third country, where a given quality, reputation or other characteristic of the product [may be] essentially attributable to that geographical origin'.

142 Under Article 36(3) of Regulation No 753/2002, '[g]eographical indications as referred to in paragraphs 1 and 2 may not give rise to confusion with a geographical indication used to identify a quality wine psr'. However, that provision allows the following exception in the case of homonymy:

'[S]ome third country geographical indications as referred to in the first subparagraph that are homonymous geographical indications for a quality wine psr ..., may be used subject to practical conditions under which they will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

...

These indications, terms and practical conditions shall be as laid down in Annex VI.'

143 Therefore, the abovementioned exception for homonymy is not designed to apply as of right, but is subject to the inclusion in Annex VI to Regulation No 753/2002 both of the third country geographical indications that are homonymous geographical indications for a quality wine psr which may qualify for it, and the practical conditions under which they will be differentiated from each other.

144 However, as the Council and the Commission have pointed out, it should be noted that Annex VI to Regulation No 753/2002 is empty to date and therefore does not refer to the name 'Champagne' as one of the third country geographical indications qualifying for the exception for homonymy.

145 It follows that, in any event, the provisions of Regulation No 753/2002 likewise do not permit the applicants to market the wines that they produce under the name 'Champagne'.

146 It should also be pointed out that, under Article 36(5) of that regulation, as amended by Regulation No 316/2004, applicable from 1 February 2004, a third country geographical indication 'may be used on the labelling of an imported wine even where only 85% of the wine in question was obtained from grapes harvested in the production area whose name it bears'. Moreover, it is implicit in that wording and in the organisation of Article 36(1) of Regulation No 753/2002 that, prior to the amendment introduced by Regulation No 316/2004 permitting even wines of which only 85% was obtained from grapes harvested in the production area whose name they bear to use the geographical indication corresponding to that area, the labelling of an imported wine could bear a geographical indication only provided that all the wine was obtained from grapes harvested in the geographical area whose name it bore.

147 Although the applicants stated, in reply to a written question from the Court, that, under Article 16 of the Regulation on the designations of origin of wines from the canton of Vaud, the designation 'Champagne' was recognised and protected for the wines originating in the territory of that commune, it should be pointed out that an in-depth reading of that provision reveals that, under the second paragraph, 'wine obtained from grapes of which most (at least 51%) are harvested in a commune and the rest in the production area to which that commune belongs are also entitled to use the designation of that commune'.

148 Accordingly, without it being necessary to determine the nature and classification of the name 'Champagne', the fact remains that that name is granted by Swiss law to wine obtained for the most part from grapes harvested in the Vaud commune of Champagne, so that it does not fulfil the condition implicitly laid down in Article 36(5) of Regulation No 753/2002, as amended, that only wines of which at least 85% was obtained from grapes harvested in the production area whose name they bear, in this case the territory of the Vaud commune of Champagne, may be marketed under the geographical indication of that production area. *A fortiori*, that name likewise cannot be regarded as identifying wines obtained in their entirety from grapes harvested in the production area whose name they bear.

149 Therefore, contrary to the applicants' initial claims, not only have wines which were entitled, under Swiss law, to use the designation 'Champagne' never obtained the exception for homonymy provided for either in Article 29(3) of Regulation No 2392/89 or in Article 36(3) of Regulation No 753/2002, but, furthermore, it is inconceivable that those wines might qualify in the future for the exception for homonymy provided for in the second of those provisions if the contested decision were to be annulled, having regard to the inadequate conditions laid down by Swiss law for using the municipal designation 'Champagne' in the light of the requirement regarding the origin of the grapes laid down in Article 36(5) of Regulation No 753/2002.

150 Furthermore, it likewise cannot be considered that a possible change in the applicants' legal situation arising, for example, from a change in the conditions for granting the Vaud municipal designation 'Champagne', establishes the admissibility of the application; indeed, the applicants do not claim that it does. It should be pointed out that, according to settled case-law, an applicant's interest in bringing proceedings cannot be assessed on the basis of a future, hypothetical event (Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757, paragraph 30, and the case-law cited therein).

151 It is apparent from all the foregoing that the contested decision does not bring about a distinct change in the legal position of the applicants in the territory of the Community; accordingly, they have no legal interest in bringing proceedings against it.

