Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 14 April 2015 [1]

Case C-207/14

Hotel Sava Rogaška, gostinstvo, turizem in storitve, d.o.o.
v
Republika Slovenija

(request for a preliminary ruling from the Vrhovno sodišče (Slovenia))

(Approximation of laws — Directive 2009/54/EC — Article 8(2) — Annex I — Concept of 'natural mineral water from one and the same spring' — Criteria of interpretation)

I – Introduction

1. The consumption of thermal waters at source became popular in the 19th century and was followed, as a result of social and cultural developments, by their marketing in the form of bottled water. In 1870, the first advertisement for the Perrier natural mineral water spring used the description 'the Princess of Table Waters'. Under EU law, the legal framework applicable to natural mineral waters comes under the objective of establishing and guaranteeing the free movement of goods, whilst placing particular emphasis on consumer protection.

2. In that context, this request for a preliminary ruling concerns the interpretation of the concept of 'natural mineral water from one and the same spring' within the meaning of Article 8(2) of Directive 2009/54/EC, [2] which, whilst codifying Directive 80/777/EEC, [3] the first directive to regulate the issues connected with the market in bottled mineral waters in EU law, also replaced that directive. In particular, pursuant to Article 8(2) of Directive 2009/54, the marketing of water from one and the same spring under more than one trade description is prohibited.

3. The dispute in the main proceedings is therefore between the undertaking Hotel Sava Rogaška, gostinstvo, turizem in storitve, d.o.o. ('HSR') and the Republika Slovenija (Republic of Slovenia), represented by the Ministrstvo za kmetijstvo in okolje (Ministry of Agriculture and the Environment, 'the Ministry'), regarding the latter's refusal to grant the designation 'natural mineral water' to HSR's product. As is clear from the documents before the Court, the refusal at issue in the main proceedings is based on the fact that one and the same underground water table serves two exits, including that for which HSR has been granted an exploitation concession. However, the water drawn from the second exit has already been recognised under a specific trade description in Slovenia, where it is lawfully marketed as such.

1 — Original language: French.

2 — Directive of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (OJ 2009 L 164, p. 45, and corrigendum OJ 2014 L 306, p. 8).

3 — Council Directive of 15 July 1980 on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters (OJ 1980 L 229, p. 1).

4. Rooted in relatively technical concepts and exhibiting a degree of interpretative difficulty based on the emphasis placed on the criteria relating, on the one hand, to the objective properties of the mineral water and, on the other hand, to the hydrogeological structure of its exit point, this case offers the Court an opportunity to give a ruling on the interpretation of Directive 2009/54 for the first time with a view to clarifying the directive's objectives and the values on the basis of which it was adopted.

II – Legal framework

A – *EU law*

5. Pursuant to recitals 5 and 9 in the preamble to Directive 2009/54:

'(5) The primary purposes of any rules on natural mineral waters should be to protect the health of consumers, to prevent consumers from being misled and to ensure fair trading.

…

(9) The inclusion of the statement of the analytical composition of a natural mineral water should be compulsory in order to ensure that consumers are informed.'

6. Article 1(1) of the directive provides:

'This Directive concerns waters extracted from the ground of a Member State and recognised by the responsible authority of that Member State as natural mineral waters satisfying the provisions of Annex I, Section I.'

7. Article 8(2) of Directive 2009/54 states:

'It shall be prohibited to market natural mineral water from one and the same spring under more than one trade description.'

8. Section I, entitled 'Definition', of Annex I to Directive 2009/54 contains the following points:

'1. "Natural mineral water" means microbiologically wholesome water, within the meaning of Article 5, originating in an underground water table or deposit and emerging from a spring tapped at one or more natural or bore exits.

Natural mineral water can be clearly distinguished from ordinary drinking water:

(a) by its nature, which is characterised by its mineral content, trace elements or other constituents and, where appropriate, by certain effects;

(b) by its original purity,

both characteristics having been preserved intact because of the underground origin of such water …

…

3. The composition, temperature and other essential characteristics of natural mineral water must remain stable within the limits of natural fluctuation; in particular, they shall not be affected by possible variations in the rate of flow.

