JUDGMENT OF THE COURT
18 May 1994

In Case C-309/89,

Codorniu SA, a company incorporated under Spanish law, whose registered office is in San Sadurni de Noya (Spain), represented by Enric Picanol, Antonio Creus, Concepcion Fernandez and Mercedes Janssen, of the Barcelona Bar, with an address for service in Luxembourg at the Chambers of Arendt and Medernach, 8-10 Rue Mathias Hardt,

applicant,

v

Council of the European Union, represented by Yves Cretien, Legal Adviser, and German-Luis Ramos Ruano, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Director of the Legal Department of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

supported by

Commission of the European [Union], represented by Jose Luis Iglesias Buhigues, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the - office of Georgios Kremlis, of its Legal Service, - Wagner

Centre, Kirchberg,

intervener,

APPLICATION for a declaration that Article 1(2)(c) of Council Regulation (EEC) No 2045/89 of 19 June 1989 amending Regulation (EEC) No 3309/85 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1989 L 202, p. 12) is void in so far as it inserts paragraph 5a(b) into Article 6 of Council Regulation (EEC) No 3309/85 of 18 November 1985 (OJ 1985 L 320, p. 9),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida and M. Diez de Velasco (Presidents of Chambers), C. N. Kakouris, F. Grevisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray (Rapporteur), Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 22 September 1992,

after hearing the Opinion of the Advocate General at the sitting on 27 October 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 October 1989, Codorniu SA sought a declaration pursuant to [the fourth paragraph of Article 263 TFEU] that Article 1(2)(c) of Council Regulation (EEC) No 2045/89 of 19 June 1989 amending Regulation (EEC) No 3309/85 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1989 L 202, p. 12) is void in so far as it inserts paragraph 5a(b) into Article 6 of Council Regulation (EEC) No 3309/85 of 18 November 1985 (OJ 1985 L 320, p. 9).

2 The Council adopted Regulation No 3309/85 on the basis of Article 54(1) of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (OJ 1979 L 54, p. 1) which provides for the adoption of rules relating to the description and presentation of products of the wine sector.

3 Regulation No 3309/85 established a distinction between mandatory particulars necessary for the identification of a sparkling wine and optional particulars intended to specify the intrinsic characteristics of a product or sufficiently to distinguish it from other products of the same kind on the market. Although the choice of particulars has been generally left to those concerned, special rules for the use of certain prestigious optional particulars likely to enhance the value of the product have been laid down in order to maintain fair competition on the market in sparkling wines.

4 Under the first subparagraph of Article 6(4) of Regulation No 3309/85, as amended by Article 1(2)(b) of Regulation No 2045/89, the expressions 'bottle-fermented by the traditional method', 'traditional method', 'classical method' or 'classical traditional method' and any expressions resulting from a translation of

them may be used only to describe, in particular, quality sparkling wines produced in a specified region (psr) and satisfying the conditions provided for in the second subparagraph of paragraph 4. Under the second subparagraph use of one of the abovementioned expressions in respect of a wine is allowed only if it was made sparkling by a second alcoholic fermentation in the bottle, stayed without interruption in contact with the lees for at least nine months in the same undertaking from the time when the cuvee was constituted and was separated from the lees by disgorging.

5 Regulation No 2045/89 supplements Regulation No 3309/85 mainly in relation to the quality sparkling wines produced in specified regions referred to by Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions (OJ 1987 L 84, p. 59).

6 The first recital in the preamble to Regulation No 2045/89 states that in order to facilitate the sale of certain quality sparkling wines it was necessary to widen the choice regarding the terms on the label which made clear whether wines are quality sparkling wines produced by fermentation in the bottle following the traditional method.

7 According to the third recital to Regulation No 2045/89, in order to protect such traditional descriptions which were used in France and Luxembourg for products of specific origin, the term 'crémant' should be reserved for certain quality sparkling wines manufactured in those two countries.

8 In consequence Article 1(2)(c) of Regulation No 2045/89 (hereinafter referred to as the 'contested provision') inserted in Article 6 of Regulation No 3309/85 a new paragraph 5a worded as follows:

'In the case of quality sparkling wines psr which fulfil the conditions laid down in the second subparagraph of paragraph 4:

(b) the term "crémant" shall be reserved for quality sparkling wines psr made in France or Luxembourg:

— to which this term has been applied, in combination with the name of the specified region, by the Member State in which the wine was made, and

— which were produced in accordance with special rules laid down for their manufacture by the aforementioned Member States.

