OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 2 February 1991 *

Mr President,
Members of the Court,

A. Introduction

1. The action before the Court for failure to fulfil obligations is concerned with the compatibility with Community law of the French rules on the organization of the market in '*vins doux naturels*' (natural sweet wines).

2. The rules contested by the Commission are described in the Report for the Hearing. I can therefore merely reiterate their essential features in this Opinion.

The French rules

3. The French legislation resulted in a Comité Interprofessionnel des Vins Doux Naturels et Vins de Liqueurs à Appellations Contrôlées (hereinafter referred to as 'CIVDN'). That committee is made up of representatives of producers, traders and the French administration.

4. CIVDN fixes, for each marketing year, a marketing credit ('crédit de commercialisation') which determines the quantity of *vins doux naturels* which may be marketed by producers — per hectare under cultivation — during the twelve months following the date on which each 'appellation' was released. That marketing authorization is divided into three equal tranches, the release of which is staggered. Quantities produced within the statutory maximum yield per hectare but exceeding the marketing credit may not be marketed immediately but are allocated to a strategic and ageing stock ('stock de sécurité et de vieillissement') and retained in producers' cellars. The quantities thus stored may be utilized under a marketing credit for a subsequent marketing year (which, of course, presupposes that the producer's harvest is less than the marketing credit laid down for that year). Quantities earmarked for export are not subtracted from the marketing credit, but from the

* Original language: German.

strategic and ageing stock. For the December 1988 to January 1990 period, however, exceptional arrangements were applied whereby those quantities were also deducted from the marketing credit until such time as the operator produced proof of exportation.

5. At the same time, CIVDN lays down price rules intended to supplement the mechanism described above and thereby to secure market stability. In this way, guide prices and minimum and maximum intervention prices are fixed for each marketing year. The prices applicable to the products are agreed by contract between producers and dealers and the contracting parties do not have to adhere to the guide prices laid down. However, the quantities sold in this way may not leave producers' cellars until the contracts in question have been registered with CIVDN and CIVDN has issued a certificate to that effect. If the market prices resulting from the contracts registered in this way are below the minimum intervention price, the release of next instalment of the marketing credit will be postponed. If, on the other hand, the contract prices are in excess of the maximum intervention price, the release of the next instalment will be brought forward.

6. The aforementioned decisions of CIVDN are then approved by the competent ministry, as a result of which they become generally binding.

The Community legislation

7. Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine [1] lays down rules which, in principle, apply to all wines produced in the Community. According to Article 1 (1) of that regulation, the common organization of the market in wine comprises, *inter alia*, a price system and rules governing intervention. However, the price system set out in Title III of the regulation applies only to table wines. This is also true — with an exception to which I shall discuss later — of the rules governing intervention. Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions, [2] as amended by Council Regulation (EEC) No 2043/89 of 19 June 1989, [3] lays down a framework of Community rules governing the production and control of the wines in question, which is to be fleshed out by specific provisions adopted by the Member States. Those rules provide, *inter alia*, that the Member States are to fix, for each of those quality wines produced in a specified region ('quality wines psr'), a yield per hectare, which, if exceeded, normally entails a prohibition on the use for the whole harvest of the designation claimed (as a quality wine psr) (Article 11).

1 — OJ 1987 L 84, p. 1.
2 — OJ 1987 L 84, p. 59.
3 — OJ 1989 L 202, p. 1.

8. According to Article 2 of Regulation No 823/87, the specific provisions applicable to quality wines psr are based on the following factors:

'(a) demarcation of the area of production;

(b) vine varieties;

(c) cultivation methods;

(d) wine-making methods;

(e) minimum natural alcoholic strength by volume;

(f) yield per hectare;

(g) analysis and assessment of organoleptic characteristics.'

9. The first paragraph of Article 18 provides as follows:

'Producer Member States may, taking into account fair and traditional practices:

— in addition to the factors listed in Article 2, determine such other conditions of production and characteristics as shall be obligatory for quality wines psr,

— in addition to the other provisions laid down in this Regulation, lay down any additional or more stringent characteristics or conditions of production, manufacture and movement in respect of the quality wines psr produced in their territory.'

10. Quality wines psr also include quality liqueur wines produced in specified regions ('quality liqueur wines psr'), which in France have the traditional specific name '*vins doux naturels*'. Specific rules for quality liqueur wines psr were laid down by Council Regulation (EEC) No 4252/88 of 21 December 1988 on the preparation and marketing

of liqueur wines produced in the Community. [4]

11. Article 17 of that regulation provides as follows:

'In addition to the provisions provided for in this Regulation, producer Member States may, taking into account fair and traditional practices, lay down any additional or more stringent characteristics concerning declarations of activity or conditions concerning production, preparation, ageing and release to the market for quality liqueur wines psr as referred to in this Title and prepared within their territory.'

12. It appears from the second recital in the preamble to Regulation No 4252/88 that quality liqueur wines psr must also comply with the provisions of Regulation No 823/87.

13. It is common ground that none of the relevant provisions of Community law contain any express prohibition preventing the adoption or maintenance of the French provisions at issue relating to *vins doux naturels*.

The matters at issue

14. The Commission takes the view that the unlawful nature of the French rules may be inferred from the system of the Community provisions in the field of the wine market. In contrast, the French Republic considers that the Community organization of the wine market is not exhaustive in this respect and that it therefore does not preclude the introduction of measures of the sort provided for by the French rules in the sphere of *vins doux naturels*.

Forms of order sought

15. The Commission claims that the Court should:

(a) declare that by

— fixing the price of *vins doux naturels* on the French market,

4 — OJ 1988 L 373, p. 59.

— fixing a marketing quota for *vins doux naturels* beyond which a producer may not market wines produced within the limits of the statutory yield per hectare but must allocate them to a strategic and ageing stock,

— making withdrawals of wines from producers' cellars conditional upon prior production of a document issued by the CIVDN certifying that the contract has been registered, thus making it impossible to dispose of any quantities outside the marketing credit system, and

— limiting exports of quality wines psr by providing that quantities in strategic stock may be exported only if the required amounts are available within the marketing credit of the trader concerned,

the French Republic has failed to fulfil its obligations under Community law and in particular under the provisions of Council Regulations (EEC) No 822/87 and (EEC) No 823/87 concerning quality wines psr; and

(b) order the French Republic to pay the costs.

The French Republic claims that the Court should:

(a) declare the application unfounded;

(b) order the Commission to pay the costs.