…'

9. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy[4] defines a framework for the management and common protection of waters based not on national borders or policies but on hydrological formations, that is by river basin, with a view to achieving sustainable development. With regard to terminology, Article 2 of the WFD lays down a complex structure of definitions of a highly technical nature, such as definitions of an aquifer and a body of groundwater.

B – *National law*

10. Directive 80/777, replaced by Directive 2009/54, was transposed into Slovenian law inter alia by the Regulation on natural mineral waters, spring waters and table waters.[5] Paragraph 4(1) of that regulation provides that mineral water is water which, in addition to certain microbiological requirements, satisfies inter alia the condition that it should originate in an underground water table or deposit, which is protected against any possibility of contamination and emerges from a spring tapped at one or more natural or bore exits. Under Paragraph 12(4) of the Regulation, natural mineral water drawn from one and the same spring may be marketed under one brand name only.

III – The facts of the dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

11. According to the documents before the Court, on 18 July 2011 HSR made an application to the Ministry for the recognition in Slovenia of the trade description 'ROI Roitschocrene' for the natural mineral water drawn from the exit named 'RgS-2/88'.

12. By decision of 26 February 2012, the Ministry refused that application on the grounds that, pursuant to Paragraph 12(4) of the Regulation and Article 8(2) of Directive 2009/54, a natural mineral water from one and the same spring may be marketed under one trade description only, and that a natural mineral water drawn from the same aquifer as the water at issue but from a different exit (named 'V-3/66-70') has already been recognised as natural mineral water under the trade description 'Donat Mg' by decision of 3 July 2001 and marketed as such.

13. HSR brought an action for the annulment of that decision before the Upravno sodišče (Administrative Court), claiming, firstly, that the water drawn from exit 'RgS-2/88' is not the same as that drawn from exit 'V-3/66-70' and, secondly, that a distinction should be made between the concepts of a 'spring' and an 'aquifer'. Following the dismissal of that action, HSR lodged an appeal before the referring court, arguing inter alia that the Administrative Court had incorrectly interpreted the concept of a 'spring' contained in Article 8(2) of Directive 2009/54.

4 — OJ 2000 L 327, p. 1. Directive as amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 114, 'the WFD'). It is appropriate to point out that that directive has been supplemented by Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ 2006 L 372, p. 19).

5 — Pravilnik o naravni mineralni vodi, izvirski vodi in namizni vodi (Uradni list RS, No 50/04 of 6. 5. 2004), as amended by Pravilnik o spremembah in dopolnitvah Pravilnika o naravni mineralni vodi, izvirski vodi in namizni vodi (Uradni list RS, No 75/05 of 9. 8. 2005, 'the Regulation').

14. In its order for reference, the Vrhovno sodišče (Supreme Court) explains that the exits 'V-3/66-70' and 'RgS-2/88' share one and the same underground water table or deposit.[6] In addition, it observes that the Donat Mg natural mineral water is included in the register of natural mineral waters recognised in Slovenia as well as on the list of natural mineral waters recognised by Member States,[7] with the spring stated being the Donat spring.[8]

15. The referring court asks how it should interpret the expression 'natural mineral water from one and the same spring' within the meaning of Article 8 of Directive 2009/54. It notes that the term 'spring', which is used on several occasions in the directive, is not defined therein. In view of the linguistic differences in the definition of 'natural mineral water' contained in Annex I, Chapter I, point 1 of the directive, a number of interpretations of that expression are possible. It is in the light of those circumstances that the Vrhovno sodišče decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 8(2) of Directive [2009/54] to be interpreted in such a way that "natural mineral water from one and the same spring" means:

(a) water from one and the same point of exit, but not water that is drawn from different exits even when such water originates in the same aquifer or body of groundwater within the meaning of the definitions of "aquifer" and "body of groundwater" given in [the WFD], or

(b) water from one and the same point of exit, but not water that is drawn from different exits even when such water originates in the same aquifer or body of groundwater within the meaning of the definitions of "aquifer" and "body of groundwater" given in [the WFD], although, in interpreting the expression, account should be taken of factors such as the distance between exits, the depth of the exits, the specific qualities of the water drawn from individual exits (such as its chemical and microbiological composition), hydraulic connectivity between exits and the confinement of the water held by the aquifer, or

