

## Case T-212/02

**Commune de Champagne and Others**

**v**

**Council of the European Union and  
Commission of the European Communities**

(Action for annulment — EC/Swiss Confederation Agreement on Trade in Agricultural Products — Decision approving the Agreement — Legal scope — Wine products — Protected names — Exception for homonymy — Regulation (EEC) No 2392/89 and Regulation (EC) No 753/2002 — Quality wine psr ‘Champagne’ — Wines from the commune of Champagne in the canton of Vaud — Admissibility — Act having an adverse effect — Locus standi — Person individually concerned — Action for compensation — Causal link — Damage attributable to the Community — Lack of jurisdiction)

Order of the Court of First Instance (Third Chamber), 3 July 2007 . . . . II - 2023

### Summary of the Order

#### *1. Actions for annulment — Interest in bringing proceedings*

(Art. 230 EC; EC-Swiss Confederation Agreement on Trade in Agricultural Products, Annex 7, Art. 5(8); Council and Commission Decision 2002/309, Art. 1)

2. *Actions for annulment — Actionable measures — Measures producing binding legal effects* (Arts 230 EC and 299 EC; EC-Swiss Confederation Agreement on Trade in Agricultural Products, Arts 14 and 17(1), Annex 7, Art. 5(1) to (6) and Appendix 2; Council and Commission Decision 2002/309)
3. *Actions for annulment — Actionable measures — Measures producing binding legal effects* (Art. 230 EC; EC-Swiss Confederation Agreement on Trade in Agricultural Products, Annex 7, Art. 5(1) to (6), and Appendix 2; Council Regulation No 2392/89, Art. 29(2) and (3); Commission Regulation No 753/2002, Art. 36(3) and Annex VI; Council and Commission Decision 2002/309)
4. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link* (Art. 288, second para., EC; EC-Swiss Confederation Agreement on Trade in Agricultural Products, Annex 7, Art. 5(1) to (6) and Appendix 2; Council and Commission Decision 2002/309)

1. An action for annulment brought by a natural or legal person is admissible only in so far as the applicant has an interest in the annulment of the contested measure. In order for such an interest to be present, the annulment of the measure must of itself be capable of having legal consequences or, in accordance with a different form of words, the action must be liable, if successful, to procure an advantage for the party who has brought it.

for the protection of that name against Decision 2002/309 in so far as it approves, on behalf of the European Community, Article 5(8) of Annex 7 to the Agreement between the Community and the Swiss Confederation on Trade in Agricultural Products, the only effect of which is to authorise, for a transitional period of two years, the marketing outside the Community, under the name 'Champagne', of certain wines originating in the canton of Vaud, is inadmissible.

Therefore, the action for annulment brought by producers of wines originating in the canton of Vaud in Switzerland marketed under the name 'Champagne', by the Champagne commune in the canton of Vaud, by a wine-sector association and by an association

That provision is an arrangement, for the benefit of certain wines originating in the canton of Vaud, of the exclusive protection, afforded under Article 5(1), (2) and (3) of Annex 7 to the agreement,

to the name 'Champagne' included in the list of wine products originating in the Community appearing in Appendix 2 of that annex. Therefore, not only would the annulment of Decision 2002/309, inasmuch as it approves the latter provision, not be of any advantage to the applicants, but it would even be to their detriment in that it would remove the transitional period which the decision prescribes for their benefit.

(see paras 39, 52, 53)

2. Decision 2002/309 which approves on behalf of the European Community, *inter alia*, the Agreement between the Community and the Swiss Confederation on Trade in Agricultural Products, does not bring about a change in the applicants' legal position in Switzerland, and, on that basis, is not an act subject to judicial review pursuant to Article 230 EC.

the scope of that decision is limited to that territory and has no legal effect in the territory of Switzerland. Only the agreement, which is not susceptible to an action, is designed to produce legal effects in Switzerland, in accordance with the rules specific to the legal system of that State and once it has been ratified in accordance with the procedures which are applicable there. Therefore, that decision, adopted by the Council and the Commission on behalf of the Community, does not bring about a change in the applicants' legal position in Switzerland, such position being governed only by the provisions adopted by that State in the exercise of its sovereign power. The sole cause of the allegedly harmful effects produced by the agreement in respect of the applicants in Switzerland is the fact that the Swiss Confederation, in deciding at its absolute discretion to ratify the agreement, agreed to be bound by it and undertook, in accordance with Article 14 thereof, to take the steps necessary to ensure the performance of the obligations arising from it, including those stemming from Article 5(1) to (6) and Appendix 2 of Annex 7 to the agreement, which lays down rules for the exclusive protection of the Community name 'Champagne'.