152 No other argument put forward by the applicants affects this conclusion.

153 The applicants merely submit, first, that it is immaterial that Annex VI to Regulation No 753/2002 mentions no name, and that, for a geographical indication to obtain

the exception for homonymy, it need only fulfil the conditions laid down in the second subparagraph of Article 36(3). Any other interpretation would render Article 36 of that regulation completely meaningless and would be in breach of the Community's obligations under Article 23(3) of the TRIPS Agreement.

154 These arguments are without substance.

155 It should be pointed out, first, that the second subparagraph of Article 36(2) of Regulation No 753/2002 provides that, subject to the conditions it lays down, 'some ... geographical indications' may obtain an exception for homonymy, and, secondly, that the final subparagraph of Article 36(3) expressly provides that the geographical indications which obtain the exception for homonymy by fulfilling the conditions laid down in Article 36(2) 'shall be as laid down in Annex VI'. It follows that inclusion in Annex VI of the geographical indication which obtains an exception for homonymy is not merely informative and optional, but constitutes an imperative procedural requirement involving a prior examination of compliance of the geographical indication with the conditions laid down in the second subparagraph of Article 36(3) of Regulation No 753/2002, and also with the practical conditions designed to ensure that homonymous geographical indications are differentiated from each other. Contrary to the applicants' claims, this interpretation is the only one consistent with the arrangement and wording of Article 36(3) of that regulation, especially since the second subparagraph of Article 36(3), as a derogation from the principle laid down in the first subparagraph of Article 36(3), which provides that third country geographical indications may not give rise to confusion with a geographical indication used to identify a quality wine psr, must be interpreted strictly.

156 Secondly, as regards the alleged incompatibility of this interpretation with Article 23(3) of the TRIPs Agreement, it should be pointed out that, in the application, the

applicants noted in essence, on the contrary, that Regulation No 753/2002, unlike the contested provisions of the Agreement, did not absolutely prohibit the use, by certain imported wines, of geographical indications that were homonymous geographical indications for a quality wine psr, and was therefore a proportionate measure.

157 Accordingly, although the applicants' argument, raised in their observations on the pleas of inadmissibility of the Council and the Commission and relating to the TRIPs Agreement, must be analysed as a plea of illegality of Regulation No 753/2002, it must be classified as a new plea raised during the proceedings and rejected as inadmissible, pursuant to Article 48(2) of the Rules of Procedure.

158 In any event, the applicants do not establish or even state in what respect the interpretation of Regulation No 753/2002 set out above is contrary to Article 23(3) of the TRIPs Agreement. A comprehensive and objective analysis of the TRIPs Agreement reveals, on the contrary, that Regulation No 753/2002 is consistent with the provisions of that agreement relating to the protection of geographical indications. Indeed, it should be stated, first, that Article 22(1) of that agreement defines geographical indications as indications which identify a good as originating in the territory of a Member of the World Trade Organisation (WTO), or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Moreover, Article 23(3) stipulates that, in the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of Article 22(4) of the TRIPs Agreement, which provides that the protection afforded to geographical indications shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

159 Therefore, contrary to what the applicants appear to maintain, the TRIPs Agreement by no means requires WTO members to ensure, generally and absolutely, protection for all homonymous geographical indications, but provides that protection is not afforded to a geographical indication which falsely represents that the goods originate in another party State. Furthermore, under the second sentence of Article 23(3) of the TRIPs Agreement, each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

160 It should be pointed out that that is precisely the system established by Regulation No 753/2002. Indeed, first, under Article 36(1) of that regulation, the labelling of an imported wine from a third country that is a member of the WTO may bear the name of a geographical area provided that it serves to identify a wine as originating in the territory of a third country or a region or locality of that third country, where a given quality, reputation or other characteristic of the product may be essentially attributable to that geographical origin; that condition is an almost literal repeat of the definition of the term geographical indication in Article 22(1) of the TRIPs Agreement. Also, similarly to Article 22(4) of the TRIPs Agreement, Article 36(3) of Regulation 753/2002 provides that the geographical indications of third countries which are Members of the WTO may not give rise to confusion with a geographical indication used to identify a quality wine psr.

161 It must be stated, as regards the provision in the second subparagraph of Article 36(3) of Regulation No 753/2002, according to which, by derogation from the rule prohibiting third country geographical indications which give rise to confusion with geographical indications used to identify a quality wine psr, certain third country geographical indications that are homonyms thereof may be used subject to practical conditions under which they will be differentiated from each other, taking into

account the need to ensure equitable treatment of the producers concerned and that consumers are not misled, that it is couched in identical terms to the second sentence of Article 23(3) of the TRIPs Agreement.

