OPINION OF ADVOCATE GENERAL TRSTENJAK

delivered on 25 October 2007 [1]

I — Introduction

1. The present reference for a preliminary ruling from the highest German administrative court, the Bundesverwaltungsgericht (Federal Administrative Court), concerns questions relating to the interpretation and the scope of the rules protecting other traditional terms in Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [2] as regards the description, designation, presentation and protection of certain wine sector products and the corresponding Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Regulation No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products, [3] as amended by Commission Regulation (EC) No 1512/2005 of 15 September 2005 amending Regulation 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 (hereinafter: Regulation No 753/2002). [4]

2. Other traditional designations for wines are indicated on labels where wine is sold and in legal relations. Labels could have the same meaning for wines as passports and identity cards have for individuals. They are either universally recognised or limited to one (Member) State. [5]

3. Specifically, the questions arise in a dispute before German administrative courts between the wine producer Mr Schneider and the Land Rheinland-Pfalz concerning the lawfulness of the administrative act by which the use of the terms ‘Réserve’ and ‘Grande Réserve’ or ‘Reserve’ and ‘Privat-Reserve’ was prohibited in connection with the labelling of wine produced by Mr Schneider in the German region of Pfalz.

1 — Original language: German.
2 — OJ 1999 L 179, p. 1.
3 — OJ 2002 L 118, p. 1.
4 — OJ 2005 L 241, p. 15.
5 — This graphic, indeed drastic comparison was made by the Greek Government at the hearing to draw attention to the need for a strict interpretation of Regulations No 1493/1999 and No 753/2002.

II — Legal framework

A — *Regulation No 1493/1999*

4. Regulation No 1493/1999 governs the production, labelling and control of wine sector products and inter alia lays down rules relating to certain particulars in connection with labelling.

5. Article 47 of Regulation No 1493/1999 states:

'1. Rules relating to the description, designation and presentation of certain products covered by this Regulation, and the protection of certain particulars and terms are set out in this Chapter and in Annexes VII and VIII. The rules shall take into account, in particular, the following objectives:

(a) the protection of the legitimate interests of consumers;

(b) the protection of the legitimate interests of producers;

(c) the smooth operation of the internal market;

(d) the promotion of the production of quality products.

2. The rules mentioned in paragraph 1 shall include, in particular, provisions:

(a) making the use of certain terms compulsory;

(b) permitting the use of certain terms, subject to conditions;

(c) permitting the use of other terms, including information which may be useful for consumers;

(d) governing protection and control arrangements for certain terms;

(e) governing the use of geographical indications and traditional terms;

…'

6. Article 48 of Regulation No 1493/1999 states:

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

— the information provided for in Article 47. This shall apply even if the information is used in translation or with a reference to the actual provenance or with additions such as "kind", "type", "style", "imitation", "brand" or the like;

…'

7. Article 49 of Regulation No 1493/1999 states:

'1. Products whose description or presentation does not conform to the provisions of this Regulation or the detailed rules adopted for its implementation may not be held for sale or put on the market in the Community or exported.

…

2. The Member State on whose territory the product whose description or presentation does not conform to the provisions referred to in paragraph 1 is located shall take the necessary steps to impose penalties in respect of infringements committed, according to their gravity.

The Member State may, however, grant an authorisation for the product to be held for sale, put on the market in the Community or exported, provided that its description or presentation is changed to conform to the provisions referred to in paragraph 1.'

8. Article 53 of Regulation No 1493/1999 provides for the adoption of detailed rules for the implementation of the regulation, including Annexes VII and VIII. The implementing rules govern in particular the derogations, conditions and authorisations provided for in those Annexes. Implementing rules should also be adopted on the legal basis of Article 53 also for the labelling of table wine, table wine with geographical indication and quality wine psr.

9. Point B of Annex VII of Regulation No 1493/1999 provides with regard to optional particulars:

'1. The labelling of the products obtained in the Community may be supplemented by the following particulars, under conditions to be determined:

…

(b) in the case of table wines with geographical indication and quality wines psr:

…

— other traditional terms in accordance with the provisions laid down by the Member State of production,

…

3. In the case of the products referred to in paragraph 1 of point A, the labelling may be supplemented by other particulars.

4. Member States of production may make certain particulars in paragraphs 1 and 2 compulsory, prohibit them or restrict their use in respect of wines produced in their territory.'

10. With regard to languages which may be used for the labelling, point D of Annex VII provides as follows:

‘1. The information on the labelling must be given in one or more other official languages of the Community so that the final consumer can easily understand each of these items of information.

Notwithstanding the first subparagraph:

— the name of the specified region,

— the name of another geographical unit,

— the traditional specific terms and the additional traditional particulars,

— the name of the vineyards or their associations and bottling particulars

shall be given solely in one of the official languages of the Member State in whose territory the product was prepared.

The information referred to in the second subparagraph may be repeated in one or more other official languages of the Community for products originating in Greece and Cyprus.

…

In the case of products obtained and put on the market in their territory, Member States may allow the information referred to in the second subparagraph also to be given in a language other than an official language of the Community, if use of that language is traditional and customary in the Member State concerned or in part of its territory.

Member States of production may allow, in respect of their products, the information referred to in the second subparagraph also to be given in another language if use of that language is traditional for such particulars …’

B — *Regulation No 753/2002*

11. Regulation No 753/2002 is the implementing regulation for Regulation No 1493/1999 and contains certain rules as regards the description, designation, presentation and protection of certain wine sector products.

12. Article 6 of that regulation contains the following rules common to all particulars on labelling:

'1. For the purposes of Annex VII(B)(3) to Regulation (EC) No 1493/1999, the labelling of the products covered by that Annex may be supplemented by other particulars provided that there is no risk that such particulars might mislead those to whom they are addressed, particularly by creating confusion with the compulsory particulars referred to in paragraph A(1) or the optional particulars referred to in paragraph B(1) of that Annex.

2. In the case of the products referred to in Annex VII(B)(3) to Regulation (EC) No 1493/1999, an authority designated under Article 72(1) thereof may, provided that it acts in compliance with the general procedural rules adopted by the Member State, require bottlers, consignors or importers to provide proof of the accuracy of the wording used for the description as it relates to the nature, identity, quality, composition, origin or source of the product concerned or the products used to make it.'

13. Under Article 23 of Regulation No 753/2002, for the purposes of the fifth indent of point B(1)(b) of Annex VII to Regulation No 1493/1999, 'other traditional terms' means 'additional terms traditionally used in producer Member States to designate, in the case of wines referred to in this Title, the production or ageing method or the quality, colour, type of place, or a particular event linked to the history of the wine concerned and defined in a Member State's legislation for the purposes of designating the wines concerned originating in its territory.'

14. Article 24 of Regulation No 753/2002 further provides with regard to protection of traditional terms:

'1. For the purposes of this Article, "traditional terms" means the additional traditional

terms referred to in Article 23, the terms referred to in Article 28 and the traditional specific terms referred to in Article 14(1), first subparagraph, point (c), Article 29 and Article 38(3).

2. The traditional terms listed in Annex III shall be reserved for the wines to which they are linked and shall be protected against:

(a) all misuse, imitation or evocation, even if the protected term is accompanied by an expression such as "kind", "type", "style", "imitation", "brand" or similar;

(b) any other unwarranted, false or misleading indication as to the nature or essential qualities of the wine on the inner or outer packaging, advertising material or any documents relating to it;

(c) any other practice liable to mislead the public, in particular to give the impression that the wine qualifies for the protected traditional term.