B. Opinion

I — *Admissibility*

1. *Subject-matter of the proceedings*

16. As I have already mentioned, *vins doux naturels* and quality liqueur wines psr form part of the group of quality wines psr within the meaning of Regulation No 823/87. According to Article 1 (2) of Regulation No 823/87, the expression quality wine psr covers other products still, such as, for example, sparkling wines produced in specified regions.

17. The Commission's objections to the French legislation relate — as can be clearly seen from the application — solely to *vins*

doux naturels, which are the subject, moreover, of its first three complaints. In contrast, the fourth complaint is concerned with the exportation of 'quality wines psr' and therefore appears at first sight to be broader. This is, however, manifestly an inaccuracy — of completely minor importance — which raises no doubt about the actual scope of the proceedings.

18. In the form of order sought, the Commission accuses the French Republic of failing to fulfil its obligations under Community law and in particular under Regulations Nos 822/87 and 823/87. In contrast, Regulation No 4252/88 is not mentioned in the form of order sought, although it is extensively discussed in the application and in the reply. This is surprising. According to the terms of Article 1 (1) of Regulation No 4252/88, that regulation lays down rules for the preparation and *marketing* of liqueur wines, which also include quality liqueur wines (and hence *vins doux naturels*). It therefore might have been expected that, as it is a question of assessing the compatibility of the French legislation, it would have been the provisions of that regulation which would have been examined first and above all, and that the result of that examination would have been reflected in the form of order sought by the Commission. The Commission's representative rightly indicated at the hearing that the provisions applicable to *vins doux naturels* constituted a 'web' of provisions set out in Regulations Nos 822/87, 823/87 and 4252/88. The Commission infers the illegality of the French rules from an overall assessment of those provisions, as is shown by the fact that it does not refer in the form of order sought to specific provisions but — quite generally — to Regulations Nos 822/87 and 823/87. Should the incompatibility of the French legislation with Community law be inferred from an overall examination of the provisions of Community law applicable to *vins doux naturels*, it would have been appropriate to refer to all those provisions and hence also to Regulation No 4252/88 in the form of order sought.

19. A glance at the pre-litigation procedure may help to cast light on the reason for that omission. Regulation No 4252/88 was adopted on 21 December 1988 and published in the Official Journal on 31 December 1988. The first letter by which the Commission asked the French Government to submit observations on the question of the compatibility of the national rules with Community law is dated 28 December 1988. At that time, the author of the letter was manifestly ignorant of the existence of Regulation No 4252/88. Likewise, in the Commission's amplifying letter dated 24 May 1989, that regulation is not even mentioned. The first reference to Regulation No 4252/88 is contained in a memorandum of 1 June 1989 intended to be forwarded to the Commission, by which the French Government answered the Commission's first letter. By an oversight of the French authorities, that letter was not forwarded to the Commission until 29 June 1990, that is to say, after the Commission had delivered its reasoned opinion under the first paragraph of Article 169 of the EEC Treaty (on 19 June 1990). That delay may perhaps also explain the Commission's further failure to tackle the issue in

that opinion from the point of view of Regulation No 4252/88. It is nevertheless curious that more than a year and a half after the adoption of that regulation, the competent departments did not yet seem to have become aware of its existence.

20. What consequences should be drawn from the fact that the form of order sought by the Commission seeks merely a declaration that Regulations Nos 822/87 and 823/87 have been infringed, but not that Regulation No 4252/88 has been infringed? From a strictly formal point of view, it might be considered that the subject-matter of the proceedings is defined exhaustively by the *form of order sought* in the application, and that hence the Commission is not entitled to rely on Regulation No 4252/88 in order to argue that the French legislation is contrary to Community law. That would have serious consequences for the Commission's argument, since, in so far as it refers to the context and the common aims of the relevant provisions, it would have to refrain from taking a substantial part of the said rules into account.

21. Nevertheless, in my view, the decisive point is that it appears unequivocally from the application, taken as a whole, that the Commission is asking the Court to assess the French legislation, having regard to all the provisions of Community law applicable to *vins doux naturels* raised in the application. Moreover, the defendant understood the application in that way. [5] At the hearing, the Commission's representative submitted that the heads of claim should be interpreted as covering a declaration that the French legislation was contrary to Community law in the light of Regulation No 4252/88. In view of those circumstances, it seems to me to be justified to understand the form of order sought in the way that both of the parties have understood it. It is not therefore a new claim, but an objective interpretation, consonant with the interests at stake, of the heads of claim in the light of the application. [6]

22. Since the Commission tackled the question of Regulation No 4252/88 for the first time in the application, the question might obviously be raised as whether there was no due pre-litigation procedure in this respect. As the Court has consistently held, an application brought under Article 169 of the EEC

5 — In its defence (p. 3), the defendant summarized the subject-matter of the proceedings as follows: 'The Commission of the European Communities questions the compatibility with the common organization of the market in wine, as laid down by Council Regulations (EEC) Nos 822/87, 823/87 and 4252/88, of certain aspects of the French legislation on natural sweet wines.'

6 — This case can be distinguished in this respect from the facts of, for example, the judgment in Case C-110/89 *Commission* v *Greece* [1991] ECR I-2659. In that case, the Commission had, it is true, criticized the defendant's conduct, but had at no time intimated that it wished the Court to make a declaration to that effect (cf. in that connection my Opinion in that case, [1991] ECR I-2675, at I-2676).

Treaty 'can be based only on the arguments and submissions set forth in the reasoned opinion'. [7] The Court may consider that ground of inadmissibility of its own motion, without its being necessary for the defendant itself to have entered an objection. However, in my view, this does not mean that the Court is bound to consider that question of its own motion in every infringement proceedings. I consider that the ideas expressed by Mr Advocate General Gulmann in Case C-61/90 on this issue [8] are worthy of attention. In his Opinion, the Advocate General stated that the Court's case-law as to the requirements for the pre-litigation procedure was based on a concern to protect the rights of the Member States, and that the Member States' interests were sufficiently safeguarded by the fact that they may raise an objection of inadmissibility. [9]

23. It seems to me, however, that it is not necessary in this case to consider that question in greater detail for another reason still: in its application, the Commission has not, in comparison to the reasoned opinion, made different complaints against the defendant concerning infringements of Community law or founded its arguments on a new legal basis. The Commission continues, as before, to argue that the unlawfulness of the French rules results from the context and system of the provisions of Community law. The Commission simply inserted Regulation No 4252/88 within the framework of the provisions which it examined in this case, without basing new submissions on that regulation. Account should also be taken of the fact that Regulation No 4252/88 is designed, through the content of its provisions, to supplement Regulations Nos 822/87 and 823/87. [10]

2. *Rules on exports*

24. The exceptional rules criticized by the Commission have been in force only for a limited period. In answer to a question put by the Court, the French Republic stated that the rules at issue had been applied since December 1988. [11] It is common ground as between the parties that those rules were applied only until 10 January 1990.