(c) water springing from the same aquifer or body of groundwater within the meaning of the definitions of "aquifer" and "body of groundwater" given in [the WFD] irrespective of whether it reaches the surface at a number of different exits, or;

(d) water springing from the same aquifer or body of groundwater within the meaning of the definitions of "aquifer" and "body of groundwater" given in [the WFD] irrespective of whether it reaches the surface at a number of different exits, although, in interpreting the expression, account should be taken of factors such as the distance between exits, the depth of the exits, the specific qualities of the water drawn from individual exits (such as its chemical and microbiological composition), hydraulic connectivity between exits and the confinement of the water held by the aquifer?

6 — According to its observations, HSR draws natural mineral water from the exit 'RgS-2/88' from a depth of 274 m. The company Droga Kolinska d.d. ('Droga Kolinska') draws mineral water from the Donat Mg exit 'V-3/66-70' at a depth of 606 m. The exits are more than 5 km apart.

7 — See OJ 2013 C 95, p. 38.

8 — It is clear from the documents before the Court that, by decision of 3 July 2001, the Ministry recognised the water drawn from the exits 'RgS-2/88' and 'V-3/66-70' as natural mineral water under the trade description 'Donat Mg', even though the company benefiting from that decision, Droga Kolinska, does not have a concession to use the water drawn from exit 'RgS-2/88', since that concession is held by HSR in accordance with a decision of 14 February 2008. Accordingly, Droga Kolinska cannot market that water under the trade description 'Donat Mg'.

(2) If none of the suggested answers to question 1 should be correct, must the interpretation of the notion of "natural mineral water from one and the same spring" take into account factors such as the distance between exits, the depth of the exits, the specific qualities of the water drawn from individual exits, hydraulic connectivity between exits and the confinement of the water held by the aquifer?'

16. The request for a preliminary ruling was received by the Court Registry on 25 April 2014. Written observations have been submitted by HSR, the Slovene, Czech and Greek Governments and the European Commission. HSR, the Slovene and Greek Governments and the Commission attended the hearing, which was held on 4 March 2015.

IV – Analysis

A – *Consideration of the questions referred for a preliminary ruling*

17. By its questions, the referring court seeks the view of the Court on the interpretation of the prohibition laid down in Article 8(2) of Directive 2009/54, pursuant to which the marketing of a 'natural mineral water from one and the same spring' under more than one trade description is prohibited. Although the questions are put by the referring court in the form of a list of different possible interpretations, it should be pointed out that they all focus on one and the same concept. Accordingly, despite their structure, I propose, like all the parties who have submitted written observations in this case, to consider those questions jointly.

B – *The rules applicable to natural mineral water under EU law*

18. It is apparent from the documents before the Court that the main difficulty with which the referring court is faced relates to the fact that Directive 2009/54 does not provide for a definition of the concept of a 'spring' and that, therefore, that concept could give rise to more than one interpretation. If the fundamental objective is to prevent consumers from being misled, the concept of the 'same spring' should be limited to the concept of the 'same exit'. Only water drawn from one and the same exit, and of the same chemical and microbiological composition, would thus be covered by that term. If, however, a broad interpretation were adopted, the view should be taken that the concept of the 'same spring' covers water drawn from several different points of exit which share a common aquifer within the meaning of the WFD. [9]

19. In this connection, it is appropriate, first and foremost, to define the scope of the interpretation in question.

20. It should be borne in mind that achieving harmonisation in the field of the marketing of bottled water has been a particularly long and complex process within the internal market. The main point of contention between the Member States centred on a difference of opinion about the very concept of natural mineral water. [10] Accordingly, even though the issue of the approximation of laws in the field

9 — Under Article 2(11) of the WFD, an aquifer is defined as a 'subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater'. Article 2(12) of the WFD defines a 'body of groundwater' as 'a distinct volume of groundwater within an aquifer or aquifers'.