However, for five wine-growing years the term "crémant", in French or in translation, may be used to describe a sparkling wine which was traditionally thus described on 1 September 1989.'

9 Pursuant to Article 2, Regulation No 2045/89 entered into force on 1 September 1989.

10 Codorniu is a Spanish company manufacturing and marketing quality sparkling wines psr. It is the holder of the Spanish graphic trade mark *(marca grafica)* 'Gran Cremant de Codorniu', which it has been using since 1924 to designate one of its quality sparkling wines psr. Codorniu is the main [Union] producer of quality sparkling wines psr, the designation of which includes the term 'crémant'. Other producers established in Spain also use the term 'Gran Cremant' to designate their quality sparkling wines psr.

11 Since it took the view that the contested provision was unlawful Codorniu brought the present action.

12 The Council lodged an objection of inadmissibility under the first paragraph of Article 91(1) of the Rules of Procedure of the Court of Justice. By order of 5 December 1990 the Court, pursuant to the first paragraph of Article 91(4) of the

Rules of Procedure, reserved its decision for the final judgment.

13 By order of 31 January 1990 the Court gave leave, pursuant to Article 93(1) and (2) of the Rules of Procedure, for the Commission of the European [Union] to intervene in support of the form of order sought by the defendant.

Admissibility

14 In support of its objection of inadmissibility the Council states that it did not adopt the contested provision on the basis of the circumstances peculiar to certain producers but on the basis of a choice of wine-marketing policy in relation to a particular product. The contested provision reserves the use of the term 'crémant' to quality sparkling wines psr manufactured under specific conditions in certain Member States. It thus constitutes a measure applicable to an objectively determined situation which has legal effects in respect of categories of persons considered in a general and abstract manner.

15 According to the Council, Codorniu is concerned by the contested provision only in its capacity as a producer of quality sparkling wines psr using the term 'crémant', like any other producer in an identical situation. Even if when that provision was adopted the number or identity of producers of sparkling wines using the term 'crémant' could theoretically be determined, the measure in question remains essentially a regulation inasmuch as it applies on the basis of an objective situation of law or fact defined by the measure in relation to its objective.

16 Codorniu alleges that the contested provision is in reality a decision adopted in the guise of a regulation. It has no general scope but affects a well-determined class of producers which cannot be altered. Such producers are those who on 1 September 1989 traditionally designated their sparkling wines with the term 'crémant'. For that class the contested provision has no general scope. Furthermore, the direct result of the contested provision will be to prevent Codorniu from using the term 'Gran Cremant' which will involve a loss of 38% of its turnover. The effect of that damage is to distinguish it, within the meaning of [the fourth paragraph of Article 263 TFEU], from any other trader. Codorniu alleges that the Court has already

recognized the admissibility of an action for annulment brought by a natural or legal person against a regulation in such circumstances (see the judgment in Case C-358/89 *Extramet Industrie v Council* [1991] ECR I-2501).

17 Under [the fourth paragraph of Article 263 TFEU] the institution of proceedings by a natural or legal person for a declaration that a regulation is void is subject to the condition that the provisions of the regulation at issue in the proceedings constitute in reality a decision of direct and individual concern to that person.

18 As the Court has already held, the general applicability, and thus the legislative nature, of a measure is not called in question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it is established that it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see most recently the judgment in Case C-298/89 *Gibraltar v Council* [1993] ECR I-3605, paragraph 17).

19 Although it is true that according to the criteria in [the fourth paragraph of Article 263 TFEU] the contested provision is, by nature and by virtue of its sphere of application, of a legislative nature in that it applies to the traders concerned in general, that does not prevent it from being of individual concern to some of them.

20 Natural or legal persons may claim that a contested provision is of individual concern to them only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (see the judgment in Case 25/62 *Plaumann v Commission* [1963] ECR 95).

21 Codorniu registered the graphic trademark 'Gran Cremant de Codorniu' in Spain in 1924 and traditionally used that mark both before and after registration. By reserving the right to use the term 'crémant' to French and Luxembourg producers, the contested provision prevents Codorniu from using its graphic trade mark.

22 It follows that Codorniu has established the existence of a situation which from the point of view of the contested provision differentiates it from all other traders.