25. As the Court has held, an action brought under Article 169 is for a declaration that the

7 — See, for example, the judgment in Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, paragraph 16.

8 — Opinion in Case C-61/90 *Commission* v *Greece* [1992] ECR I-2426, at 2428 et seq.

9 — Nevertheless, in its judgment in that case, the Court did not follow that Opinion, but confirmed its consistent case-law cited above (judgment in Case C-61/90 *Commission* v *Greece* [1992] ECR I-2407, paragraph 29).

10 — Cf. the second recital in the preamble to Regulation No 4252/88 which, referring to Regulation No 822/87, states as follows: 'those rules should be *supplemented* by adopting *corresponding* provisions for all liqueur wines produced in the Community' (my emphasis).

11 — In its letter of 29 October 1992, the French Republic stated that the exceptional rules had been in force since 14 December 1988. However, it appears from the minutes of the plenary assembly of the CIVDN of 16 December 1988, appended to that letter as Annex 3, that those rules had been applied since as long ago as 2 December 1988 ('... à compter du 2 décembre').

Member State concerned 'has failed to fulfil its obligations under the Treaty and that it has failed to put an end to that infringement within the time set by the Commission in its reasoned opinion'. [12] The question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State found itself at the end of the period laid down in the reasoned opinion. [13]

26. Since the pre-litigation procedure seeks to eliminate the infringement of the Treaty before court proceedings are commenced, there is in principle no place for an action under Article 169 for a declaration that the Treaty has been infringed, if the infringement had already ceased on the expiry of the period laid down in the reasoned opinion. [14] In this case, the application of the rules at issue ceased in January 1992, that is to say, several months before the reasoned opinion was dispatched on 19 June 1990.

27. As the Court has consistently held, there is still an interest in pursuing the action under Article 169, even where the default has been remedied *after* the time-limit prescribed in the reasoned opinion has expired. [15] In contrast, if the infringement was terminated *before* that time, an action for failure to fulfil obligations is in principle inadmissible.

28. As I have already stated elsewhere, [16] exceptions to that rule must be allowed. Since the pre-litigation procedure inevitably takes some time, it would otherwise be scarcely possible for the Commission to proceed, for example, against infringements of the Treaty which are limited in terms of time. [17] Of course, the Commission should conclude the procedure rapidly in such cases so as not to stand accused of having caused delays which cannot be attributed to the particular circumstances of the case at issue. [18]

29. In this case, the Commission asked the French Government as early as 28 December 1988 (that is to say, shortly after the entry into force of the export rules) to submit its observations, and set a two-month time-limit to that end. In its second letter

12 — Judgment in Case C-347/88 *Commission* v *Greece* (cited in footnote 7), at paragraph 40.

13 — Judgment in Case C-200/88 *Commission* v *Greece* [1990] ECR I-4299, paragraph 13.

14 — Cf. my Opinion in Case C-362/90 *Commission* v *Italy* [1992] ECR I-2359, at I-2361.

15 — Cf., for example, the judgment in Case C-29/90 *Commission* v *Greece* [1992] ECR I-1971, paragraph 12.

16 — See my Opinions in Case 362/90 *Commission* v *Italy*, cited in footnote 14, and in Case 240/86 *Commission* v *Greece* [1988] ECR 1843, at 1844.

17 — See the facts in Case C-110/89 *Commission* v *Greece*, cited in footnote 6.

18 — See the judgment in Case C-362/90 *Commission* v *Italy* [1992] ECR I-2353, paragraph 12: 'It should be stated, moreover, that the Commission did not act in good time in order to prevent, by means of procedures available to it, the infringement complained of from producing effects and did not even invoke the existence of circumstances preventing it from concluding the pre-litigation procedure laid down in Article 169 of the Treaty before the infringement ceased to exist'.

before action of 24 May 1989 (which, admittedly, related only to the third complaint), the French Government was given one month to reply. Owing to an oversight, to which I have already adverted, on the part of the French administration, the Commission received no reply to those two letters. Nevertheless, the Commission did not deliver its reasoned opinion until 19 June 1990, that is to say, just under a year after the expiry of the deadline laid down in the last letter and several months after the contested export system came to an end. The Commission has not put forward any circumstances capable of explaining that delay. I therefore consider that the conditions in which an action for failure to fulfil obligations might in such cases nevertheless be held to be admissible by way of exception are not fulfilled.

30. The French Republic has not expressly claimed that the application is inadmissible. The Court may nevertheless verify of its own motion whether the conditions for an application for failure to fulfil obligations under Article 169 were present. [19]

31. Consequently, to that extent the application should be dismissed as inadmissible.

19 — See the judgment in Case C-362/90 *Commission* v *Italy* (cited in footnote 18), at paragraph 8.

II — *The substance*

1. *The French rules*

32. The first three complaints which should be examined in this connection relate to the fixing of prices (first complaint) and to the marketing quotas for *vins doux naturels* (second complaint). The rules at issue in the third complaint, under which the release of wine from producers' cellars is subject to the prior production of a certificate from CIVDN attesting to the fact that the contracts have been registered, serve to implement and control the system of marketing quotas. They therefore stand and fall with the rules criticized in the second complaint. Accordingly, I shall concentrate on the first two complaints and discuss, for simplicity's sake, the price rules and the quantitative mechanism, respectively.

2. *Permissibility of the national provisions in the context of a common organization of the market*

33. The question of the permissibility of national provisions in an area which is subject to a common organization of the market has already exercised the Court on many

occasions. In the *Amsterdam Bulb* case, the Court held as follows:

'From the moment when the Community adopts regulations under Article 40 of the Treaty establishing a common organization of the market in a specific sector the Member States are under a duty not to take any measure which might create exemptions from them or affect them adversely.' [20]

34. The Court has confirmed that case-law on several occasions. [21] According to that case-law, it is necessary to determine the content of the Community legislation and then to ascertain, on that basis, whether the national rules are in conformity with that legislation.