3. Trade marks used to describe a wine on its labelling may not contain traditional terms listed in Annex III unless the wine qualifies for such a traditional term.

…

4. If a traditional term listed in Annex III to this Regulation also falls within one of the categories of indication referred to in Annex VII(A) and (B)(1) and (2) to Regulation (EC) No 1493/1999, the provisions of this Article rather than the other provisions of Title IV or Title V shall apply to that traditional term.

The protection of a traditional term shall apply only for the language(s) in which it appears in Annex III.

Each traditional term listed in Annex III shall be linked to one or more categories of wine. These categories are:

…

(d) quality wines psr not covered by (a), (b) or (c) above and table wines with a geographical indication; in this case the protection of a traditional term shall apply only to the designation of wines other than liqueur wines, sparkling wines, aerated sparkling wines, semi-sparkling wines and aerated semi-sparkling wines;

…

5. To qualify for inclusion in Annex III(A), a traditional term must:

(a) be specific in itself and precisely defined in the Member State's legislation;

(b) be sufficiently distinctive and/or enjoy an established reputation on the Community market;

(c) have been traditionally used for at least 10 years in the Member State in question;

(d) be used for one or more Community wines or categories of Community wine.

A traditional term is deemed traditional in the official language of one Member State if it has been used in that official language and in a specified border region of the neighbouring Member State(s) for wines elaborated under the same conditions provided that such a term fulfils the criteria in points (a) to (d) in one of these Member States and both Member States mutually agree to define, use and protect such a term.

…

7. Member States shall notify to the Commission:

(a) the facts justifying recognition of each term;

(b) the traditional terms included in their legislation that meet the above requirements and the wines for which they are reserved;

(c) any traditional terms that cease to be protected in the country of origin.

…'

15. Annex III to Regulation No 753/2002 contains the list of protected traditional terms referred to in Article 24, indicating countries, wines concerned, product categories and languages, in particular:

— for Greece, in Greek, the terms: 'Ειδικά Επιλεγμένος (Grand reserve)', 'Επιλογή ή Επιλεγμένος (Reserve)' and 'Παλαιωθείς επιλεγμένος (Old reserve)',

— for Spain, in Spanish, the terms 'Gran Reserva' and 'Reserva',

— for Italy, in Italian, the term 'Riserva',

— for Austria, in German, the term 'Reserve',

— for Portugal, in Portuguese, the terms 'Reserva', 'Reserva velha' (or 'grande reserva') and 'Super reserva'.

III — Main facts of the case, main proceedings, questions referred and proceedings before the Court of Justice

A — *Facts of the case*

16. The appellant in the main proceedings before the Bundesverwaltungsgericht, Mr Schneider, runs a family vineyard under the company name 'Consulat des Weins' in southern Pfalz near the city of Trier (Rheinland-Pfalz) and markets eight wines. During an inspection carried out by the competent

regional authority in Rheinland-Pfalz on 20 November 2002, the following objections were raised against the proposed labelling of those wines, in so far as they are relevant to this reference for a preliminary ruling: The main labels bore the name of the vineyard and below, according to the price range of the wine, the particulars 'Grande Réserve' or 'Réserve'. It was intended to state the quality category of the wines, the region of production ('Pfalz') and the official inspection and bottling number on the label on the back.

17. On 19 December 2002 the Aufsichts- und Dienstleistungsdirektion (ADD) Trier of the Land of Rheinland-Pfalz took a decision inter alia to prohibit the use of the French terms 'Réserve' and 'Grande Réserve' as misleading. The offer made by Mr Schneider in the objection proceedings to use the German terms 'Reserve' and 'Privat-Reserve' instead was rejected by the ADD by decision of 19 and 21 March 2003, since it considered that those designations were not permitted either.

18. Mr Schneider appealed against the initial decision and the decision on the objection. By that action before the German administrative courts, Mr Schneider sought to have the prohibition set aside; he also applied for a declaration that the use of the German terms was permitted, both on their own and in conjunction with his company name. That action was dismissed at first instance by the Verwaltungsgericht Neustadt (Administrative Court, Neustadt) on 29 January 2004. Mr Schneider brought an appeal against that judgment before the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court, Rheinland-Pfalz). That court dismissed his appeal by judgment of 21 September 2004. In the view of both administrative courts, the contested designations constituted inadmissible imitations or evocations of the protected traditional Spanish, Italian and Portuguese terms '(Gran) Reserva', '(Gran) Riserva' and '(Grande) Réserve'.

19. Mr Schneider brought an appeal on a point of law before the Bundesverwaltungsgericht against the judgment of the Oberverwaltungsgericht Rheinland-Pfalz of 21 September 2004. In the appeal he relies on the following grounds which are relevant from the point of view of Community law: The applicable legislation on wine designations protects the traditional terms referred to in point 18 of this Opinion only in the respective Spanish, Portuguese or Italian national languages but not in any other language. The same also applies to the corresponding designation in the Greek language and Greek alphabet. The use of comparable designations for wines from another Member State is therefore neither an imitation nor an evocation.

20. During the proceedings before the German administrative courts, the expression 'Consulat des Weins — Réserve/Grande Réserve' was also registered as a Community trade mark by OHIM.

B — *Proceedings before the referring court and questions referred*

21. Relying on the fifth indent of point B(1)(b) of Annex VII to Regulation No 1493/1999, the Bundesverwaltungsgericht takes the view that the designations 'Réserve' and 'Grande Réserve' and 'Reserve' and 'Privat-Reserve' are essentially other traditional terms and are intended to refer to a particular quality of the wine based on the production or ageing method. However, they cannot be used in Germany as other traditional terms within the meaning of that provision because they have not been defined by German national legislation in accordance with Article 23 of Regulation No 753/2002. Nevertheless, the designations may in principle be used in Germany as other particulars within the meaning of point B(3) of Annex VII to Regulation No 1493/1999 since Article 23 of Regulation 753/2002 does not have any prohibitive effect in respect of point B(3) of Annex VII to Regulation No 1493/1999. Such a prohibitive effect applying to all designations which are substantively covered by the situations regulated by Article 23 of Regulation No 753/2002 would run counter to the purpose of the new legislation on wine designations, which is to permit the use of optional particulars outside the area covered if possible.

22. In the view of the Bundesverwaltungsgericht, however, the use of the abovementioned traditional terms is not permitted where it misleads the public or infringes protected designations. The other traditional designations protected under Article 24(2) in conjunction with Annex III of Regulation No 753/2002 exist only in Spanish, Greek, Italian, Portuguese and now German, but not in French.

23. Nevertheless, the Bundesverwaltungsgericht considers that prohibited imitation or evocation under Article 24(2) of Regulation No 753/2002 can also exist where the protected term is used in a language other than the protected original language. The prohibition on misuse is taken to mean the use of the protected term itself, whilst the prohibition on imitation bans the use of similar terms and the prohibition on evocation the use of terms which are similar in meaning.

24. However, in the view of the Bundesverwaltungsgericht, this protection of other traditional designations against misuse, imitation or evocation applies only to wines from the same Member State as the protected traditional term, that is to say in the present case only to Spanish, Portuguese, Italian, Greek and Austrian wines, but not to wines from German regions. This follows from the specific relationship between the traditional term and the winemaking tradition of the respective Member State and the freedom of Member States to regulate their respective sectors. The contrary view would prevent the development of optional wine designations since recognition of a traditional term from one Member State would block the use and thus the development of a comparable term in another Member State.