23 It follows that the objection of inadmissibility put forward by the Council must be dismissed.

Substance

24 In support of its application Codorniu puts forward several pleas in law for annulment based on infringement of the Treaty, in particular the first paragraph of [Article 18 TFEU] and the second paragraph of [Article 40(2) TFEU], on the one hand, and [Article 3 TEU] and the first paragraph of Article 42 [TFEU] on the other, as well as breach of the principles of proportionality and equal treatment, misuse of powers and breach of essential procedural requirements.

25 As regards the first plea in law Codorniu alleges that any different treatment of similar products must be based on objective criteria. However, the quality sparkling wines psr which satisfy the conditions of Article 6(4) of Regulation No 3309/85 are similar products. It follows that an exclusive right to use the term 'crémant' which is merely an optional designation of the method of manufacturing a quality sparkling wine psr cannot be reserved to France and Luxembourg on the basis of objective criteria. The contested provision thus constitutes discrimination contrary to the first paragraph of [Article 18 TFEU] and the second paragraph of [Article 40(2) TFEU].

26 It is appropriate in the first place to point out that under the principle of non-discrimination between [Union] producers or consumers, which is enshrined in the second subparagraph of [Article 40(2) TFEU] and which includes the prohibition of discrimination on grounds of nationality laid down in the first paragraph of [Article 18 TFEU], comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified. It follows that the conditions of production or consumption may not be differentiated except by reference to objective criteria which ensure a

proportionate division of the advantages and disadvantages for those concerned without distinction between the territories of the Member States (see the judgment in Case 106/83 *Sermide v Casa Conguaglio Zucchero* [1984] ECR 4209, paragraph 28).

27 The contested provision provides that the term 'crémant' in combination with the name of the specified region shall be reserved for quality sparkling wines psr made in France or Luxembourg which satisfy the conditions provided for in the second paragraph of Article 6(4) of Regulation No 3309/85 and which were produced in accordance with the special rules laid down for their manufacture by those two Member States.

28 It thus appears that the term 'crémant' refers primarily not to the origin but the method of manufacture of the quality sparkling wine psr, in particular that provided for in Article 6(4) of Regulation No 3309/85. Since the quality sparkling wines psr sold under the Spanish graphic trade mark 'Gran Cremant de Codorniu' satisfy the conditions provided for by the contested provision, it follows that that provision treats comparable situations differently.

29 It is therefore necessary to ascertain whether such treatment was objectively justified.

30 In that respect the reason given for the reservation of the term 'crémant' was concern to protect a description traditionally used in France and Luxembourg for products of specific origin.

31 It is common ground that the first national measures providing in France and Luxembourg for the use of the term 'crémant' as a 'traditional description' were adopted in 1975. Codorniu, however, has been traditionally using its graphic trade mark containing the words 'Gran Cremant' to designate a quality sparkling wine psr since at least 1924.

32 In those circumstances the reservation of the term 'crémant' for quality sparkling

wines psr manufactured in France and Luxembourg cannot validly be justified on the basis of traditional use, since it disregards the traditional use of that mark by Codorniu.

33 The Commission observes, however, that it follows from the wording of the contested provision, according to which the term 'crémant' must be followed by specification of the region of production, that the term 'crémant' refers not so much to the method of manufacture of a quality sparkling wine psr as to its origin.

34 In that respect it must be observed that according to the contested provision the term 'crémant' is in essence attributed on the basis of the method of manufacture of the product, since the specification of the region of production serves only to indicate the origin of the quality sparkling wine psr. The origin thus has nothing to do with the attribution of the term 'crémant', which is not associated with a geographical connection.

35 The different treatment has therefore not been objectively justified and the contested provision must be declared void.

36 In view of the foregoing it does not appear necessary to consider the other pleas in law put forward by Codorniu.

Costs

37 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Council of the European Union has been unsuccessful, it must be ordered to pay the costs. Under the first paragraph of Article 69(4) of those rules the Commission of the European [Union], as intervener, must bear its own costs.

On those grounds,

THE COURT

hereby:

1. **Declares Article 1(2)(c) of Council Regulation (EEC) No 2045/89 of 19 June 1989 amending Regulation (EEC) No 3309/85 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines void in so far as it inserts paragraph 5a(b) into Article 6 of Council Regulation (EEC) No 3309/85 of 18 November 1985;**

2. **Orders the Council of the European Union to pay the costs;**

3. **Orders the Commission of the European [Union] to bear its own costs.**

Due Mancini Moitinho de Almeida
Diez de Velasco Kakouris Grevisse
Zuleeg Kapteyn Murray

Delivered in open court in Luxembourg on 18 May 1994.

R. Grass O. Due

Registrar President