35. Admittedly, there are forms of words in the case-law which suggest that certain national measures may be incompatible *per se* with the existence of a common organization of the market. In *Pigs Marketing Board*, the Court referred to the aforementioned case-law before reasoning as follows:

'With a view to applying that statement in the case of the Pigs Marketing Scheme it should be borne in mind that the common organization of the market in pigmeat, like the other common organizations, is based on the concept of an open market to which every producer has free access and the functioning of which is *regulated solely by the instruments provided for by that organization.*

Hence any provisions or national practices which might alter the pattern of imports or exports or influence the *formation of market prices* by preventing producers from buying and selling freely within the State in which they are established, or in any other Member State, in conditions laid down by Community rules and from taking advantage directly of intervention measures or any other measures for regulating the market laid down by the common organization are incompatible with the principles of such organization of the market.' [22]

20 — Judgment in Case 50/76 *Amsterdam Bulb* v *Produktschap voor Siergewassen* [1977] ECR 137, paragraph 8.

21 — Cf. the judgments in Case 111/76 *Officier van Justitie* v *Van den Hazel* [1977] ECR 901, paragraph 13, in Case 177/78 *Pigs and Bacon Commission* v *McCarren* [1979] ECR 2161, paragraph 14, and in Case 237/82 *Jongeneel Kaas* v *Netherlands* [1984] ECR 483, paragraph 12.

22 — Judgment in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, paragraphs 56, 57 and 58, my emphasis.

36. That case-law could be understood as meaning that, in the field of each of the common market organizations — irrespective of their actual form —, the Member States are under a duty to refrain from any price-fixing measure.

37. In its *judgment of 23 February 1988* in Case 216/84 *Commission* v *France*, the Court had to rule, in proceedings brought against France by the Commission for failure to fulfil obligations, on the compatibility with Article 30 of a ban on the sale of milk substitutes. The French Government argued that the contested rules were consistent with the provisions governing the common organization of the market in milk products. The Court held in that regard as follows:

'It appears from the established case-law of the Court that once the Community has established a common market organization in a particular sector, the Member States must refrain from taking any unilateral measure which consequently falls within the competence of the Community. It is therefore for the Community and not a Member State to seek a solution to this problem in the context of the common agricultural policy.

In this connection, it must be added that, even if they support a common policy of the Community, national measures may not conflict with one of the fundamental principles of the Community — in this case that of the free movement of goods — unless they are justified by reasons recognized by Community law.' [23]

38. In the judgment given shortly afterwards in the *Zoni* case, the Court referred to that judgment and held that

'once the Community has established a common organization in a particular sector, the Member States must refrain from taking any unilateral measure even if that measure is likely to support the common policy of the Community'. [24]

39. In my opinion, it would not be correct, however, to infer from those judgments that, in the field of common organizations of the markets, unilateral measures [25] by the Member States would unquestionably have to be

23 — Judgment in Case 216/84 *Commission* v *France* [1988] ECR 793, paragraphs 18 and 19.

24 — Judgment in Case 90/86 *Criminal proceedings against Zoni* [1988] ECR 4285, paragraph 26. See likewise the judgment delivered on the same day in Case 407/85 *3 Glocken and Another* v *USL Centro and Another* [1988] ECR 4233, paragraph 26, and the judgment in Case C-86/89 *Italy* v *Commission* [1990] ECR I-3891, paragraph 19.

25 — It goes without saying that the Member States may act if and in so far as powers have been conferred on them to that end in provisions laying down a common organization of the market in the sector in question (see the judgment in Case 89/84 *Ramel* [1985] ECR 1385, paragraph 25).

unlawful. On the contrary, national rules and measures can be regarded as unlawful only if — and in so far as — the provisions on a common organization of the market are exhaustive, which leaves no room for national provisions. That interpretation is supported by the second subparagraph of Article 40 (3) of the EEC Treaty, according to which a common organization of a market must be limited to pursuit of the objectives set out in Article 39. This shows that the powers of the Community legislator in this field are not unlimited and that, in this field, the Member States indeed retain the power to legislate.

40. The Court's judgments which I have just cited do not, in my view, preclude that interpretation. In its judgment in the *Pigs Marketing Board* case, the Court referred expressly to 'conditions laid down by Community rules' and to 'measures for regulating the market laid down by the common organization'. [26] Likewise, the wording in Case 216/84 *Commission* v *France*, according to which Member States must refrain from taking any unilateral measure in the sphere of a common market organization 'which *consequently* falls within the competence of the Community', may be understood as referring to the powers conferred on the Community by provisions establishing the common organization of the market (and to the mere fact that a common organization of the market has been established). A confirmation of the view that it is still necessary to examine the lawfulness of the national rules in the light of their compatibility with the provisions on the common organization of the market can, in my view, be found in some relatively recent judgments of the Court. In its judgment of 30 May 1991 in *Case C-110/89 Commission* v *Greece*, for example, the Court held that:

'in sectors covered by a common organization of the market, and *a fortiori* when that organization is based, as in the present case, on a common price system, Member States can no longer take action through unilateral measures affecting the machinery of price-formation as established under the common organization'. [27]

41. The considerations set out by the Court in its judgment of 18 September 1986 in Case 48/85 *Commission* v *Germany* are to the same effect; that judgment has particular relevance to this case, since it is concerned with the common organization of the market in wine. With regard to the powers of the Member State, the Court stated as follows:

'Their legislative competence can only be residual; it is limited to situations which are

26 — Judgment cited in footnote 22, at paragraph 58.

27 — Judgment cited in footnote 6, at paragraph 21; see also the judgment in Case C-35/88 *Commission* v *Greece* [1990] ECR I-3125, paragraph 29, and the judgment in Case C-61/90 *Commission* v *Greece*, cited in footnote 9 above, at paragraph 22.

not governed by the Community rules and to cases where those rules expressly give them power to act'. [28]

42. It should therefore be examined whether the common organization of the market in wine can be regarded as a complete system, thus precluding the legality of the French rules.