10 — There was therefore a 'Latin' model under which the intervention of the State in relation to a classification is based on an expert scientific assessment and the marketing of the products requires prior authorisation. Under the German model, undertakings operate under sectoral agreements based solely on the chemical composition of the product (degree of mineralisation). By contrast, under the UK model, it is essentially left to the consumer to make the best choice from amongst the very different products placed on the market. See, in this regard, Marty, N., 'La construction d'un marché européen des eaux embouteillées: enjeux, acteurs et déroulement des négociations de la directive 80/777 sur les eaux minérales (années 1950-années 1980)', *Revue d'histoire de l'intégration européenne*, Vol. 19, 2013, No. 2, pp. 227 to 242.

of food products and beverages was raised as early as at the end of the 1950s, the directive seeking to harmonise the exploitation and marketing of mineral waters was adopted only in 1980.[11] On the international stage, this same battle has emerged in the discussions surrounding the adoption of the Codex Alimentarius.[12]

21. Directive 80/777 related to the exploitation and marketing of foodstuffs intended for human consumption, and was particularly concerned to protect them against risks of pollution, because public health was at stake. It also guaranteed the rights of the consumer by ensuring, by means of bottling at source in packaging with suitable closures, that the liquid retained those characteristics which enabled it to be recognised as mineral water.[13] As the successor to Directive 80/777, Directive 2009/54 therefore broadly reproduces the same guiding principles.

22. Adopted on the basis of Article 95 EC (Article 114 TFEU), Directive 2009/54 falls within the framework of the approximation of laws relating to the establishment and functioning of the internal market in the field of foodstuffs.[14] A key element for the purposes of its interpretation can be found in recital 5 in the preamble to the directive, pursuant to which the primary purposes of any rules on natural mineral waters should be to protect the health of consumers, to prevent consumers from being misled and to ensure fair trading. Indeed, as the Greek Government points out, that recital was added to the ratio legis of Directive 2009/54 as part of the recast of Directive 80/777.

23. It is indeed true that the issue of drinking water, and of bottled water in particular, involves legislation from a variety of different fields. It is governed by a number of acts, including inter alia the directive on the quality of water intended for human consumption,[15] the directive establishing the constituents of natural mineral waters which may present a risk to public health[16] and the directive introducing the concept of medicated waters.[17] With regard, in particular, to the rules on labelling, Directive 2009/54 contains additions to and derogations from the general rules contained in the legislation on the labelling of foodstuffs.[18]

24. Nevertheless, in view of the differences between the objectives and the matters regulated, the absence of a legal definition of the term ‘spring’ in Directive 2009/54 does not, however, appear to me to call for any cross-referencing with the definitions contained in the WFD. Such an approach could even constitute an error in law.

11 — For a detailed historical description, see Marty, N., op. cit.

12 — Doussin, J.-P., *Les eaux minérales dans le Codex alimentarius — Un choc des cultures*, Annales des Mines, May 1998, p. 30. The Codex Alimentarius Commission, established in 1963 by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), develops international, harmonised food standards, guidelines and codes of practice intended to protect consumers’ health and ensure fair practices in the food trade. See the webpage http://www.codexalimentarius.org/codex-home/en/.

13 — Directive 80/777 was adopted specifically to remove barriers to the marketing of those drinks and to facilitate the operation of the common market. See the Opinion of Advocate General Ruiz-Jarabo Colomer in *Commission* v *Germany* (C-463/01, EU:C:2004:290, point 56).

14 — It should be noted that, pursuant to Article 1 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, that regulation applies without prejudice to the provisions laid down in Directive 80/777. The relationship between those two acts is one of the legal questions raised in the context of *Neptune Distribution* (C-157/14), pending before the Court.

15 — Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ 1980 L 229, p. 11), which was repealed and replaced by Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32), as amended.

16 — Commission Directive 2003/40/EC of 16 May 2003 establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters (OJ 2003 L 126, p. 34).

17 — Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

18 — Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29). See recital 8 in the preamble to Directive 2009/54.