25. Because the Bundesverwaltungsgericht has doubts as to the interpretation of Regulations No 1493/1999 and No 753/2002 it has stayed the proceedings and made reference to the Court of Justice for a preliminary ruling on the following questions:

'(1) Is Article 47(2)(b) and (c) of Regulation (EC) No 1493/1999 in conjunction with the fifth indent of point (B)(1)(b) and point (B)(3) of Annex VII to that regulation and Article 23 of Regulation (EC) No 753/2002 to be interpreted as meaning that a particular which refers to the production or ageing method or the quality of the wine is permitted only as a regulated 'optional particular' in accordance with the fifth indent of point (B)(1)(b) of Annex VII to Regulation (EC) No 1493/1999 under the conditions provided for therein and in Article 23 of Regulation (EC) No 753/2002, and not as an 'other particular' in accordance with point (B)(3) of Annex VII to Regulation (EC) No 1493/1999?

(2) Is Article 24(2)(a) of Regulation (EC) No 753/2002 to be interpreted as meaning that imitation or evocation exists only if it is in the same language as that of the protected traditional term?

(3) Is Article 24(2) of Regulation (EC) No 753/2002 to be interpreted as meaning that the traditional terms listed in Annex III are protected only with regard to wines from the same producer Member State as the protected traditional term?'

C — Proceedings before the Court of Justice

26. In addition to the parties in the main action, the Hellenic Republic, Italy and Spain

also took part in the proceedings. Italy only submitted written observations and did not take part in the oral procedure. Spain took part only in the oral procedure.

27. At the hearing on 13 September 2007 the parties in the main action, the Hellenic Republic, Spain and the Commission presented oral submissions and answered questions asked by the Court of Justice.

IV — Submissions of the parties

A — *The first question*

28. In the view of Mr Schneider, the use of the contested particulars is permitted not only as a regulated 'optional particular' in accordance with the fifth indent of point B(1)(b) of Annex VII to Regulation No 1493/1999 under the conditions provided for therein and in Article 23 of Regulation No 753/2002, but also as an 'other particular' in accordance with point B(3) of Annex VII to Regulation No 1493/1999. The use of the terms is not regulated by law in Germany and the terms may therefore be used at the discretion of the bottler.

29. In the view of the Land Rheinland-Pfalz, a particular which refers to the production or ageing method or the quality of the wine is permitted only as a regulated 'optional particular' in accordance with the fifth indent of point B(1)(b) of Annex VII to Regulation No 1493/1999 under the conditions provided for therein and in Article 23 of Regulation No 753/2002, and not as an 'other particular' in accordance with point B(3) of Annex VII to Regulation No 1493/1999 where it falls within the area covered by existing protected 'other traditional terms'. A prohibitive effect restricted to the terms protected under Article 23 in conjunction with Annex III of Regulation No 753/2002 does not run counter to the purpose of the new legislation on wine designations, which is to permit the use of optional particulars outside the area covered if possible. In addition, private individuals like Mr Schneider are barred from developing optional particulars in the area covered by existing protected traditional terms.

30. The Italian Government also takes the view that a particular which refers to the

production or ageing method or the quality of the wine may be used only as a regulated 'optional particular' in accordance with the fifth indent of point B(1)(b) of Annex VII to Regulation No 1493/1999 under the conditions provided for therein and in Article 23 of Regulation No 753/2002, and not as an 'other particular' in accordance with point B(3) of that Annex. In support of that view, the Italian Government relies on Article 6(1) of Regulation No 753/2002, under which the use of 'other particulars' is possible provided that no risk of confusion is created, particularly with regard to regulated optional particulars.

32. The Spanish Government points out that the traditional terms 'Reserva' and 'Gran Reserva' are used in Spain for an ageing method for red, white and rosé wines and are generally known to consumers. In Germany, however, there is no production or ageing method for wine that can be linked with terms such as 'Réserve' and 'Grande Réserve'. For that reason those two terms are fanciful terms in Germany, but imitate traditional terms from other Member States and may mislead consumers. Therefore the two terms 'Réserve' and 'Grande Réserve' can only be regulated optional particulars. However, such particulars have no express legal basis in the basic regulation in relation to German wines and are not permitted.

31. The Hellenic Government takes the view that only wines included in the exhaustive list of traditional particulars in Annex III to Regulation No 753/2002 are protected. Any particular which refers to a production or ageing method or the quality of any other wine and which could be construed by consumers from the Community or from a third country as an 'other traditional term' protected under Articles 23 and 24 of Regulation No 753/2002 is used unlawfully and the prohibitions under Article 49 of Regulation No 1493/1999 apply to products bearing that particular.

33. The Commission takes the view that designations may be used in principle as 'other particulars' within the meaning of Article 47(2)(c) and point B(3) of Annex VII of Regulation No 1493/1999, even where they refer to the situations addressed in Article 23 of Regulation No 753/2002 (production or ageing method, quality, colour or type of wine, place or particular event linked to the history of the wine concerned). Article 23 of Regulation No 753/2002 does not have any prohibitive effect in respect of the use of 'other particulars' within the meaning of point B(3) of Annex VII to Regulation

No 1493/1999. It cannot be ruled out that such particulars are information which may be useful for consumers within the meaning of Article 47(2)(c) of Regulation No 1493/1999. Furthermore, it follows from Article 6(2) of Regulation No 753/2002 that use as an 'other particular' may be permitted in principle.

34. The Commission makes the further argument that the situations covered by Article 23 of Regulation No 753/2002 are so broad that there is not really any scope remaining for the 'other particulars' under point B(3) if a prohibitive effect is assumed. Furthermore, the development of new 'other traditional terms' is possible only where they can be listed as 'other particulars' prior to their registration. To assume a prohibitive effect for Article 23 of Regulation No 753/2002 would also run counter to the regulatory purpose of Regulation No 1493/1999, which is to permit the use of optional particulars outside the area covered if possible.

B — *The second question*

35. In the view of Mr Schneider, Article 24(2)(a) of Regulation No 753/2002 is to be interpreted as meaning that imitation or evocation exists only if it is in the same language as that of the protected traditional term. This is clear from the precise indication of the language in question in the list contained in the Annex to Regulation No 753/2002. That interpretation is also based on the fact that there is no risk of misleading consumers, which is necessary for unlawful imitation or evocation, where the term is used in another language.

36. The Land Rheinland-Pfalz did not make any remarks on the second question in its written observations. At the hearing Rheinland-Pfalz supported the submissions on the second question made by Italy, Greece and the Commission. The Land takes the view that a limited prohibition on translations would be inconsistent with the protection of traditional terms found in other languages, the aims of the internal market and consumer protection.

37. In the view of the Italian Government, the protection of regulated traditional terms against misuse, imitation or evocation cannot depend on the language used. Evocation exists wherever the translation is likely to create a link with the traditional term in the mind of consumers; that is the case here because of the similarity between the terms of Latin origin which are used.

38. In the view of the Hellenic Government too, the use of a protected term is prohibited in any language. The Hellenic Government believes that an average European consumer is familiar with most particulars listed in Annex III to Regulation No 753/2002 irrespective of the language used and links those particulars with the quality of the wine. Those particulars and terms indicated on the label are the information which is relevant in deciding on the purchase of wine.

39. The Spanish Government argues that from a linguistic point of view the word 'Réserve' is a translation of the Spanish term 'reserva'. Such a translation is prohibited under Article 48 of Regulation No 1493/1999. The use of traditional terms in the language for which they have been registered is unlawful imitation or evocation, but translations constitute wrongful appropriation.