3. *The common organization of the market in wine*

(a) Case-law of the Court

43. In its judgment in *Prantl*, the Court held that the Community legislation on the common organization of the market in wine could be regarded as forming a 'complete system', 'especially as regards prices and intervention, trade with non-member countries, rules on production and oenological practices and as regards requirements relating to the designation of wines and labelling'. [29] In the judgment in *Ramel*, the Court confirmed that view and held as follows:

'Therefore, subject to any special Community provision to the contrary, the Member States no longer have any powers in that field'. [30]

44. However, the French Government correctly points out that those cases were concerned with the rules applicable to *table wines*, whereas *vins doux naturels* are *quality wines*. It is therefore doubful whether it is possible to infer from those judgments that the Court also intended to rule therein on the rules applicable to quality wines. The *judgment of 18 September 1986* in Case 48/85 *Commission* v *Germany*, cited above, [31] is particularly interesting in that regard. Those infringement proceedings were concerned with German rules not permitting the addition of rectified concentrated grape must in the production of local wines and quality wines psr. The Commission argued that this constituted an infringement of the provisions of Regulation No 337/79 [32] (the immediate predecessor of Regulation No 822/87) and of one provision of

28 — Judgment in Case 48/85 *Commission* v *Germany* [1986] ECR 2549, paragraph 12.

29 — Judgment in Case 16/83 *Prantl* [1984] ECR 1299, paragraph 14.

30 — Judgment cited in footnote 25, at paragraph 25. Cf. also in this connection the judgment in Case 48/85, cited in footnote 28, at paragraph 11.

31 — Cited in footnote 28.

32 — 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.

Regulation No 338/79 [33] (the predecessor of Regulation No 823/87). In that context, the Court held as follows:

'According to Article 1, Regulation No 337/79 establishes a common organization of the market in wine comprising a price and intervention system ... and rules concerning ... release to the market.' [34]

45. Consequently, Regulation No 338/79 was not mentioned in that context. In my view, therefore, clear conclusions cannot be drawn from that judgment for the purposes of the matter at issue in this case. The question whether the Community provisions in the wine sector preclude the introduction or maintenance by a Member State of price rules or a quantitative system can therefore be resolved only by interpreting the relevant provisions.

(b) Interpretation of the Community provisions

46. None of the Community rules which should now be considered expressly deal with the question as to whether a Member State may introduce price rules or a quantitative system for a product such as *vin doux naturel*. However, it cannot be inferred simply from the fact that the law is silent that the Member States are debarred from adopting measures in this field. [35] In any event, the compatibility of the national rules with the Community regulations must be considered in the light not only of the express provisions of the regulations but also of their aims and objectives. [36] As can be inferred from the judgment in *Van den Hazel*, the background to the adoption of the relevant rules may also be material in this context. [37] In that case, the Court referred to a communication from the Commission to the Council in which the Commission justified the absence of intervention measures from its proposal for a regulation on the organization of the market in poultrymeat by the consideration that intervention on the market was not 'desirable', which prompted the Court to draw the following conclusion:

'It may be inferred from those considerations that the absence of measures concerning the withdrawal, where necessary, of products from the market does not stem

33 — Council Regulation (EEC) No 338/79 of 5 February 1979 laying down special provisions relating to quality wines produced in specified regions, OJ 1979 L 54, p. 48.

34 — Cited in footnote 28, at paragraph 11.

35 — Judgment in *Jongeneel Kaas* v *Netherlands*, cited in footnote 21, at paragraph 13; judgment in Case 148/85 *Direction Générale des Impôts* v *Forest* [1986] ECR 3449, paragraph 14.

36 — Judgment in *Amsterdam Bulb*, cited in footnote 20, at paragraph 9.

37 — Judgment cited in footnote 21, at paragraphs 14, 15 and 16.

from an omission or from an intention to leave measures of this nature to the appraisal of the Member States but is rather the consequence of a considered choice of economic policy of relying essentially on market forces to attain the desired balance.'

(aa) Systematic interpretation

47. According to Article 1 of Regulation No 822/87, the common organization of the market in wine comprises, *inter alia*, a price system and rules governing intervention. According to Article 1 (2), the common market organization applies to, among other things, quality wines psr and hence also to *vins doux naturels*. It follows from the specific provisions of Title III that the price rules laid down in the regulation apply only to table wines and that the rules governing intervention (with one exception, which I shall be considering shortly) also apply only to table wines. Regulations Nos 823/87 and 4252/88 do not lay down any specific rules in that regard. Consequently, the system of those provisions suggests that the application of the price and intervention rules ought in principle to be confined in fact to the sphere of table wines. However, it should be observed that, in the field of quality wines psr, the legislator merely laid down a framework of rules intended to be fleshed out by the Member States. [38] In its proposal for a regulation amending Regulation No 823/87 submitted to the Council on 17 December 1987, the Commission even stated that Regulation No 823/87 included provisions the purpose of which was to 'guide' Member States in drawing up national rules on quality wines psr. [39] It would therefore seem that overly wide conclusions cannot be drawn from a comparison between the content of Article 1 of Regulation No 822/87 and that of Title III of that regulation.

48. The same is true, in my view, of the statement in the twenty-first recital in the preamble to Regulation No 823/87 to the effect that quality wines psr have to be separately entered in the harvest and stock declarations (provided for in Regulation No 822/87) 'as they are not covered by the measures to stabilize the market'. The only conclusion which may be drawn from that statement is that quality wines psr are not (in principle) covered by Title III of Regulation No 822/87.

49. The statement in the fourth recital in the preamble to Regulation No 822/87 is more significant:

'Whereas the aim of the common agricultural policy is to attain the objectives set out in

38 — See in this connection the third recital in the preamble to Regulation No 823/87 and the Opinion of Mr Advocate General Gulmann in Case C-47/90 *Delhaize et Le Lion* [1992] ECR I-3687, at 3694.

39 — COM (87) 642 final, OJ 1988 C 14, p. 8, at p. 9.

Article 39 of the Treaty and, in particular in the wine sector, to stabilize markets and ensure a fair standard of living for the agricultural community concerned; whereas these objectives may be attained by adjusting resources to needs, in particular through the pursuit of a policy of quality.'

50. That aim is cast in more concrete form by the preamble to Regulation No 823/87, in so far as the provisions of that regulation are designed

'to maintain a minimum quality standard for quality wines psr, to avoid an uncontrollable extension of the production of such wines and to harmonize the provisions of the Member States so as to establish conditions of fair competition in the Community'. [40]

51. In the next recital, it is further stated that

'the development of a policy of encouraging quality production in agriculture and especially in wine growing is bound to contribute to the improvement of conditions on the market and, as (a) result, to an increase in outlets'. [41]

52. If those recitals are considered together, it appears that the Community legislator intended that the Community should be empowered to intervene in the wine sector in order to attain its aims by 'adjusting resources to needs'. It is also clear that a quality of promoting quality was to constitute the starting point.