162 Finally, the requirement stemming, as stated above, from the final subparagraph of Article 36(3) of Regulation No 753/2002, that third country geographical indications obtaining the exception for homonymy and the practical conditions designed to differentiate them from the geographical indications used to identify a quality wine psr must be referred to in an annex to that regulation, can in no way be regarded as incompatible with the provisions of the TRIPs Agreement. Not only does the TRIPs Agreement not provide that the exception for homonymy shall apply as of right, without the intervention of any authority, to any homonymous geographical indication which satisfies the conditions thereof, but it also expressly states that '[e]ach Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other', thus giving those members some latitude as to the procedures for granting the exception for homonymy.

163 Secondly, the applicants consider that the fact that Article 29(3) of Regulation No 2392/89 provides for the adoption of derogating decisions in order to enable certain geographical indications to obtain an exception for homonymy is irrelevant, since the Franco-Swiss Treaty expressly allowed the use of the designation 'Champagne' by certain wines originating in the Vaud commune of Champagne. The third paragraph of Article 2 of that treaty provides for an exception for homonymy as of right, without the need for any decision to be taken in that regard. Indeed, this was confirmed by the Conseil d'État of the canton of Vaud in an Opinion of 22 December 2003.

164 In that regard, it should be pointed out that, even if the Franco-Swiss Treaty were to be given the interpretation attributed to it by the applicants, their argument would

justify the admissibility of the action only provided that the provisions of that treaty relating to the exception for homonymy were intended to apply in spite of the adoption of Regulation No 2392/89 and subsequently of Regulation No 753/2002.

165 It should be pointed out that, under the first paragraph of Article 307 of the EC Treaty, the rights and obligations arising from agreements concluded before the EC Treaty came into force, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of that Treaty.

166 According to settled case-law, the purpose of that provision is to make clear, in accordance with the principles of international law, that application of the Treaty does not affect the commitment of the Member State concerned to respect the rights of third countries under an earlier agreement and to comply with its corresponding obligations. Consequently, in order to determine whether a Community rule may be deprived of effect by an earlier international agreement, it is necessary to consider whether that agreement imposes on the Member State concerned obligations whose performance may still be required by third countries which are parties to it (Joined Cases C-364/95 and C-365/95 *T. Port* [1998] ECR I-1023, paragraph 60, and Case T-3/99 *Banatrading* v *Council* [2001] ECR II-2123, paragraph 70).

167 Thus, for a Community provision to be deprived of effect as a result of an international agreement, two conditions must be fulfilled: the agreement must have been concluded before the entry into force of the EC Treaty and the third country concerned must derive from it rights which it can require the Member State concerned to respect (*T. Port*, cited in paragraph 166 above, paragraph 61, and *Banatrading* v *Council*, cited in paragraph 166 above, paragraph 71).

168 However, in the present case, the Franco-Swiss Treaty on which the applicants rely was concluded in 1974, that is, after the entry into force of the EC Treaty. Therefore, the provisions of the Franco-Swiss Treaty cannot reasonably be invoked by the applicants to preclude application of Regulation No 2392/89 and subsequently Regulation No 753/2002. The argument must therefore be rejected as irrelevant.

169 In any event, it should be pointed out that, under the first paragraph of Article 2 of the Franco-Swiss Treaty, 'the names listed in Annex A to this Treaty, where paragraphs 2, 3 or 4 do not provide otherwise, are exclusively reserved, in the territory of the Swiss Confederation, to French products or goods and may be used there only as provided by the law of the French Republic'.

170 The first paragraph of Article 3 of that treaty contains the reciprocal provision that 'the names listed in Annex B to this Treaty, where paragraphs 2, 3 or 4 do not provide otherwise, are exclusively reserved, in the territory of the French Republic, to Swiss products or goods and may be used there only as provided by Swiss law'.

171 However, whereas the French registered designation of origin 'Champagne' appears in Annex A, Annex B does not include the Vaud municipal designation of the same name.

172 Thus, under those provisions, on the one hand, the name 'Champagne' is exclusively reserved, in Switzerland, to French products, subject to the second, third and fourth paragraphs of Article 2, and, on the other, the Vaud municipal designation 'Champagne' enjoys no protection in France.