40. The Commission also takes the view that the use of the protected term in a language other than the original language may be unlawful imitation or evocation within the meaning of Article 24(2)(a) of Regulation No 753/2002. The second subparagraph of Article 24(4) provides that the protection of a traditional term applies only for the language in which it appears in Annex III. However, that holds only for unlawful misuse, as is shown by Article 48 of Regulation No 1443/1999: That article expressly provides that the risk of confusion or of misleading consumers — which must be avoided — may also exist in the case of translations of designations. In this respect the legal situation has not changed compared with the earlier Regulation No 881/98. It is for the national court to assess whether a risk of misleading consumers actually exists in this case.

C — The third question

41. In the view of Mr Schneider, Article 24(2) of Regulation No 753/2002 is to be interpreted as meaning that the traditional terms listed in Annex III are protected only with regard to use for wines from the same producer Member State as the protected traditional term. This is because the origin of wine has a very particular importance in the eyes of consumers. Traditional terms always have their particular expressive value only in connection with the place of origin. The term 'Réserve' is widely used in practice by Member States (e.g. France) and third countries and has not been penalised

thus far as unlawful evocation. Only this narrow interpretation of the scope of the protection for that term is consistent with the fact that different national criteria have been authorised in parallel for the protected Spanish, Portuguese and Italian terms and no unlawful imitation has been taken to exist among the terms. As in his submissions on the second question, Mr Schneider also takes the view with regard to the third question that, in accordance with the protective purpose of the regulation, only uses entailing a risk of misleading consumers may be prohibited. However, a risk of confusion with Spanish, Portuguese and other wines in respect of which the terms in question are protected does not exist in particular where the (German) region is also indicated.

42. The Land Rheinland-Pfalz did not comment on the third question in its written observations. At the hearing Rheinland-Pfalz supported the submissions on the third question made by Italy, Greece and the Commission.

43. The Italian Government argues that under Article 24 of Regulation No 753/2002 traditional terms are protected against any imitation or evocation throughout the European Union. Within that framework the protection applies exclusively to wines which are eligible for protection and come from a certain producer Member State. In the present case, for example, the protection of the traditional terms 'Reserva' for Spain, 'Riserva' for Italy, 'Reserve' for Greece, 'Reserva' for Portugal and 'Reserve' for Austria is reserved solely for wines from the countries concerned which are eligible for protection; they may therefore on no account be used to label wines from Germany.

44. The Hellenic Government takes the view that the prohibition on using the protected terms also applies to use for wines from States of origin other than that of the protected term.

45. In the opinion of the Commission, the third question must be construed more narrowly. The interpretation of Article 24(2) of Regulation No 753/2002 essentially revolves around whether the use of the terms 'Reserve' and 'Privat-Reserve' is prohibited for wines in the category 'quality wine psr' produced in Germany because the designation 'Reserve' is listed in Annex III as an 'other traditional term' for wines in the same category produced in Austria. In the view of the Commission, which is also endorsed by the Spanish Government, that question should be answered in the affirmative because under Article 24(2) of Regulation No 753/2002 the traditional terms listed in

Annex III are reserved for wines with which they are linked, that is to say wines belonging to the same categories of wine. Thus the designation 'Reserve' is reserved for wines in the category 'quality wine psr' produced in Austria and is protected against unlawful misuse, imitation or evocation for wines in the same category from other Member States, including wines in the category 'quality wine psr' produced in Germany.

46. The blocked development of optional wine designations feared by the Bundesverwaltungsgericht does not justify any other interpretation either. This follows inevitably from any prohibition on unlawful misuse and also covers only identical, and not merely similar or derived terms, like the term 'Privat-Reserve'. That term may be used freely provided there is no unlawful imitation or evocation, which is to be assessed by the national court. Ultimately the interpretation favoured by that court is necessary for reasons of the effectiveness (effet utile) of the protection of wine designations in the Common Market.

V — Advocate General's assessment

A — *Preliminary remarks*

47. Regulation No 1493/1999 reformed the common organisation of the market in wine. In the interpretation given below it is therefore important to bear in mind the historical background to Regulation No 1493/1999, in particular the deliberate structural modification of the fundamental principles of the legislation on wine designations compared with its predecessor, Regulation (EEC) No 2392/89. [6] The system of Regulation No 2392/89 was characterised with respect to wine designations for still wines by the principle of prohibition, according to which only the designations listed exhaustively in the regulation could be used. [7] On the other hand, under Article 11 and the first subparagraph of Article 12(1) of Regulation No 2392/89 all designations not listed in the regulation were originally prohibited, with a few exceptions, until Regulation No 1427/96 [8] introduced a certain relaxation. [9]

48. Since the principle of prohibition was felt to be too rigid and no longer consistent

6 — 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). That regulation was followed by Commission Regulation (EEC) No 3201/90 of 16 October 1990 laying down detailed rules for the description and presentation of wines and grape musts (OJ 1990 L 309, p. 1).

7 — In Case C-46/94 *Voisine* [1995] ECR I-1859, paragraphs 22 and 27, the Court held, with reference to Articles 11 and 12 of Regulation No 2392/89, that they reveal the Community legislature's intention to adopt, in that regulation, a detailed and complete code governing the description and presentation of wines and that both those articles determine the sole particulars permitted for describing quality wine psr on the labelling.

8 — Council Regulation (EC) No 1427/96 of 26 June 1996 amending Regulation No 2392/89 laying down general rules for the description and presentation of wines and grape musts (OJ 1996 L 184, p. 3).

9 — See Hieronimi, "Grands Crus' auch bei deutschem Wein? Rechtliche Möglichkeiten einer Weinlagen-Klassifizierung in Deutschland', *Zeitschrift für das gesamte Lebensmittelrecht — ZLR* 5/97, p. 539-564 (548). See also the Opinion of Advocate General Geelhoed in Case C-81/01 *Borie Manoux* [2002] ECR I-9259, point 29, in which it was stated, with regard to the use of an indication for wines not regulated by Community law 'that any statement on the label of a quality wine psr needs to have an explicit basis in Regulation No 2392/89.'

with the requirements of the market, it was replaced, following the abovementioned initial relaxation in 1996 in Regulation No 1493/1999, by the principle of authorisation, which is also known as the principle of misuse. The legislation on designations for still wines was thus harmonised with the legislation on sparkling wines. [10]

49. According to the principle of authorisation or misuse, in addition to the optional designations listed in Regulation No 1493/1999, all other useful information for still wines is permitted unless it is prohibited by law or misleads consumers. [11] This relaxation has also been described as liberalisation. The liberalisation of the legislation on wine designations served the overriding aim of the reform, which was to guarantee the necessary flexibility of the common organisation of the market in wine to adapt smoothly to new developments. [12]

50. The legislature was aware that the rules on designation for wine sector products have significant effects on their marketability. [13] From this point of view too, the replacement of the principle of prohibition by the principle of authorisation or misuse with the wider freedom enjoyed by distributors in labelling is to be seen as a rearticulation of the balance between the legitimate interests of producers and of consumers. [14]

51. It should be borne in mind, first of all, in interpreting the rules of the legislation on wine designations, that national labelling rules affect not only the commercial interests of consumers, but also entail a restriction on the free movement of goods. Therefore, in

10 — Recital 10 in the preamble to Regulation No 753/2002 states: 'Regulation (EC) No 1493/1999 harmonises the labelling for all wine sector products with the model already established for sparkling wines, by allowing the use of terms other than those expressly covered by Community legislation, provided that they are accurate. The rules for implementing this Regulation should therefore also be harmonised in the same way, using the model established for sparkling wines, while ensuring that there is no risk of these other terms being confused with the terms covered by Community legislation and that such terms may be used only if operators can prove their accuracy where there is any doubt.'