53. The Community provisions applicable to quality wines psr and to liqueur wines put that approach into effect. Those provisions aim at promoting the quality of the products which they cover. The factors to be taken into consideration in that respect are set out in Article 2 of Regulation No 823/87 and specified in that regulation. [42] In the case of quality liqueur wines psr, account should also be taken of the specific provisions of Regulation No 4252/88. Manifestly, the policy on the promotion of quality pursued by

40 — Third recital in the preamble to Regulation No 823/87.

41 — Fourth recital in the preamble to Regulation No 823/87.

42 — In this Opinion it is unnecessary to go into the other provisions of that regulation, which seek only indirectly to protect the quality of those wines, in particular the provisions on authorized designations for the products in question.

those provisions actually brings about an 'improvement of conditions on the market'. [43] It should be observed in this regard that the two regulations provide simply for minimum quality characteristics. [44] The Member States are therefore free to lay down even stricter quality requirements and thereby further to reinforce the beneficial effects of the policy of promoting quality on the wine market. [45]

54. The wording of the fourth recital in the preamble to Regulation No 823/87, which refers to 'contributing' to the policy of promoting quality with a view to attaining the objectives of the regulation, suggests that the Community has still other means available to it. That is in fact the case. According to Article 11 of Regulation No 823/87, Member States have to fix a maximum yield per hectare for each quality wine psr. In the case of *vins doux naturels*, this is supplemented by the second indent of Article 13 (2) of Regulation No 4252/88, which provides that the description 'vin doux naturel' is to be reserved for quality liqueur wines psr obtained within the limit of a yield per hectare of 40 hectolitres of grape must.

55. Those rules are justified as follows in the fifteenth recital in the preamble to Regulation No 823/87:

'in order to maintain the quality standard of the wines in question and *to avoid excessive yields liable to disrupt the market*, Member States should fix a maximum yield per hectare for each quality wine psr'. [46]

56. This shows that the legislator was not exercised simply by a concern to promote quality, but that it intended at the same time to make a means of regulating the market available.

57. Likewise, the provisions governing the fixing of the maximum yield per hectare leave a broad discretion to the Member States. [47] According to the third subparagraph of Article 11 (1) of Regulation No 823/87, the yield per hectare may be fixed at different levels for the same quality wine psr depending on the sub-region, local administrative area, or part thereof, and the vine variety or varieties from which the grapes are derived. In addition, the maximum yield per hectare may be adjusted by

43 — See the fourth recital in the preamble to Regulation No 823/87.

44 — See the third recital in the preamble to Regulation No 823/87 ('in order to maintain a minimum quality standard for quality wines psr ...') and the fifth recital in the preamble to Regulation No 4252/88 ('provision should accordingly be made for their minimum characteristics').

45 — Apart from manifold individual provisions, reference should be made in this context simply to Article 18 of Regulation No 823/87 and to Article 17 of Regulation No 4252/88, which authorize the Member States to lay down additional or more stringent 'production' conditions.

46 — My emphasis.

47 — Those provisions are the subject of a request for a preliminary ruling in Case 289/91 *Kuhn*, in which Mr Advocate General Gulmann is shortly to deliver an Opinion.

the Member State concerned (fourth subparagraph of Article 11 (1)). Here again, therefore, the Member States may, by laying down more stringent rules (in this context, a lower maximum yield per hectare), influence the market by adjusting supply to suit demand.

58. In view of that situation and of the possibilities conferred on the Member States by Regulations Nos 823/87 and 4252/88, I consider that the Member States are not entitled to introduce in this sphere in addition price rules and a quantitative mechanism of the type at issue, if they have not been expressly empowered to do so by the Community legislator.

59. Such a power could at most arise from Article 18 of Regulation No 823/87 or from Article 17 of Regulation No 4252/88. To be precise, it is a question as to whether the rules at issue can be based on the first indent of the first paragraph of Article 18 of Regulation No 823/87 or on Article 17 of Regulation No 4252/88. [48]

48 — According to the fifth indent of the second subparagraph of Article 1 (1) of Regulation No 823/87 (as amended by Regulation No 2043/89), the second indent of the first paragraph of Article 18 does not apply to quality liqueur wines psr (and other categories of quality wines) for which specific Community provisions exist. However, it should be observed that the second indent of the first paragraph of Article 18 of Regulation No 823/87 and Article 17 of Regulation No 4252/88 are very similar.

60. The requirements of the first indent of the first paragraph of Article 18 are not satisfied, since the French rules manifestly do not relate to 'such conditions of production and characteristics as shall be obligatory for quality wines psr'.

61. Neither can the French rules be based on Article 17 of Regulation No 4252/88. Admittedly, the French Government has argued that what was involved in this case was rules on 'ageing' within the meaning of that provision. However, the Commission has rightly observed that producers may at any time sell quantities in 'strategic and ageing stocks', provided that they have a commensurate marketing credit (which does not depend on the age of the wine). In addition, those quantities may be sold abroad at any time. It is therefore clearly not a condition relating to the ageing of the products concerned.

62. The answer to the question whether the French rules may be regarded as laying down 'additional or more stringent characteristics' concerning 'release to the market' is not quite as straightforward. It must be conceded to the French Government that those rules (namely the price rules and the quantitative mechanism contested in the first complaint), whose beginnings go back to 1943, were probably laid down 'taking into

account fair and traditional practices'. It may also be assumed that they are not contrary to the Treaty provisions on the free movement of goods between Member States. [49]

63. The Commission's argument that the provisions at issue are not rules on 'circulation' (namely, movement) but marketing ('commercialisation') provisions does not appear particularly cogent to me. There is, admittedly, a temptation to assume that the legislator had in mind provisions of the sort set out in Title V of Regulation No 822/87 ('Rules concerning free circulation and release to the market'), such as for example provisions on accompanying documents necessary in order for the products in question to be released to the market (cf. Article 71 of Regulation No 822/87) and not, for instance, price rules or a quantitative mechanism. Consideration of the wording of the various language versions of the provisions shows, however, that in some cases very different forms of words have been used and, in addition, that Article 1 of Regulation No 4252/88 itself states that that regulation lays down rules on the 'marketing' ('commercialisation') of liqueur wines. [50]

64. However, in my view it is the aim pursued by the Community provisions in authorizing Member States to adopt additional or more stringent rules which is decisive. It is clear from the preambles to Regulation No 823/87 and Regulation No 4252/88 that that aim is to *preserve the special qualitative features* of the products in question:

'Whereas, in order to preserve the special qualitative features of quality liqueur wines psr, Member States should be allowed to apply additional or more stringent rules governing the production, preparation, ageing and circulation of quality liqueur wines psr,

49 — In its judgment in Case C-47/90 *Delhaize et Le Lion* [1992] ECR I-3669, paragraph 26, the Court had to consider whether the rules at issue (which stipulated that wine had to be bottled in the region of production) could be based on Article 18 of Regulation No 823/87. It held as follows: 'Toutefois, l'article 18 du règlement no 823/87 ne saurait être interprété come autorisant les États membres à imposer des conditions qui seraient contraires aux règles du traité relatives à la circulation de marchandises' (However, Article 18 of Regulation No 823/87 cannot be interpreted as authorizing Member States to impose conditions contrary to the Treaty rules on the movement of goods).