25. Indeed, as the Court has already made clear, the WFD is a framework directive adopted on the basis of Article 175(1) EC (now Article 192 TFEU). It establishes common principles and an overall framework for action in relation to water protection and coordinates, integrates and, over the longer term, develops the overall principles and structures for the protection and sustainable use of water in the European Union.[19] However, the WFD does not seek to achieve complete harmonisation of the rules of the Member States concerning water.[20] It follows from recital 19 in the preamble thereto that the directive aims at maintaining and improving the aquatic environment in the European Union. That ecological purpose is primarily concerned with the quality of the waters in question.[21]

26. It is true that it cannot be ruled out that the terms originating from several different directives do in fact define the same natural phenomenon, inasmuch as an aquifer or an underground water table or deposit are all intended to describe a form of underground accumulation of water. However, the imprecise nature of the relationship between those concepts argues against a direct reference to the technical concepts contained in the WFD when interpreting Directive 2009/54.

27. Finally, I would point out that the questions raised in the context of the dispute in the main proceedings concerning the practice of the national authorities in relation to the award of concessions for the extraction of natural mineral water have no bearing on the interpretation sought, since they cannot influence the interpretation of the very concept of 'natural mineral water from one and the same spring' within the meaning of Article 8(2) of Directive 2009/54.

28. It is in the light of those findings that Article 8(2) of Directive 2009/54 should be interpreted.

C – *The concept of 'natural mineral water from one and the same spring' within the meaning of Article 8 of Directive 2009/54*

1. The approach adopted for the purposes of the interpretation in question

29. In accordance with Article 8(2) of Directive 2009/54, it is prohibited to market natural mineral water from one and the same spring under more than one trade description. It is interesting to note that Article 8 of Directive 2009/54 has not been amended as compared with the proposal for Directive 80/777 submitted by the Commission in 1970.[22] It is therefore a provision which is as constant as it is concise.

30. However, in accordance with the case-law of the Court, in order to determine the scope of a provision of EU law, account must be taken of its wording, its context and its objectives, since the origins of the provision may also provide information relevant to its interpretation.[23]

31. In that regard, I note that, in the present case, the interpretation of the words 'same spring' gives rise to particular tension between, on the one hand, the objective properties of the mineral water and, on the other hand, the hydrogeological characteristics relating to its path to the surface. The referring court asks the Court in particular about the relevance, inter alia, of the distance between the exits, the

19 — With regard to complexity of the very purpose of the WFD, see my Opinion in *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2014:2324).

20 — Judgment in *Commission* v *Luxembourg* (C-32/05, EU:C:2006:749, paragraph 41).

21 — Judgment in *Commission* v *Luxembourg* (C-525/12, EU:C:2014:2202, paragraph 51).

22 — OJ 1970 C 69, p. 14.

23 — See, inter alia, the judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 50 and the case-law cited).

specific qualities of the water, the hydraulic connectivity between the exits and the depth of the exits. The documents produced before the Court contain a number of points of view intended to address those aspects. In particular, HSR insists that there is a difference between the concept of a 'spring' and that of an 'aquifer'.

32. I am of the opinion that such a technical way of addressing the matter in hand renders the interpretation sought unhelpfully vague. With a view to explaining the content of Article 8 of Directive 2009/54, I personally intend to take as the starting point the key concept contained in Directive 2009/54, namely the concept of natural mineral water, in conjunction with the primary objective of that directive, namely consumer protection. On the basis of that starting point, it may be held that the status of the hydrological elements may be regarded as being supplementary for the purposes of the interpretation of the concept of the 'same spring'.

2. The concept of 'natural mineral water' in the light of the objective of consumer protection

33. By the expression 'natural mineral water, within the meaning of Annex I, Section I, point 1 of Directive 2009/54, the EU legislature meant 'microbiologically wholesome water[24] *originating* in an underground water table or deposit and *emerging* from a spring tapped at one or more natural or bore exits'. The definition at issue therefore refers cumulatively to two levels: firstly, the origin of the natural mineral water and, secondly, the emergence of the water. Furthermore, in accordance with the abovementioned point 1, natural mineral water can be distinguished from ordinary drinking water by its nature and by its original purity.