An act of an institution adopted pursuant to the Treaty, as a unilateral act of the Community, cannot create rights and obligations outside the territory defined under Article 299 EC, so that

(see paras 90, 91, 95)

3. An applicant is entitled to bring an action pursuant to Article 230 EC only if the contested measure produces binding legal effects such as to affect his interests by bringing about a distinct change in his legal position. This is not the case with Decision 2002/309, inasmuch as it approves, in the name of the Community, Article 5(1) to (6) and Appendix 2 of Annex 7 to the Agreement between the Community and the Swiss Confederation on Trade in Agricultural Products, in respect of the applicants, namely, producers of wines originating in the canton of Vaud in Switzerland marketed under the name 'Champagne', the Champagne commune in the canton of Vaud, a wine-sector association and an association for the protection of that name, so that they do not have a legal interest in bringing proceedings against that decision.

Although those provisions of the agreement reserve the exclusive right to the name 'Champagne' in the territory of the Community to certain wines produced in the French region of Champagne under that name, that legal situation already prevailed, in regard to the applicants, when the agreement came into force and when the application was lodged. Under Article 29(3) of Regulation No 2392/89, laying down general rules for the description and presentation of wines and grape musts, when the action was brought, the name 'Cham-

pagne' could not, in theory, be used to describe any imported wine. Furthermore, the exception for homonymy, provided for, in certain circumstances, in paragraph 3 of that provision, where the geographical name of a wine produced in the Community is the same as the name of a geographical unit situated in a third country, does not apply as of right, but following an express derogating decision. On the day the application was lodged, the wine produced in the territory of the Vaud commune of Champagne was not the subject of any decision derogating from the prohibition laid down in Article 29(2) of Regulation No 2392/89, so that the applicants were legally prevented from marketing their products under the name 'Champagne'.

The provisions of 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 likewise do not permit the applicants to market in the Community the wines that they produce in the territory of the Vaud commune of Champagne under the name 'Champagne'. The exception for homonymy laid down in Article 36(3) of Regulation 753/2002 is not designed to apply as of right, but is subject to the inclusion in Annex VI to that regulation both of the third country geographical indications

that are homonymous geographical indications for a quality wine produced in special regions which may qualify for it, and the practical conditions under which those geographical indications will be differentiated from each other. However, Annex VI is empty to date and therefore does not refer to the name 'Champagne' as one of the third country geographical indications qualifying for the exception for homonymy.

be assessed on the basis of a future, hypothetical event.

(see paras 128, 133-135, 138, 139, 143-145, 149-151)

4. The Community's non-contractual liability under the second paragraph of Article 288 EC is dependent on the coincidence of a series of conditions as regards the unlawfulness of the conduct alleged against the institutions, the fact of damage and the existence of a causal link between that conduct and the damage complained of. As regards the latter condition, the damage pleaded must be the direct result of the conduct alleged.

Finally, it is inconceivable that those wines might qualify in the future for the exception for homonymy provided for in Article 36(3) of Regulation 753/2002, if Decision 2002/309 were to be annulled, having regard to the inadequate conditions laid down by Swiss law for using the municipal designation 'Champagne'. Furthermore, a possible change in the applicants' legal situation arising, for example, from a change in the conditions for granting the Vaud designation 'Champagne' could not provide justification for the applicant's interest in bring proceedings, since that interest cannot

In the territory of the Community, Article 5(1) to (6) and Appendix 2 to Annex 7 to the Agreement between the Community and the Swiss Confederation on Trade in Agricultural Products, which lays down rules for the exclusive protection of the Community name 'Champagne', have not affected the situation of the applicants, who, when the agreement came into force, were already prevented, under Regulation No 2392/89 laying down general rules for the description and presentation of

wines and grape musts, from marketing their product under the name 'Champagne'. Their inability to do so also stemmed from 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, which was applicable as from 1 August 2003. It follows that, in the territory of the Community, Decision 2002/309 approving that agreement, on behalf of the Community, cannot be the cause of the damage which the applicants claim to have suffered, since that damage, as described by the applicants, was already the consequence of the relevant Community legislation.

In the territory of Switzerland, the only source of the allegedly harmful effects produced by the agreement in respect of

the applicants is the fact that, by deciding in its absolute discretion to sign and ratify that agreement, the Swiss Confederation agreed to be bound by it and undertook, pursuant to Article 14 of the agreement, to take the steps necessary to ensure the implementation of the obligations arising thereunder, which included those stemming from Article 5(1) to (6) and Appendix 2 of Annex 7. It follows that any damage which the applicants might suffer in the territory of Switzerland as a result of the steps taken by the Swiss authorities in implementation of the agreement cannot be regarded as attributable to the Community, and therefore the Community judicature does not have jurisdiction to hear and determine an action seeking compensation for it.

(see paras 200, 201, 204-207)