173 It follows that, even if wines originating in the Vaud commune of Champagne can rely on the third paragraph of Article 2 of the Franco-Swiss Treaty, which provides: '[i]f one of the names protected under the first paragraph is the same as the name of a region or place situated outside the territory of the French Republic, the first paragraph does not preclude the use of the name for products or goods manufactured in that region or in that place', that fact is merely a derogation from the exclusive protection afforded to the French registered designation of origin 'Champagne' in the territory of Switzerland under the first paragraph of Article 2 and Annex A of that treaty. However, that exception for homonymy does not have the effect of authorising the marketing in France, under the designation 'Champagne' of wines originating in the Vaud commune of Champagne, which would be permitted only if the name were included in Annex B of that treaty.

174 Indeed, it is apparent from the correspondence between the head of the Department of Institutions and External Policies of the canton of Vaud and the town council of the commune of Champagne produced by the applicants themselves, in particular the letter from Mr C. R. of 8 September 1998, that, during the negotiations for the Agreement, that interpretation of the Franco-Swiss Treaty was the one accepted not only by the French Republic but also by the Swiss Confederation, which raised the question of the omission of the Vaud designation 'Champagne' from the lists and protocol of the Franco-Swiss Treaty.

175 It follows that the applicants' claim that the Franco-Swiss Treaty authorised them to market, in France, under the name 'Champagne', wines originating in the commune of Champagne is unfounded.

176 Moreover, it is significant to point out that, as previously stated, the applicants, requested by the Court to adduce reliable proof of the claim that they exported approximately 1 000 bottles a year bearing the name 'Champagne', not only failed to produce evidence, such as invoices, showing that they sold their product under that

name in France, but also stated that most of those exports were to Belgium under the name 'Arquebuse'.

177 As regards the letter from a law firm to the Cave des viticulteurs de Bonvillars (Bonvillars Winegrowers' Association), produced by the applicants, as well as being irrelevant to an analysis of their legal situation, it cannot, in any event, by any means be interpreted as establishing that the Champagne producers do not object to the marketing under the name 'Champagne' of the wine produced by the applicants. Indeed, it shows at the very most that, after taking a very firm stand and threatening the Cave de Bonvillars with legal proceedings, the Comité interprofessionnel du vin de Champagne (Interprofessional Committee for Champagne Wines) stated that its aim was not to prevent 'the manufacture of products originating in the commune of Champagne but simply to avoid any pointless misunderstandings, particularly in relation to the future', and suggested they hold a meeting 'to clarify the position for the future'. In the absence of any further information from the applicants, in spite of a written question in that respect addressed to them by the Court, regarding inter alia the content or outcome of that meeting, it cannot be inferred that the Comité interprofessionnel du vin de Champagne does not object to the use, in France, of the name 'Champagne' to identify the wines exported by the applicants.

178 It is apparent from all the foregoing considerations that the contested provisions of the Agreement do not bring about a distinct change in the applicants' legal position; the claims for annulment of the contested decision must therefore be rejected as inadmissible.

179 For the sake of completeness, it must be stated that the applicants cannot be considered as individually concerned, within the meaning of the fourth paragraph of Article 230 EC, by the contested decision.

180 It should be pointed out that the contested provisions of the Agreement, which is approved by the contested decision, have the effect, pursuant to Article 5(2) of Annex 7 to the Agreement, of exclusively reserving the protected name 'Champagne' to products originating in the Community as provided in the Community legislation. Furthermore, as stated in paragraphs 41 to 49 above, in view of the fact that the name 'Champagne' is not included among the protected Swiss names referred to in the Agreement and appearing in Appendix 2 thereof, the exception for homonymy provided for in Article 5(4)(a) of Annex 7 to the Agreement is not designed to apply as to the French name 'Champagne', which is included, as a quality wine psr originating in France, among the protected Community names referred to in the Agreement.

181 It follows that the effect of the contested provisions of the Agreement is to prohibit any use of the name 'Champagne' for wines which do not originate in the Community, more particularly France, and which do not satisfy the conditions laid down by the Community legislation for obtaining the name quality wine psr 'Champagne'. Therefore, the contested provisions of the Agreement apply in the same way to all those persons — both present and future — who produce or market wine products which cannot use the name quality wine psr 'Champagne', on the ground, inter alia, that they do not originate in the French region of Champagne, and among them, all the producers of wine products originating in Switzerland. Therefore, the contested provisions of the Agreement constitute a measure of general application which applies to objectively determined situations and produces its legal effects vis-à-vis categories of persons envisaged in the abstract (see, to that effect, Case T-397/02 *Arla Foods and Others* v *Commission* [2005] ECR II-5365, paragraphs 52 and 53, and the case-law cited therein).