34. However, for the purposes of the interpretation of the concept of a 'spring', that definition is not free from doubt in particular on comparison with other language versions,[25] specifically the versions in which there is an overlap between the concepts of the origin and the emergence of the water, as is the case with the Slovenian version.[26]

35. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.[27]

36. In that connection, as I have already pointed out, the legislature attaches particular importance to the protection of consumers. That purpose is expressed in Directive 2009/54 at several levels. Firstly, as regards its interference with the objective of the free movement of natural mineral waters, the directive requires that common rules are laid down concerning the microbiological requirements to be fulfilled in order for water to be classified as natural mineral water and the adoption of a system of recognition by the responsible authority of a Member State for water which satisfies the requirements under the directive. Secondly, as regards interference with the objective of protecting the health of consumers, Directive 2009/54 lays down requirements relating to the statement of the analytical composition of a natural mineral water in connection with the requirements governing labelling in general.[28] In that context, the directive also requires that provision be made for emergency measures capable of

24 — Within the meaning of Article 5 of Directive 2009/54, which, in conjunction with Annex I, Section III of the directive, indicates the total colony count of a natural mineral water.

25 — In English: '*originating* in an underground water table or deposit and *emerging* from a spring tapped at one or more natural bore exits'; ; in Italian: 'un'acqua microbiologicamente pura, la quale abbia *per origine* una falda o un giacimento sotterranei e *provenga* da una sorgente con una o più emergenze naturali o perforate'; in Finnish: 'vettä, jonka *alkuperä* on maanalainen vesikerrostuma tai –varasto ja joka *tulee esille* lähteestä, josta sitä otetaan yhden tai useamman luontaisen tai poratun ulostulopaikan kautta'.

26 — In German: 'das seinen Ursprung in einem unterirdischen Quellvorkommen hat und aus einer order mehreren natürlichen oder künstlich erschlossenen Quellen gewonnen wird'; in Polish: 'pochodzącą ze złoża podziemnego lub poziomu wodonośnego i wydobywaną z tych źródeł jednym lub kilkoma ujęciami naturalnymi lub wierconymi'; in Slovene: 'ki ima svoj izvor v podzemnem vodnem viru in izteka ali se črpa na izviru iz enega ali več naravnih iztokov ali vrtin'.

27 — See inter alia the judgment in *Eleftheri tileorasi and Giannikos* (C-52/10, EU:C:2011:374, paragraphs 23 and 24).

28 — See recital 8 in the preamble to Directive 2009/54 and the reference made therein to Directive 2000/13.

responding to threats to public health. Thirdly, as regards interference with the objective of ensuring fair trading and preventing consumers from being misled,[29] Directive 2009/54 requires that the single source of the mineral water is identified, as illustrated by the prohibition laid down in Article 8(2) thereof.

37. I would point out that, taken as a whole, Article 8 of Directive 2009/54 focuses on the issues relating to trade descriptions, that is the indication of the geographical origin of the water. Thus, Article 8(1) of the directive states inter alia that the name of a locality may appear in the wording of a trade description provided that it refers to a mineral water the spring of which is exploited at the place indicated by that description. In the same vein, paragraph 2 of that article prohibits the marketing of water from one and the same spring under more than one trade description. Finally, Article 8(3) of Directive 2009/54 states that the spring and place of exploitation of the natural mineral water must be correctly stated for labelling and advertising purposes.

38. Accordingly, unlike the rules in the field of trade marks, pursuant to which it is perfectly legitimate for more than one trade mark to be used for the same product, Article 8 of Directive 2009/54 seeks to ensure that the spring and geographical origin can be identified unequivocally, as they are apparent from the trade description of the natural mineral water.

39. Ultimately, it is therefore essential that the analytical composition of the water satisfies the requirements laid down in Directive 2009/54, and that that composition is known to the consumer who, by virtue of the trade description and/or the labelling, must be able to identify information relating to its geographical origin.