50 — In the French version — as has just been indicated — Article 1 of Regulation No 4252/88 refers to 'commercialisation', whereas the fourteenth recital in the preamble states that the Member States may adopt rules governing 'circulation' and Article 17 accordingly also refers to rules on 'circulation'. This is also true of the Dutch version, where the words used are 'afzet' (Article 1) and 'verkeer' (fourteenth recital and Article 17), and of the Italian version, which uses the term 'commercializzazione' in Article 1, but employs 'circolazione' in the fourteenth recital and in Article 17. The English version differs, in that the word 'marketing' is used in Article 1, the word 'circulation' in the fourteenth recital and the expression 'release to the market' in Article 17. As for the German version, it is particularly unclear, since the word 'Vermarktung' is used both in Article 1 and in the fourteenth recital, whereas Article 17 refers to 'Inverkehrbringen'. Examination of the corresponding provisions of Regulation No 823/87 yields a similar result.

account being taking of traditional practices'. [51]

65. The French rules are intended to stabilize the markets by seeking to obviate a sharp fall in prices during the marketing year. As the French Government has stated, in the final analysis those rules are calculated to protect the existing structure of the production of *vins doux naturels*. It appears to me that these are completely legitimate concerns, which fall within the aims of the common agricultural policy set out in Article 39 of the Treaty. Nevertheless, it is also clear that the French rules are *not* requirements designed to preserve the *quality* of the products concerned. Consequently, the French rules cannot be based on Article 17 of Regulation No 4252/88.

66. The Commission has rightly observed that the price rules and quantitative mechanism at issue result, or may result, in its being impossible to market products prepared within the limits of the maximum yield per hectare laid down in Article 11 of Regulation No 823/87 and the relevant national implementing measures. At the same time, the price rules affect producers' right freely to negotiate prices for their products. The French rules are therefore contrary to the principle of an open market — which also applies in the sphere of the common organization of the market in wine — 'to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by that organization'. [52]

67. The objections which the French Government bases on the nature of the price rules and quantitative mechanism which it has introduced do not affect that conclusion. Thus, the Government argues that the price rules should not be regarded as systematic market intervention, since producers and traders are free to agree prices below the minimum price or above the maximum price. In addition, the French Government maintains that contracts concluded at the beginning of the marketing year account for a considerable fraction of the marketing credit for that year. Those circumstances do not alter the fact that producers may initially utilize only the first part of their marketing

51 — Fourteenth recital in the preamble to Regulation No 4252/88. The German version erroneously refers to quality wines psr, whereas, regard being had to the context and to the wording of the other language versions, it should of course refer to quality *liqueur* wines psr. The same wording appears with regard to the same point in the (French and German versions of) the twenty-second recital in the preamble to Regulation No 823/87 ('afin de conserver le caractère qualitatif particulier ...'/'zur Erhaltung des besonderen qualitativen Charakters...', rendered in the English version as 'in order to preserve the particular quality characteristics ...').

52 — See the Court's judgment in *Pigs Marketing Board* v *Redmond*, cited in footnote 22, at paragraphs 56 and 57, and the Opinion of Mr Advocate General Gulmann in Case C-47/90, cited in footnote 36 above, at 3696 et seq. Cf. also the third recital in the preamble to Regulation No 4252/88, according to which that regulation is intended to enable 'free circulation of such products to be facilitated'.

credit and that the release of subsequent parts may be delayed, which is liable to have a substantial effect on price formation.

68. The French Government has also argued that a conflict between the maximum yield per hectare and the yield provided for by the marketing credit could arise only if the quantity of *vin doux naturel* eligible for marketing under the marketing credit were in excess of the quantity produced within the limits of the maximum yield per hectare. I shall simply state with regard to this that it is precisely in a case such as the one at issue that an infringement of the principle of the open market occurs, namely when a Member State prohibits producers from marketing part of the wine which they have lawfully prepared.

69. The French Government has also suggested that producers were voluntarily subject to the price rules and quantitative mechanism applicable to *vins doux naturels* and that they are at liberty to decide to produce table wines, which are not covered by those rules. I would simply observe in that regard that producers' freedom to elect to prepare quality wines may not be impaired by national requirements which are incompatible with the provisions of Community law applicable in that sector.

(bb) Historical background

70. The argument which I have just developed, to the effect that the provisions on the common organization of the market in wine — *inter alia* with regard to quality wines — constitute a complete system which precludes national price rules and quantitative mechanisms, is also confirmed by Article 51 of Regulation No 822/87 and by the historical background to the Community-law provisions. Article 51 (1) provides as follows:

'To the extent necessary to support the market in table wines, intervention measures may be taken in respect of the products listed in Article 1 (2) (b) other than table wine.'

71. According to Article 51 (2), such measures are to be taken by the Council acting by a qualified majority on a proposal from the Commission. The products covered by that provision, for which intervention measures may be taken, also include quality wines psr and hence *vins doux naturels*.

72. The fact that provision is made for intervention measures for those products to the necessary extent *on the market in table wines*, whereas no comparable power is provided for in case such intervention should prove necessary to support the market in quality wines psr themselves, in itself suggests that, in the legislator's intention, intervention measures should be permitted only exceptionally in the field of quality wines psr. The Commission has rightly observed in this connection that that provision originates in Article 19 of the proposal for a regulation on the common organization of the market in wine, submitted by the Commission to the Council on 24 June 1967. [53] That provision reads as follows:

'In the event that a price system or intervention measures or a trading system should prove necessary for products referred to in Article 1 (2) other than table wine, additional provisions may be adopted in accordance with the procedure referred to in Article 43 (2) of the Treaty' (unofficial translation).