182 However, the possibility cannot be ruled out that a provision which, by reason of its nature and scope, is of general application, may be of individual concern to natural or legal persons. That is the case where the measure at issue affects them by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and thereby distinguishes them

individually in the same way as an addressee (Case 25/62 *Plaumann* v *Commission* [1963] ECR 197, 223; Case C-309/89 *Codorníu* v *Council* [1994] ECR I-1853, paragraphs 19 and 20; Case T-370/02 *Alpenhain-Camembert-Werk and Others* v *Commission* [2004] ECR II-2097, paragraph 56).

183 In the present case, the applicants claim that they are in that situation because the Champagne Clause was included in the Agreement with a view to regulating the position of a particular category of producers who were identifiable and identified at the time of its adoption and also because, under Swiss law, they alone have a specific right to use the designation of origin 'Champagne'.

184 Nevertheless, these arguments cannot support the conclusion that the applicants are individually concerned by the contested provisions of the Agreement.

185 First, as explained above, those provisions do not have the sole purpose of governing the special situation of the producers of wines originating in the Vaud commune of Champagne, but are designed generally to ensure that the name 'Champagne' is used exclusively for wines originating in France which use that designation in accordance with Community law. Only Article 5(8) of Annex 7 to the Agreement refers to the special situation of 'certain wines originating in the Swiss canton of Vaud', and grants a provisional derogation permitting the use of the word 'Champagne' to describe and present them subject to the conditions laid down therein. However, the mere fact that that provision establishes more favourable transitional rules for 'certain wines originating in the canton of Vaud' does not in itself affect the conclusion that the contested provisions of the Agreement which ensure the exclusivity of the name 'Champagne' constitute a measure of general application which is not of individual concern to the applicants.

186 Secondly, the applicants' right to use the Swiss designation 'Champagne' likewise does not give them an individual interest in challenging the contested provisions of the Agreement, and it is not even necessary to determine the precise nature and classification of that designation. Indeed, unlike the trade mark right held exclusively by the applicant in *Codorníu* v *Council*, cited in paragraph 182 above, in which the Court of Justice pointed out in that regard in its judgment that Codorníu had registered the graphic trade mark 'Gran Cremant de Codorníu' in Spain in 1924 and traditionally used that mark both before and after registration, the applicants' right to use the name 'Champagne' stems from the Swiss legislation which recognises that all undertakings whose products satisfy the prescribed geographical and qualitative requirements have the right to market them under the name 'Champagne' and withholds that right from all producers whose products do not fulfil those conditions, which are identical for all undertakings (see, to that effect, Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533, paragraph 50, and Case T-381/02 *Confédération générale des producteurs de lait de brebis et des industriels de Roquefort* v *Commission* [2005] ECR II-5337, paragraph 51).

187 Like the contested provisions of the Agreement, the relevant Swiss legislation therefore does not only apply to the applicants, but also produces legal effects vis-à-vis an indeterminate number of both Swiss and third country producers wishing to market goods in Switzerland, now or in the future, under the name 'Champagne'.

188 Accordingly, the mere fact that the applicants have enjoyed, up to now, the right to use the municipal designation 'Champagne' for some of the wines that they produce does not lead to the conclusion that they are individually concerned by the contested provisions of the Agreement, since that situation arises from the application to an objectively determined situation of a measure of general application, namely the Swiss legislation concerning designation of origin, which produces its legal effects vis-à-vis categories of persons envisaged generally and in the abstract (see, to that

effect, *Molkerei Großbraunshain et Bene Nahrungsmittel* v *Commission*, cited in paragraph 186 above, paragraph 51).

189 Moreover, that finding is confirmed by the Opinion of the Conseil d'État of the canton of Vaud of 8 January 2003, produced by the applicants themselves, which states that 'all winegrowers producing wines made from grapes harvested in vineyards in the commune of Champagne are entitled to use that designation. It is on that basis that the Cave des viticulteurs de Bonvillars uses inter alia the designation "Champagne" for the wines which it markets and which originate in that commune. No other winegrower in the canton of Vaud is entitled to use that designation unless he is the owner or tenant of a vineyard situated in the territory of the commune of Champagne or markets wine made from grapes harvested in that commune'.

190 In that regard, it should be pointed out, finally, that, according to settled case-law, the general applicability, and thus the legislative nature, of a measure are not called into question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (Case C-41/99 P *Sadam Zuccherifici and Others* v *Council* [2001] ECR I-4239, paragraph 29, and the case-law cited therein; see also, to that effect, Case C-447/98 P *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [2000] ECR I-9097, paragraph 64).