11 — Mickel/Bergmann, 'Weinwirtschaft in der EU', in: *Handlexikon der Europäischen Union*, 3rd edition, 2005, paragraph 5, keyword 'Weinbezeichnung'.

12 — Recital 7 in the preamble to Regulation No 1493/1999.

13 — Recital 50 in the preamble to Regulation No 1493/1999 states: 'The description, designation and presentation of products covered by this Regulation can have significant effects on their marketability; this Regulation should therefore lay down rules in this connection which take into account the legitimate interests of consumers and producers and promote the smooth operation of the internal market and the production of quality products; the fundamental principles of these rules should provide for the obligatory use of certain terms so as to identify the product and provide consumers with certain important items of information and the optional use of other information on the basis of Community rules or subject to rules concerning the prevention of fraudulent practices.'

14 — See Koch, 'Neues vom Weinrecht', *Neue juristische Wochenschrift — NJW* 2004, p. 2135, 2136. The author stresses that the liberalisation of the legislation on wine designations was generally intended to create more transparency and information for consumers, with positive effects on sales. However, he also points out that this had not made it any easier to answer the question what information is permitted or is limited only by the prohibition on misleading consumers and what is not permitted because of particulars already regulated.

accordance with the decision in *Clinique*, [15] prohibitions on misleading information in Community legislation must also be interpreted specifically in the light of the free movement of goods. [16] The risk of misleading consumers cannot override the requirements of the free movement of goods unless that risk is sufficiently serious. [17] For that reason I would warn against a very broad interpretation of the criteria relating to misleading information.

B — *The first question*

52. With its first question the Bundesverwaltungsgericht is essentially seeking to ascertain whether Article 47(2)(c) and point B(3) of Annex VII of Regulation No 1493/1999 are to be interpreted as meaning that the designations 'Réserve' and 'Grande Réserve' and 'Reserve' and 'Privat-Reserve' may be used for wines produced in a Member State in principle, that is, irrespective of any conflict between those designations and designations listed in Annex III to that regulation, as 'other particulars' within the meaning of those provisions, provided that Member State has not adopted any legislation regarding the use of those designations as 'other traditional terms' within the meaning of Article 47(2)(b) in conjunction with the fifth indent of point B(1)(b) of Annex VII of Regulation No 1493/1999 and Article 23 of Regulation No 753/2002.

53. Article 47(2) of Regulation No 1493/1999 mentions three types of particulars: certain compulsory terms, [18] optional terms subject to conditions and other optional terms, including information which may be useful for consumers. The scope of the protection afforded to those particulars is determined according to their substance. In this case, however, only the two optional terms are of relevance.

15 — Case C-315/92 *Clinique Laboratories and Estée Lauder Cosmetics* [1994] ECR I-317, paragraph 12 et seq. In paragraph 14 of that judgment, the Court found that Article 30 of the EC Treaty (now Article 28 EC) prohibits obstacles to the free movement of goods resulting from rules that lay down requirements to be met by such goods (such as requirements as to designation, form, size, weight, composition, presentation, labelling, packaging), even if those rules apply without distinction to all products, unless their application can be justified by a public-interest objective taking precedence over the free movement of goods.

16 — See Zipfel, 'Der lebensmittelrechtliche Täuschungsschutz im Blickfeld des EG-Rechts', *Zeitschrift für das gesamte Lebensmittelrecht — ZLR* 5-6/1994, p. 557, 564.

17 — Case C-313/94 *Graffione* [1996] ECR I-6039, paragraph 24. In that judgment the Court makes express reference to the judgment in *Clinique*.

18 — Under Annex VII to Regulation No 1493/1999, such particulars are, for example, the sales designation of the product, the nominal volume, the actual alcoholic strength by volume, and the lot number in accordance with Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs.

54. Other traditional terms are optional particulars subject to conditions (regulated 'optional particulars' in the words of the order for reference). Under Article 23 of Regulation No 753/2002, other traditional terms are 'additional terms traditionally used … to designate … the production or ageing method or the quality, colour, type of place, or a particular event linked to the history of the wine concerned and defined in a Member State's legislation for the purposes of designating the wines concerned originating in its territory'.

55. Article 6 of Regulation No 753/2002 is the protective clause governing other particulars and other traditional terms. The use of other particulars within the meaning of point B(3) of Annex VII to Regulation No 1493/1999 is clarified by Article 6 of Regulation No 753/2002. Under that provision, the use of other particulars is subject to the condition that there is no risk that such particulars might mislead consumers with regard to compulsory or regulated optional particulars.

56. In my opinion, the wording of Article 6(1) of Regulation No 753/2002 does not refer to an abstract risk of misleading consumers. An interpretation of Article 6 of Regulation No 753/2002 as indicating an abstract risk of misleading consumers would run counter to the purpose of the principle of authorisation or misuse, since a specific, almost casuistic approach to the risk of misleading consumers is inherent in that principle. An abstract approach would also affect disproportionately the legitimate interests of producers.

57. The risk of misleading consumers plays a similar role in the legislation on wine designations as the likelihood of confusion in trade mark law. With regard to that risk, the Court has held in a different context that 'by authorising the use of brand names to supplement the description, presentation and advertising of sparkling wines, the Community legislature necessarily intended to balance the interests involved as between, on the one hand, the protection of consumers, and in particular the right not to be misled as to the intrinsic qualities of a product, and, on the other, the protection of intellectual property rights and, in particular, the legitimate interest of the owners of a brand name to use and exploit it for commercial purposes. That process of balancing the interests involved would be seriously

undermined if a mere risk of confusion, found to exist without even taking the opinions and habits of the consumers concerned into consideration, were enough to prevent the use of an appellation protected as a brand name'. [19] On a proper construction of Article 13(2)(b) of Regulation No 2333/92, [20] which also contains a prohibition on using certain particulars because of a risk of misleading consumers, 'it is not sufficient for the prohibition laid down by that provision to be applied to find that a brand name which includes a word appearing in the description of one of the products there mentioned is, as such, likely to be confused with that description. It is also necessary to establish that use of the brand name is in fact likely to mislead the consumers concerned and thus affect their economic behaviour. In that respect, it is for the national court to have regard to the presumed expectations, in regard to that information, of an average consumer who is reasonably well informed and reasonably observant and circumspect.' [21]

58. The wording of Article 6 of Regulation No 753/2002 which refers to the specific risk of misleading consumers therefore makes clear that the possibility of an overlap with situations covered by regulated particulars does not mean *per se* that an 'other particular' is not permitted. [22] As the Commission convincingly argues, in view of the broad scope for particulars under the fifth indent of point B(1)(b) of Annex VII to the regulation, this would significantly restrict the scope for the other particulars. [23]

59. Any other interpretation would also run counter to the aim of the reform, which is to create marketing freedom by authorising other unregulated particulars, and virtually reverse the intended liberalisation of the legislation on wine designations by the back door. The main purpose of the new legislation

19 — Case C-303/97 *Sektkellerei Kessler* [1999] ECR I-513, paragraph 32. That case concerned the risk of confusion in connection with the labelling of German Sekt. The question was whether the general use of a Sekt brand name 'Kessler Hochgewächs' is prohibited because of an abstract risk of confusion with the designation 'Riesling-Hochgewächs', which is reserved for wines produced exclusively from grapes of the Riesling variety under both Community law and national law. Advocate General Fennelly also took the view that a purely abstract risk of confusion was not sufficient (Opinion in Case C-303/97 *Sektkellerei Kessler* [1999] ECR I-513).