73. In reply to a question from the Court, the Commission provided particulars in its document of 26 October 1992 of what happened to that provision during the subsequent course of the legislative procedure; the details are set out in the Report for the Hearing. To my mind, it appears from the Commission's description that the legislator deliberately refrained (apart from the exception set out in Article 51 of Regulation No 822/87) from laying down a price or intervention system for quality wines psr. The fact that the version of Article 55 of Regulation No 822/87 currently applicable provides merely for intervention measures (and not for a price or trading system) is probably attributable to the idea that, for the purposes of Article 51 — maintaining balance on the market in table wine —, the possibility of taking intervention measures in the sector of quality wines psr is enough.

74. In addition to the legislative materials mentioned by the Commission, another — more recent — document seems in my view to be relevant, in so far as it confirms that the legislator did not intend to lay down in the field of quality wines psr provisions analogous to those contained in Title III of Regulation No 822/87, but relied on a policy of improving quality. The document in question is the opinion of the Economic and Social Committee on the Commission's proposal for a Council regulation amending Regulation No 823/87. [54] Referring to the fact that the production of quality wines psr had reached a high level following the

53 — *Journal Officiel* No 201 of 21 August 1967, p. 13.

54 — This proposal resulted in Regulation No 2043/83 amending Regulation No 823/87 (see footnote 3).

enlargement of the Community, the Committee stated as follows:

'Given that:

— it seems *neither possible nor opportune to consider a formal organization of the market in quality wines psr*, and

— there is a certain saturation of the market, the rules on the conditions needed to encourage the production of original and quality wines should be tightened up.' [55]

4. *Conclusion*

75. In view of the foregoing considerations, I take the view that the French price rules and quantitative mechanism are incompatible with the provisions on the common organization of the market in the wine, and that the Commission's application should be upheld in this respect.

76. I would add, however, that it has not been easy for me to reach this conclusion. Among other things, I was perplexed by the fact that the rules at issue were in force for many years without prompting the Commission to contest them. Moreover, one might have expected that the Commission — at least in connection with the *travaux préparatoires* for Regulation No 4252/88 — would have become aware of those rules and that that question would have been dealt with in the regulation itself. Neither is it possible to ignore that, in the final analysis, the French rules pursue objectives which might be regarded as being compatible with the aims of the common agricultural policy set out in Article 39 of the Treaty. Likewise, to my mind, some weight should be given to the French Government's reference to the importance of the rules at issue to the producers (generally relatively small holdings) and to the region concerned.

77. However, the French Government has not shown that it was essential to retain the rules at issue in order to attain those objectives. Account should be taken in that connection of the fact that, according to the actual submission of the French Government at the hearing, the rules at issue at present apply to only two of the ten most important

55 — OJ 1988 C 208, p. 18 (my emphasis).

'*appellations*'. [56] With regard more specifically to the argument that, in view of the strength of large purchasers on the market, producers of *vins doux naturels* should be given a measure of protection, I am not convinced that the rules at issue are necessary to that end. It appears to me to be definitely possible for producers to offset purchasers' strength, if only by virtue of the provisions of competition law and of the possibility to grouping together, while complying with those provisions, in order to effect sales jointly.

5. *The export rules*

78. As I have already mentioned, I consider that the part of the application relating to the export rules should be dismissed as inadmissible. In case the Court should disagree, I shall consider whether those rules are compatible with the provisions of Community law.

79. It might be possible in particular to consider the possibility of an infringement of Article 34, which is to be regarded as forming an integral part of the common organization of the market. [57] However, as the Court has repeatedly held, Article 34 concerns national measures

'which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a special advantage for national production or for the domestic market of the State in question'. [58]

80. In this case, the export rules at issue certainly constitute a measure which impedes exports. The fact that exports represent only an extremely small fraction of the production of *vins doux naturels* and the French Government's objection that it is not difficult to obtain the requisite certificates does not alter this. Neither does the French Government's argument that a major part of exports is carried out by traders who are not affected by the rules.

81. However, in my view the decisive point is that the rules in question do not put

56 — However, according to the particulars provided by the French Government's agent, those two '*appellations*' are the most important ones from the quantitative point of view.

57 — Cf. the judgment in *Pigs Marketing Board* v *Redmond*, cited in footnote 22, at paragraph 55.

58 — Judgment in *Jongeneel Kaas* v *Netherlands*, cited in footnote 21, at paragraph 22; judgment in Case C-47/90 *Delhaize et le Lion* [1992] ECR I-3669, at paragraph 12.

exports at a disadvantage vis-à-vis domestic sales. On the contrary, they merely have the effect of applying to exports the rules applying to marketing on the domestic market. Consequently, those rules do not constitute in my view a measure having effect equivalent to a quantitative restriction on exports within the meaning of Article 34. [59]

82. To my mind, that question is not of great importance in any case. In so far as they subject exports to the same rules as are applicable to domestic sales, the contested provisions should suffer the same fate. As I have already held that the price rules and the quantitative mechanism are not compatible with Community law, this is also true of the export rules. [60]

III — *Costs*

83. The decision on costs depends on Article 69 (3) of the Court's Rules of Procedure.

C. Conclusion

84. I therefore propose that the Court should

(1) Declare that by

— fixing the price of *vins doux naturels* on the French market,

59 — The same is true, as far as exports to non-member countries are concerned, of a possible infringement of Article 60 (2) (b) of Regulation No 822/87.

60 — In any event, those rules cannot be justified by the need to ensure fair trade. In so far as the French Government states that it was a question of checking transactions whereby quantities exported were reimported into France by way of customs fraud, it is sufficient to observe that it is easy to deal with such abuses by adjusting the customs rules in an appropriate manner.

— fixing a marketing quota for *vins doux naturels* beyond which a producer may not market wines produced within the limits of the statutory yield per hectare but must allocate them to a strategic and ageing stock,

— making withdrawals of wines from producers' cellars conditional upon prior production of a document issued by the CIVDN certifying that the contract has been registered, thus making it impossible to dispose of any quantities outside the marketing credit system,

the French Republic has failed to fulfil its obligations under Community law and in particular under the provisions of Council Regulations Nos 822/87 and 823/87 concerning quality wines produced in specified regions;

(2) Dismiss the remainder of the application as inadmissible;

(3) Order the French Republic to pay three-quarters of the costs and the Commission to pay a quarter.