191 It is apparent from the foregoing that the applicants cannot be regarded as individually concerned by the contested provisions of the Agreement, so that their application must also be dismissed as inadmissible on that ground.

192 The applicants' argument concerning the right to effective judicial protection cannot alter that conclusion, since the Court of Justice has clearly established, as regards the requirement for individual concern laid down by the fourth paragraph of Article 230 EC, although that condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 44).

2. *The claims for compensation*

*Arguments of the parties*

193 The applicants maintain that the contested decision constitutes an infringement of the right to property, the freedom to pursue professional activities and the principle of proportionality such as to incur the non-contractual liability of the Community.

194 That infringement causes them damage arising from the costs they would incur in order to enter the wine market using a name other than the name 'Champagne', and also from the loss of profit following the predictable drop in price, of the order of CHF 4, per bottle of wine which they produce if the name 'Champagne' were removed from the 150 000 bottles currently sold each year under that name. Nevertheless, the applicants are waiting for the opportunity to submit more specific figures to the Court when the first effects of the contested decision will have been felt.

195 The causal link between the conduct alleged against the institutions and the damage suffered lies in the fact that the French Republic urged the Council and the Commission to negotiate the contested provisions of the Agreement. Without pressure from that Member State, the Swiss Confederation would never have agreed to those provisions, which it was compelled to do, however, in order to secure the signature of the seven bilateral agreements.

196 Since the Swiss authorities were required to adopt the necessary measures to implement the contested provisions of the Agreement, the damage is attributable to the Community, as was held in Case T-174/00 *Biret International* v *Council* [2002] ECR II-17, paragraphs 33 and 34).

197 It is immaterial, in that regard, that, because of its status as a party to the Agreement, the Swiss Confederation may be jointly liable for the damage, since all the conditions for compensation for the damage caused to the applicants are satisfied (Case 23/59 *Feram* v *High Authority* [1959] ECR 501).

198 The Council and the Commission consider that none of the conditions for incurring the liability of the Community is satisfied in the present case. They maintain, in particular, that, since the contested decision does not produce legal effects for the applicant's situation, there is no causal link between the damage allegedly suffered and the alleged illegality of the contested decision. Indeed, on the one hand, the contested decision creates no new obligation for the applicants in Community territory and, on the other hand, any damage which the applicants might suffer in the territory of Switzerland, arises from the action of the Swiss authorities either when they declare the Agreement applicable in their territory or when they approve the legislation implementing the undertakings to which they agreed under the Agreement, which allowed them to choose the procedures in that regard.

199 The Commission adds that any pressure applied by the French Republic for the inclusion of the Champagne Clause is irrelevant. Negotiations are only preparatory acts and cannot constitute the cause of damage, since only the legislative act in which they culminate may be the subject of a right to reparation. Since the Swiss Confederation ratified the Agreement as a sovereign State, the applicants who consider that they have been harmed by that Agreement should have recourse to the Swiss authorities.

*Findings of the Court*

200 It is settled case-law that the Community's non-contractual liability under the second paragraph of Article 288 EC, is dependent on the coincidence of a series of conditions as regards the unlawfulness of the conduct alleged against the institutions, the fact of damage and the existence of a causal link between that conduct and the damage complained of (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44; Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 30; and Case T-267/94 *Oleifici Italiani* v *Commission* [1997] ECR II-1239, paragraph 20). If any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for non-contractual liability (Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 19, and Case T-170/00 *Förde-Reederei* v *Council and Commission* [2002] ECR II-515, paragraph 37).

201 In the present case, it is necessary to consider, first, the claims for compensation in the light of the third of those conditions, relating to the existence of a causal link between the conduct alleged and the damage pleaded. As regards that condition, the case-law requires that the damage pleaded be the direct result of the conduct alleged

(see, to that effect, Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier frères and Others* v *Council* [1979] ECR 3091, paragraph 21; Case T-168/94 *Blackspur DIY and Others* v *Council and Commission* [1995] ECR II-2627, paragraph 49; and Case T-13/96 *TEAM* v *Commission* [1998] ECR II-4073, paragraph 74).

202 The applicants consider that the damage, consisting in the costs which they will have to incur in order to enter the wine market under a name other than the name 'Champagne' and by the loss in profit following the predictable drop in price of their product when that name is removed from it, is the direct result of the adoption, by the Council and the Commission, of the contested decision, which approves the contested provisions of the Agreement.