20 — Council Regulation (EEC) No 2333/92 of 13 July 1992 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1992 L 231, p. 9). Article 13(2) of that regulation provides: 'Where the description, presentation and advertising of the products referred to in Article 1(1) are supplemented by brand names, such brand names may not contain any words, syllables, signs or illustrations which(a) are likely to cause confusion or mislead the persons to whom they are addressed within the meaning of paragraph 1; or(b) are liable to be confused with all or part of the description of a table wine, a quality wine produced in a specified region, including a quality sparkling wine psr or an imported wine whose description is governed by Community provisions or with the description of any other product referred to in Article 1(1), or are identical to the description of any such product, unless the products used for constituting the cuvée of the sparkling wine in question are entitled to such description or presentation.'

21 — Case C-303/97 *Sektkellerei Kessler* (cited above in footnote 19, paragraph 38).

22 — In the specialist literature too, specific examples of 'other particulars' permitted under point B(3) are particulars on 'production methods and processes etc.', that is, particulars which certainly overlap, in terms of the situation covered, with the particulars under the fifth indent of point B(1)(b): Koch, loc. cit. (footnote 15), p. 2136.

23 — Commission's observations, paragraph 17.

on wine designations is ultimately to ensure that authorisation to use a designation is no longer strictly dependent on whether or not a certain regulated situation exists, but solely on whether there is a risk of misleading consumers. Following the reform, optional particulars were to be permitted outside the area covered if possible. However, since the definition of other traditional terms under Article 23 of Regulation No 753/2002 is very broad, it cannot be interpreted as meaning that there is no scope for other particulars in contravention of the spirit of Article 6(1) of Regulation No 753/2002. [24]

60. Assessing whether a certain designation is misleading is a point of fact which will have to be clarified by the national court in the main proceedings. [25] However, this is not automatic in the sense that any other particular would be misleading in principle solely because it referred to facts which may also be covered by regulated optional particulars.

61. Nor is this affected by the consideration that the use of an 'other particular' for the labelling of wines could possibly lead an uninformed consumer wrongly to assume that it is a regulated, i.e. legally defined, particular. The prohibition on misleading information under the legislation on wine designations does serve the purpose of preventing, in the marketing of wine, all practices which are of such a nature as to create false appearances. [26] However, as has already been mentioned above, the Court has consistently held that a factual approach should be taken. [27] The purely abstract risk of the appearance of a protected designation cannot mean that the use of an unregulated particular is not permitted, as long as consumers are not actually misled in a specific case: that would not be consistent with the balancing of the interests involved, as desired by the Commission legislature, that is to say between consumer protection and the protection of the intellectual property rights of the person marketing

24 — This interpretation has the advantage that it promotes the development of traditional terms. For example, the other traditional term 'Reserve' has developed in German in Austria specifically having regard to Annex III to Regulation No 753/2002. Wines with the designation 'tête de cuvée' can be found in France. The use of the traditional term 'cuvée' was regulated in the repealed French Code du vin (cf. Article 284(4)(2) of the Code du vin) and related to the methods of production. That provision had expressly and exceptionally excluded the use of the term 'cuvée' from the principle of prohibition which applied in the legislation on wine at that time (cf. Lamborelle, J.-C., Pillot, J., *Code du vin 1999 commenté et annoté*, Causse, 1999, p. 241 et seq.). The new French legislation on wine contains similar provisions in Article L 644-2 of the Code rural, but that particular is not registered in Annex III to Regulation No 753/2002.

25 — Case C-303/97 *Sektkellerei Kessler* (cited above in footnote 19, paragraph 36). It is for the national court to assess whether an appellation, brand name or advertising statement may be misleading. In this case, it is for the national court to assess in the light of the circumstances whether, bearing in mind the consumers to whom it is addressed, a brand name or its component parts are liable to be confused with all or part of the description of certain wines. In that respect, it is also apparent from the Court's case-law that the national court must take into account the presumed expectations of an average consumer who is reasonably well informed and reasonably observant and circumspect.

26 — Case 56/80 *Weigand* [1981] ECR 583, paragraph 18.

27 — Case C-303/97 *Sektkellerei Kessler* (cited above in footnote 19, paragraph 32 et seq.); Case C-81/01 *Borie Manoux* [2002] ECR I-9259, paragraph 27 et seq.

the wine.[28] This statement must hold *a fortiori* in the reformed legislation on wine designations. Otherwise the principle of prior authorisation of unregulated particulars would be completely undermined: The argument that the appearance of a regulated term might be produced can be made with regard to any other particular.[29]

62. Lastly I would like to make clear that the fact that the term 'Réserve' refers to the production or ageing method for the wine is not sufficient to prohibit its use for German wines. In order to be able to prohibit it, either a specific risk of misleading consumers would have to be established or an express provision would have to prohibit its use.

63. The answer to the first question must therefore be that a particular which refers to the production or ageing method or the quality of the wine may be permitted not only as a regulated 'optional particular' in accordance with the fifth indent of point B(1)(b) of Annex VII to Regulation No 1493/1999 under the conditions provided for therein and in Article 23 of Regulation No 753/2002, but also as an 'other particular' in accordance with point B(3) of Annex VII to Regulation No 1493/1999.

C — *The second question*

64. With its second question the Bundesverwaltungsgericht is seeking to ascertain whether Article 24(2)(a) of Regulation No 753/2002 is to be interpreted as meaning that imitation or evocation exists only if it is in the same language as that of the protected traditional term.

65. Under Article 24(2) of Regulation No 753/2002 traditional terms are protected against 'all misuse, imitation or evocation, even if the protected term is accompanied by an expression such as "kind", "type", "style", "imitation", "brand" or similar'.

66. As in national legal orders, Community law includes the principle that the text should be interpreted by itself according to

28 — Opinion of Advocate General Geelhoed in Case C-81/01 *Borie Manoux* (cited above in footnote 9, point 47).

29 — See also the German Bundesverwaltungsgericht, Order of 27 March 2002 — BVerwG 3 B 62.02, LMRR 2003, p. 61, discussed by Koch, 'Was der Weintrinker beim Stichwort "feinherb" denkt', *Zeitschrift für das gesamte Lebensmittelrecht — ZLR* 4/2003, p. 458 et seq. Reference should also be made to the judgment in Case C-291/00 *LTJ Diffusion* [2003] ECR I-2799 on the interpretation of Article 5(1)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989, L 40, p. 1).

its wording. The normal and natural meaning of the words must be established in the direct context of the sentence. [30] Only where, by reason of the divergences that exist between the versions of the text in different languages, it does not lend itself to a clear and uniform interpretation on the point in question must it be interpreted by reference to the purpose and the general scheme of the provisions. [31] When the wording of secondary Community law is open to more than one interpretation, preference should be given to 'the interpretation which renders the provision consistent with the Treaty. An implementing regulation must also be given, if possible, an interpretation consistent with the provisions of the basic regulation'. [32]

67. It is striking that the list of prohibited situations in Article 24(2) of Regulation No 753/2002 does not explicitly include translations of the protected term. [33] In this respect Article 24(2) of Regulation No 753/2002, which is an implementing regulation, [34] differs from the — otherwise identical — Article 48 of Regulation No 1493/1999, which prohibits in quite general terms the misleading of consumers with respect to all kinds of compulsory and optional particulars, expressly including, 'if the information is used in translation or with a reference to the actual provenance or with additions such as "kind", "type", "style", "imitation", "brand" or the like'.