40. As the directive makes clear, natural mineral water is water which flows or is drawn at source, and the composition, temperature and other essential characteristics of which must be stable within the limits of natural fluctuation. As the Czech Government points out, the purposes stated in recital 5 in the preamble to Directive 2009/54 would not be achieved if a mineral water with the same properties, albeit drawn from more than one exit, were marketed under different trade descriptions.

41. Accordingly, the concept of 'natural mineral water', when interpreted in conjunction with recital 5 in the preamble to Directive 2009/54, leads me to find that the legislature's objective is achieved where the definition of the 'same spring' within the meaning of Article 8(2) is restricted to one exit point of the natural mineral water, and therefore to its *emergence* for the purposes of point 1 of Annex I to Directive 2009/54.

3. The status of the hydrogeological elements for the purposes of determining the concept of the 'same spring'

42. Certain technical aspects must be examined in order to provide a clearer picture of the scope of Article 8(2) of Directive 2009/54. With that in mind, it is useful to refer to a report produced by the French Food Safety Agency ('AFSSA'),[30] to which the Commission refers in its written observations. With regard to the hydrogeological context, that report states that the origin of all natural mineral

29 — This approach of protecting consumers and of ensuring fair trading also stems from recital 9 in the preamble to Directive 2009/54 read in conjunction with Article 7(2) thereof vis-à-vis the guarantees relating to the information intended for consumers regarding the composition of the mineral water.

30 — The AFSSA is a French public body, established in 1999, in the wake of the BSE crisis; its primary mission was to assess the health and nutritional risks presented by all foodstuffs, including water. In July 2010, it became the Agence nationale de la sécurité sanitaire de l'alimentation, de l'environnement et du travail (National Agency for Food, Environmental and Occupational Health and Safety, 'ANSES'). See Lignes directrices pour l'évaluation des eaux minérales naturelles au regard de la sécurité sanitaire (AFSSA), dated May 2008, available at https://www.anses.fr/sites/default/files/documents/EAUX-Ra-EauxMinerales.pdf.

waters is the infiltration of meteoric waters [31] which return to the surface after a lengthy journey underground. [32] Gravity forces the underground waters down until they meet an obstacle preventing their vertical penetration; [33] they then accumulate in the pores and gaps of the subsoil (aquifers), [34] from which they flow laterally. When the hydraulic load in the saturated part of the aquifer becomes greater than the prevailing load at the possible exit points, the underground water flows through the natural outlets, that is to say through *springs*. The Report also addresses the concept of a 'deposit' [35] and that of an 'aquifer system' [36] for the purposes of determining the geological structure of the waters.

43. In my opinion, the decisive factors for the interpretation of the concept of the 'same spring' as proposed above are, firstly, the finding that 'the hydrogeological situations at the origin of the natural mineral water exit point are numerous and often very complex' [37] and, secondly, the confirmation of the multitude of natural outlets, the natural mineral water springs, in relation to the strata of the underground lateral accumulation of those waters.

44. In addition, as Advocate General Elmer found in *Badische Erfrischungs-Getränke* when ruling on the definition of mineral water, [38] the lack of a definition of the concept of a 'spring' appears to me to be indicative of the legislature's intent. Indeed, if it had wanted to make the concept of a 'spring' conditional primarily on hydrogeological characteristics such as a structure of water tables, deposits or exits, it would have been logical to attach a specific meaning to that term. However, the use of the term 'spring' in Directive 2009/54 confirms that that concept refers rather to a multitude of forms of mineral water exit points, both natural and bore exits. [39] By contrast, the geological structure is crucial to the identification of the natural mineral water as such and its characteristics.

45. For that reason, regardless of the hydrogeological configuration of the ground from which the water is extracted, the key factor for the purposes of the determination of 'one and the same spring' is, after all, the identity of the natural mineral water.

46. Indeed, natural mineral waters are defined in relation to their chemical composition and have an identified unique origin (which forms the basis on which they are distinguished from waters made suitable for drinking through treatment which have exactly the same chemical composition). [40] Thus, from the consumer's perspective, it is important that the same trade description refers to the same natural mineral water. From that point of view, the criterion concerned with the hydrogeological structure of an underground water table or deposit or of an aquifer in the scientific sense of the term

31 — The concept of 'meteoric waters' is a hydrological term used to define water which has been present in the ground for a long time (in geological terms) and originates from rainfall. Meteoric water is essentially composed of underground waters; the alternative origins of the waters do not play a significant role in the hydrological cycle. For more detailed information, see: http://www.aquaportail.com/definition-12538-eau-meteorique.html#ixzz3QIVmcJAt.