203 As stated in connection with the claims for annulment, it is necessary to consider the applicants' position in the Community and then in Switzerland.

204 In the territory of the Community, it is apparent from paragraphs 130 to 139 above that the contested provisions of the Agreement have not affected the situation of the applicants, who, when the Agreement came into force, were already prevented, under Regulation No 2392/89, from marketing their product under the name 'Champagne'. As stated in paragraphs 140 to 150 above, they were also prevented from doing so under Regulation No 753/2002, which was applicable as from 1 August 2003.

205 It follows that, in the territory of the Community, the contested decision cannot be the cause of the damage which the applicants claim to have suffered, since that

damage, as described by the applicants, was already the consequence of the relevant Community legislation. Moreover, it should be pointed out in that regard that the applicants, at the time their products were sold in Belgium under the name 'Arquebuse', had already had to gain a foothold in the Community market using a different name, before the Agreement came into force.

206 In the territory of Switzerland, it is clear from paragraph 91 above that the only source of the allegedly harmful effects produced by the Agreement in respect of the applicants is the fact that, by deciding in its absolute discretion to sign and ratify that Agreement, the Swiss Confederation agreed to be bound by it and undertook, pursuant to Article 14 of the Agreement, to take the steps necessary to ensure the implementation of the obligations arising thereunder, which included those stemming from the contested provisions of the Agreement.

207 It follows that any damage which the applicants might suffer in the territory of Switzerland as a result of the steps taken by the Swiss authorities in implementation of the Agreement cannot be regarded as attributable to the Community, and therefore the Court of First Instance does not have jurisdiction to hear and determine an action seeking compensation from it.

208 Although it is indeed true that, since the Swiss Confederation signed and ratified the Agreement, it undertook, in accordance with international law, to ensure that it was implemented to the full, in which respect it does not have any discretionary power, the fact remains that that obligation stems from a choice made by the Swiss Confederation at its absolute discretion in the conduct of the negotiations culminating in the conclusion of the Agreement and, beyond that, of its external relations.

209 The applicants' argument that, when all is said and done, the Swiss Confederation had no alternative but to accept the contested provisions in the Agreement in order

that the conclusion of the seven sectorial agreements should not be jeopardised cannot therefore lead to the conclusion that the damage alleged is attributable to the Community. Indeed, even if that argument were based on established facts, it should be pointed out that acceptance by the Swiss Confederation of those provisions is part of negotiations based on reciprocal concessions and advantages, at the end of which that State could decide freely and at its absolute discretion to forego protection of the municipal designation 'Champagne' in view of its overall interest in securing the conclusion both of the Agreement and, more generally, of the seven sectorial agreements.

210 Moreover, that fact is confirmed by the letter from the head of the Federal Department of Foreign Affairs of 24 March 1999 addressed to the association of wine growers/wine-merchants, in which he pointed out as follows:

'According to your interpretation, agriculture "bears the brunt of bad agreements" concluded with the European Union for the benefit of other sectors of our economy. The Federal Council does not share that analysis, since a detailed examination of the agreements signed on 26 February 1999 reveals that the agreement concluded in the agricultural sector is, in itself balanced and will provide Swiss agriculture with significant export opportunities in the market of more than 370 million consumers represented by the European Union.'

211 The question whether the position adopted by the Community in the negotiations for the contested provisions of the Agreement reflects the wish of the French Republic to protect the registered designation of origin 'Champagne' is wholly irrelevant in that regard. Indeed, from a legal point of view, the position of the French Republic in the negotiations for the Agreement is immaterial since only the Community and the Swiss Confederation are parties to it.

212 Finally, it should be pointed out that, since the damage allegedly suffered in the territory of Switzerland is, in the end, attributable to the authorities of that State, it is for the competent Swiss courts to adjudicate on the possible right to compensation for the damage caused to the applicants by those authorities.

213 Accordingly, without it being necessary to rule on the objections as to admissibility raised by the Council and the Commission (see, to that effect, Case C-23/00 P *Council* v *Boehringer* [2002] ECR I-1873, paragraph 52, and Case C-233/02 *France* v *Commission* [2004] ECR I-2759, paragraph 26), these claims for compensation must be rejected as manifestly unfounded in law, in so far as they concern the damage allegedly suffered in the territory of the Community, and for lack of jurisdiction of the Court of First Instance, in so far as they concern the damage allegedly suffered in the territory of Switzerland.