68. The silence of an implementing regulation regarding a certain situation which is regulated (differently) in the basic regulation is not always a gap in the law contrary to the legislative scheme. [35] Rather, the difference in the wording of the basic Regulation No 1493/1999 and the implementing Regulation No 753/2002 may also, according to the spirit and purpose of the rules, be intended to restrict the scope of the prohibition. In my opinion, the failure to mention translation in Article 24(2) of Regulation No 753/2002 is not pure coincidence, but represents a deliberate decision not to include translations in the prohibition under Article 48 of Regulation No 1493/1999 and thus a restriction of the scope of the protection afforded by the prohibition under Article 48.

69. Such an interpretation can only be justified schematically and teleologically and takes account of the nature of the traditional

30 — Oppermann, *Europarecht*, 3rd edition, 2005, p. 207.

31 — Case 6/74 *Moulijn* v *Commission* [1974] ECR 1287, paragraphs 10 and 11.

32 — Case C-90/92 *Tretter* [1993] ECR I-3569, paragraph 11.

33 — This statement applies not only to the German language version, but also, for example, to the Slovenian, English, French, Spanish and Italian versions.

34 — It is clear from the mention of the legal basis of Regulation No 753/2002 that it is an implementing regulation for the basic Regulation No 1493/1999. The legal basis of Regulation No 753/2002 is the EC Treaty and Regulation No 1493/1999.

35 — See my Opinion in Case C-1/06 *Bonn Fleisch* [2007] ECR I-5609, point 40.

terms. In addition to the differences already highlighted in the wording of Regulations No 1493/1999 and No 753/2002, the scope of the protection for traditional terms is typically different, as far as translations are concerned, from that in the case of protected designations of origin. [36]

70. Regulation No 753/2002 lists the protected traditional terms in Annex III in the form of a table in which, alongside the wines concerned and the category of wine, express mention is also made of the language concerned in which the term in question is protected. Where the Commission rightly points out in its submissions on the third question that the protection of traditional designations applies only to the categories of wine mentioned in the Annex [37] (quality wine psr), the same must apply to the languages, which are listed in that Annex alongside the wine categories: The Annex equally specifies the scope of the prohibition on imitation with regard to all categories listed therein.

71. Article 24 of Regulation No 753/2002 itself confirms this interpretation, because under the second paragraph of Article 24(4) the protection of a traditional term expressly applies only for the language(s) in which it appears in Annex III. In connection with the deliberate omission of translations from the prohibition on imitation under Article 24(2) of Regulation No 753/2002, it is clear that only the use of the protected term in its own language, that is, in the registered original language, may be prohibited.

72. I would point out that Article 24 of Regulation No 753/2002 constitutes a special rule for other traditional terms vis-à-vis Article 48 of Regulation No 1493/1999. According to the general principle of '*lex specialis derogat legi generali*' [38] the special provision takes precedence. Article 48 of Regulation

36 — Judgment in Case C-66/00 *Dante Bigi* [2002] ECR I-5917, Opinion of Advocate General Léger in that case, point 50, to which the reference is made in the Opinion of Advocate General Mazák in Case C-132/05 *Commission* v *Germany*, pending before the Court, point 42. In support of the fact that the translation of a protected designation of origin is protected to the same extent as the registered protected designation of origin itself, Advocate General Mazák relies on the clear wording of Article 13(1) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 No L 208, p. 1), repealed and replaced by Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12), which contains an express prohibition on translations.

37 — Commission's observations, paragraphs 24, 27-29. See also Case C-283/02 *Italy* v *Commission*, not published in the ECR, paragraph 40.

38 — See, for example, the Joined Opinion of Advocate General Geelhoed in Case C-221/00 *Commission* v *Austria* and Joined Cases C-421/00, C-426/00 and C-16/01 *Sterbenz and Hang* [2003] ECR I-1007, point 48, and his Opinion in Case C-99/01 *Linhart and Biffl* [2002] ECR I-9375, point 29.

No 1493/1999 contains the general prohibition on misleading consumers as regards all possible particulars under the regulation. Article 24 of Regulation No 753/2002, on the other hand, specifies the prohibition on misleading consumers restrictively for just one category of particulars — other traditional terms. Such an interpretation of the implementing Commission Regulation No 753/2002 is also consistent with the basic Regulation No 1493/1999.

73. That conclusion is also supported by an interpretation in the light of the spirit and purpose of the rule. The spirit and purpose of introducing unregulated 'other particulars' like other traditional terms is to liberalise the legislation on wine designations for the purposes of the prohibition on misuse. [39] If the regulation itself therefore seeks only to preclude expressly prohibited particulars, it is clear that the prohibition criteria contained therein may not be interpreted broadly, going beyond their wording, contrary to the reversal of the prohibition principle.

74. Rather, the paradigm shift to the misuse principle is to be taken into consideration on a teleological interpretation to the effect that an abstract prohibition on translations is justified only where they give rise *per se* to a risk of misleading consumers. This premise is, for example, the basis for the prohibition on the translation of protected designations of origin and other geographical indications since most particulars thus protected, in particular indications, of origin, mean the same to consumers in other languages as in the original language. Translations of those terms undoubtedly generally indicate the protected goods or services and are therefore liable *per se* to mislead. For example, consumers will immediately think of a cheese produced in a certain Italian region if they hear the term 'Parmigiano', but they will also have the same association for the translation 'Parmesan'. Precisely this equivalence of the translation with the protected term is the *ratio legis* of the general prohibition

39 — The regulation thus takes up a general structural principle of public law under which the individual enjoys freedom to act in principle provided the specific act is not expressly prohibited or forbidden. In this respect a link can be found with the general legal principle of '*nullum crimen sine lege certa, praevia, scripta et stricta*' because in criminal law and also in public law that principle takes account of the idea of limitation stemming from the general freedom to act enjoyed by the individual. In Community law the general freedom to act is regarded as one of the fundamental freedoms which are regarded as a means of defence against unlawful conduct by all the Member States' public authorities and in principle also the organs of the Community (see Müller-Graff, P.-C., 'Die konstitutionelle Rolle der binnenmarktlichen Grundfreiheiten im neuen europäischen Verfassungsvertrag', in: Köck, H.-F., Lengauer A., Ress G. (ed.), *Europarecht im Zeitalter der Globalisierung*: Festschrift für Peter Fischer, Vienna, 2004, p. 373.

on translations in the legislation on wine designations. [40]

75. It is not possible to assume such equivalence of protective scope specifically in the case of traditional terms, in contrast with protected designations of origin, [41] and for that reason a prohibition on translations is not justified here. Traditional terms are distinctive precisely because they are firmly established as such in a certain language in the tradition of the country of origin and also have a special significance for consumers and create the associations linked with them only in that language. That is the reason why (unlike, for example, the wine varieties with geographical indication in Annex II to the regulation) the regulation protects those terms only in a certain language. Whilst the indication of a variety or a certain geographical origin means the same in each language, as has been stated above, a traditional term has quite different connotations in different languages because it is based on or refers to different local traditions. The risk of confusion and thus the risk of misleading consumers inherent in the translation of other particulars do not exist in the case of traditional terms.