32 — The meteoric waters infiltrate deep into the ground as a result of the 'micro-permeability' of certain porous rocks (sand or sandstone) and the 'macro-permeability' of hard rocks which, although they are non-permeable, crack or fracture. See the AFSSA report, op. cit., p. 14.

33 — Term used to refer to an impermeable stratum, a closure of the cracks and fissures.

34 — In the scientific sense of the word.

35 — Deposit as a static concept, according to the dictionary definition: natural accumulation of minerals, in either solid or liquid form. The AF[S]SA report advises against the use of this term in connection with underground waters and suggests replacing it with the term 'aquifer system'. See the AFSSA report, op. cit., p. 66.

36 — According to the AFSSA Report, the aquifer system — in the scientific meaning of the term — means both a particular geological structure, inter alia in the form of a underground loop, and a dynamic process covering the flow of the water together with its system, its conditions, its limits and its initial and final conditions.

37 — AFSSA report, op. cit., p. 15, point I.

38 — C-17/96, EU:C:1997:244, points 16 and 17.

39 — See Article 8(3) of Directive 2009/54, in which the concepts of 'spring' and 'place of exploitation' are used alternatively. With regard to the exploitation of springs, see Article 3 of the directive; with regard to the protection of springs, see Article 5 of the directive; see also point 2(d) of Annex II to Directive 2009/54.

40 — In relation to the three types of bottled water, namely treated drinking waters, natural mineral waters and spring waters, see the analysis available at the following address: https://www.anses.fr/fr/content/eaux-conditionn%C3%A9es.

is not decisive in itself, since it is the geological path taken to the surface of the earth which affects the composition of the water. Accordingly, the concept of a 'spring' within the meaning of Directive 2009/54 covers one or more natural exits, or even bore exits, from which flows water which is identical for the purposes of Annex I to Directive 2009/54.

47. In any event, I would point out that natural mineral water within the meaning of Directive 2009/54 must be exploited in its state at source, without any treatment save the separation of unstable or undesirable elements.[41] In addition, Annex I, Section I, point 3 of Directive 2009/54 states that '[t]he composition, temperature and other essential characteristics of natural mineral water shall remain stable within the limits of natural fluctuation; in particular, they shall not be affected by possible variations in the rate of flow'. That consideration lends further weight to the argument that it is the composition of the water, and not the structure of its geological exit, which is the major factor with a view to achieving the consumer protection objective.

48. Furthermore, I would like to point out that the fact that the water originates in the same underground water table or deposit is a necessary but not a sufficient condition for a finding that that water is one and the same natural mineral water. Thus, chemically identical waters with independent hydraulic and geological origins do not constitute one and the same natural mineral water.

49. In the light of all the foregoing, I take the view that a 'natural mineral water from one and the same spring' within the meaning of Article 8(2) of Directive 2009/54 describes water from one or more natural or bore exits, originating in one and the same underground water table or deposit, where that water has identical characteristics which remain stable at all those natural or bore exits within the limits of natural fluctuation. By contrast, mineral waters from multiple exits, whether natural or bore exits, which share the same water table or the same deposit but have non-identical analytical properties having regard to the criteria laid down in Annex I to Directive 2009/54, cannot be regarded as waters from the same spring.

V – Conclusion

50. In the light of the foregoing considerations, I propose that the Court answer the questions submitted by the Vrhovno sodišče as follows:

The expression 'natural mineral water from one and the same spring' within the meaning of Article 8(2) of Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters means water from one or more natural or bore exits, originating in one and the same water table or in the same underground deposit, where that water has identical characteristics which remain stable at all those natural or bore exits within the limits of natural fluctuation.

41 — See Article 4 of Directive 2009/54.