214 The application must therefore be dismissed in its entirety, and there is no need to allow the applicants' fifth head of claim.

3. *The new pleas raised during the proceedings*

215 By letter of 7 March 2007, the applicants sought leave from the Court to lodge new pleas pursuant to Article 48(2) of the Rules of Procedure.

216 They rely on the adoption of Council Decision 2006/232/EC of 20 December 2005 on the conclusion of the Agreement between the European Community and the United States of America on trade in wine (OJ 2006 L 87, p. 1), from which it is

apparent that names described in that State as 'semi-generic' may continue to appear on the labels of they products they identify provided that they form part of a whole which has been approved. The applicants therefore claim that certain winegrowers in the United States will, in certain circumstances, be able to use the name 'Champagne' in their territory. This fact illustrates the disproportionate and discriminatory nature of the contested decision.

217 In that regard, it need only be observed that the applicants' arguments relate only to the substance of the action and, therefore, they cannot call in question either the inadmissibility of the action for annulment or the partial lack of jurisdiction of the Court of First Instance to rule on the action for compensation for the damage allegedly suffered in the territory of Switzerland, both previously established. Moreover, in so far as those arguments seek to show that the damage which the applicants claim to have suffered in the Community might have its origins in a wrongful act committed by the Community, they likewise cannot call in question the absence, previously established, of a causal link, in the Community, between that damage and the misconduct alleged.

218 Without its even being necessary to determine whether the conditions for admissibility laid down in Article 48(2) of the Rules of Procedure are satisfied in the present case, the applicants' arguments based on Decision 2006/232 must therefore, in any event, be rejected.

## Costs

219 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful they must be ordered to pay, as well as their own costs, the costs incurred by the Council and the Commission, as claimed by the defendants.

220 The French Republic shall pay its own costs, in accordance with the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

**1. The claims for annulment are dismissed as inadmissible.**

**2. The claims for compensation are dismissed.**

**3. The applicants shall bear their own costs and also those of the Council and the Commission.**

**4. The French Republic shall bear its own costs.**

Luxembourg, 3 July 2007.

E. Coulon — Registrar

M. Jaeger — President

ANNEX

**Jacqueline Gonin Péroset-Grandson,** residing in Champagne, Switzerland,

**De Rahm and Cie SA,** established in Lausanne, Switzerland,

**Françoise Grin,** residing in Champagne,

**Janine Payot,** residing in Champagne,

**Rose-Marie Richard,** residing in Morges, Switzerland,

**Yolande Richardet,** residing in Les Tuileries-de-Grandson, Switzerland,

**Antoinette Schopfer,** residing in Yverdon-les-Bains, Switzerland,

**Huguette Verraires-Banderet,** residing in Renens, Switzerland,

**Dominique Dagon,** residing in Onnens, Switzerland,

**Susy Dagon,** residing in Champagne,

**Élisabeth Giroud,** residing in Champagne,

**Huguette Giroud,** residing in Champagne,

**Serge Gonin Péroset-Grandson**, residing in Champagne,

**Gilbert Guilloud,** residing in Champagne,

**Claude Loup,** residing in Champagne,

**Charles Madörin,** residing in Champagne,

**Claude Madörin,** residing in Jongny, Switzerland,

**Rudolf Moser-Perrin,** residing in Payerne, Switzerland,

**Marc Perdrix,** residing in Champagne,

**René Perdrix,** residing in Giez, Switzerland,

**Éric Schopfer,** residing in Champagne,

**Denis Tharin,** residing in Champagne,

**José Tharin,** residing in Champagne,

**Maxime Tharin,** residing in Champagne,

**Albert Banderet,** residing in Champagne,

**Gilbert Banderet,** residing in Champagne,

**Jean-Pierre Banderet,** residing in Yverdon-les-Bains,

**Emmanuel Borgeaud,** residing in Champagne,

**Paul André Cornu,** residing in Champagne,

**Ronald Dagon,** residing in Champagne,

**Jean-Michel Duvoisin,** residing in Bonvillars, Switzerland,

**Daniel Forestier,** residing in Bonvillars,

**Michel Forestier,** residing in Champagne,

**Edgar Giroud,** residing in Torgon, Switzerland,

**Edmond Giroud,** residing in Champagne,

**Georges Giroud,** residing in Champagne,

**Cofigo SA,** established in Morges,

**Jean Vogel,** residing in Grandvaux, Switzerland,

**Commune of Yverdon,** Switzerland.