76. This becomes immediately clear if we ask with which of the different protected terms the French term 'Grande Réserve', for example, creates a specific risk of confusion: with the Greek term 'Ειδικά Επιλεγμένος (Grand réserve)', the Spanish term 'Gran Reserva' or the Portuguese term 'grande reserva' or 'Super reserva'? That intellectual game clearly confirms that the traditional term is unique and distinguishable only on the basis of the language in which it is protected. [42] A prohibition on translations for those terms would run counter to the spirit of the regulation which, furthermore, allows each country to be able to have the

40 — This was made very clear by Advocate General Léger in his Opinion in Case C-66/00 *Dante Bigi* [2002] ECR I-5917. In order to justify why the designation 'Parmesan' is to be regarded as a breach of the protection of the designation of origin 'Parmigiano Reggiano' for the purposes of Article 13(1)(1)(a) and (b) of Regulation No 2081/92, he not only relies on the existence of a translation, even though the regulation expressly prohibits translations. Rather he explains that the translated term is a faithful translation of the protected term 'Parmigiano Reggiano', in that it 'expresses the historic, cultural, legal and economic reality that attaches to the registered name and to the product covered by that registration' (point 50) and thus links directly to the associative effect of the translation.

41 — These enjoy a particularly high level of protection and must therefore be strictly distinguished from other particulars which mark a wine. See the restrictive interpretation by the Court of Justice in Case C-347/03 *Regione autonoma Friuli-Venezia Giulia* [2005] ECR 3785, paragraph 96 et seq. As has already been explained at the beginning, a comprehensive prohibition on translations applies to geographical designations of origin in the general legislation on wine designations on the basis of the case-law of the Court of Justice and under the clear wording of Article 13(1) of Regulation No 2081/02: Case C-66/00 *Dante Bigi* (cited above in footnote 36), Opinion of Advocate General Léger in that case, point 50, Opinion of Advocate General Mazák in Case C-132/05 *Commission* v *Germany* (cited above in footnote 36), point 42.

42 — On the differences between the designations 'Ruby' and 'Rubino' for port see Case C-283/02 *Italy* v *Commission* (cited above in footnote 37), paragraph 77 et seq.

same term protected separately in its own language. [43] For that reason it is not possible to concur with the argument put forward by the Spanish Government regarding translation.

77. Whilst it is therefore clear that the Community legislature deliberately decided not to prohibit translations for wines which are not wines in the same category and thus restricted the scope of the protection for the traditional terms to their own language, that cannot apply only to misuse, but must apply equally to all situations under Article 24(2) of Regulation No 753/2002, that is to say also to imitation and evocation. Otherwise the deliberate decision not to prohibit translations would be entirely meaningless.

78. Lastly I would like to stress that the use of the German expression 'Reserve' for German wines with regard to Annex III of Regulation No 753/2002, which registered that term for Austrian wines, would nevertheless constitute wrongful appropriation which would also have to be penalised in Germany. However, the use of derived terms (such as 'Privatreserve') and translations (such as 'Réserve' in French) is not prohibited by the second subparagraph of Article 24(4) of Regulation No 753/2002.

79. The answer to the second question must therefore be that there is imitation or evocation within the meaning of Article 24(2)(a) of Regulation No 753/2002 if it is in the language of the protected traditional term.

D — *The third question*

80. With its third question the Bundesverwaltungsgericht is seeking to ascertain whether Article 24(2) of Regulation No 753/2002 is to be interpreted as meaning that the traditional terms listed in Annex III are protected only with regard to wines from the same producer Member State as the protected traditional term.

43 — I would also like to point out that the French terms 'Réserve' and 'Grande réserve' have been protected in France since 19 August 1921. The repealed Code du vin (see Article 284(4)(2) of the Code du vin) contains special provisions governing the terms 'Réserve' and 'Grande réserve' (see Lamborelle, J.-C., Pillot J., loc. cit. [footnote 25], p. 241 et seq.). That Code du vin has not been in force since 6 September 2003. The new French legislation on wine (Ordonnance No 2006-1547 du 7 décembre 2006 relative à la valorisation des produits agricoles, forestiers ou alimentaires et des produits de la mer) appears to regulate the lawfulness of using the terms 'Réserve' and 'Grande réserve' by means of the general clause laid down in Article L 644-2 of the Code Rural. In Spain Article 3(2) of Law 24/2002 (Ley 24/2003, de 10 de julio 2002, de la Viña y del Vino, http://noticias.juridicas.com/base_datos/Admin/l24-2003.t1.html) regulates the terms 'Reserva' and 'Gran reserva' and lays down very precise conditions for ageing methods and processes. In comparison with the old and the new French legislation, Spanish law provides very precisely for the ageing methods for which the terms 'Reserva' and 'Gran reserva' may be used. In France it is pointed out that the use of the terms 'Réserve' and 'Grande réserve' should not create any risk of confusion with designations of origin for wines.

81. The Commission is correct in its view that essentially only wines in the same category (the category 'quality wine psr') can be affected, as the traditional term is linked only with them. [44] On the other hand, it would be wrong to restrict the question referred to the use of the terms 'Reserve' or 'Privat-Reserve' as the case in the main proceedings also concerns the French terms 'Réserve' and 'Grande Réserve'. Nor do I see any reason to restrict the question referred solely to use for wines from Germany.

82. Essentially the Member States which submitted observations and the Commission are correct in their view that the protection guaranteed under Article 24(2) of the implementing regulation may not be restricted to protection in respect of wines from the State of origin of the designation.

83. Unlike with regard to the language of the term, it is not possible to infer from the wording of Regulations No 1493/1999 and No 753/2002 any restrictions as regards the origin of the wines designated with protected terms. In order to be effective, the protection must apply throughout the Community and thus *a fortiori* in respect of wines from other Member States, otherwise the protection of traditional terms guaranteed by Community law would be meaningless, which would undermine the full effectiveness of Community law (interpretation according to the *effet utile*).

84. Lastly, this is the precise purpose of rules of Community law which seek to define uniform standards of protection throughout the Community. The protection of the term — in its own language — against use in other Member States for the wines produced there is precisely the added value of the rule of Community law compared with purely national protective rules. In its observations the Commission rightly points out that the protective of a traditional term under Community law is linked to the fact that the term has an importance which goes beyond the national market. [45]

85. The answer to the third question must therefore be that traditional terms are protected not only with regard to use for wines from the same producer Member State as the protected traditional term. The protection extends throughout the European Union.

44 — See also Case C-283/02 *Italy* v *Commission* (cited above in footnote 37), paragraph 32 et seq.

45 — Commission's observations, paragraph 32.

VI — Conclusion

86. In the light of the foregoing, it is suggested that the Court answer the questions asked by the Bundesverwaltungsgericht as follows:

'(1) A particular which refers to the production or ageing method or the quality of the wine is to be permitted not only as a regulated "optional particular" in accordance with the fifth indent of point B(1)(b) of Annex VII to Regulation (EC) No 1493/1999 under the conditions provided for therein and in Article 23 of Regulation (EC) No 753/2002, but may also be permitted as an "other particular" in accordance with point B(3) of Annex VII to Regulation (EC) No 1493/1999, where this creates no risk of misleading consumers in the specific case.

(2) Article 24(2)(a) of Regulation (EC) No 753/2002 is to be interpreted as meaning that there is imitation or evocation only if it is in the language of the protected traditional term.

(3) Article 24(2) of Regulation (EC) No 753/2002 is to be interpreted as meaning that the protection of the traditional terms listed in Annex III does not depend on the producer Member State of the wines for which the traditional terms are used and extends throughout the Community.'