OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 28 May 2002 [1]

I — Introduction

1. In the present case the Court is essentially asked to clarify whether the death of the director of an agricultural undertaking is to be taken to fall within the scope of the concept of *force majeure* for the purposes of Article 12 of Regulation (EC) No 1294/96, [2] in such a way that infringement of the obligation to make a declaration does not engender the legal consequences provided for in that regulation.

II — Legal framework

A — *Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine* [3]

2. Article 3 of Regulation No 822/87 provides *inter alia* that producers of must and wine shall each year declare the quantities produced from the last harvest. It also requires producers of must and wine, and merchants other than retailers, to declare their stocks of must and wine.

B — *Commission Regulation (EC) No 1294/96 of 4 July 1996 laying down detailed rules for the application of Council Regulation (EEC) No 822/87 as regards harvest, production and stock declarations relating to wine-sector products* [4]

3. Under Article 6(1) of the above implementing regulation, the economic agents concerned are required, in accordance with the provisions of the basic regulation, to '... declare... the stocks of concentrated grape must, rectified concentrated grape must and wine held by them on 31 August.' Under Article 11(2) the declarations concerned '... shall be made not later than 7 September in respect of quantities held on 31 August.'

1 — Original language: German.

2 — Commission Regulation (EC) No 1294/96 of 4 July 1996 laying down detailed rules for the application of Council Regulation (EEC) No 822/87 as regards harvest, production and stock declarations relating to wine-sector products (OJ 1996 L 166, p. 14).

3 — OJ 1987 L 84, p. 1.

4 — OJ 1996 L 166, p. 14.

4. Article 12 lays down the penalties to be applied in the event of failure to submit declarations by the specified dates, as follows:

'Persons required to submit harvest, production, stock, treatment or marketing declarations who do not submit such declarations by the dates specified in Article 11 shall not benefit, except in cases of *force majeure*, from the measures provided for in Articles 32, 38, 41, 45 and 46 of Regulation (EEC) No 822/87 for the wine year in question or the following wine year.

However, exceeding the time-limits specified in the first subparagraph by not more than five working days shall entail only a 15% reduction in the amounts payable for the wine year in question. The reduction in the amounts payable shall be 30% if the said time-limits are exceeded by not more than 10 working days.'

III — Facts of the case and questions referred

5. It can be seen from the order for reference that the referring court submits the questions concerned for a preliminary ruling '... on the assumption that the account of the facts given by the appellants is correct.' Subject to that, the facts of the case are as follows:

6. The company Herederos Damián Parras C.B. is a family business in the form of a community of property whose sole director was Antonio Moreno López, the spouse of Adelina Parras Medina.

7. He died unexpectedly on 28 July 1997 while on holiday.

8. The declaration of stocks that should, in accordance with Article 11(2) of Regulation No 1294/96, have been made by 7 September 1997 was not in fact made until 17 September.

9. By a decision of 27 October 1997 the authorities, in the shape of the Delegación Provincial de Ciudad Real, relying on Article 12 of Regulation No 1294/96, ordered a 30% reduction in the amounts payable, under the measures provided for

in Regulation No 822/87, for the current wine year.

10. By a decision of 23 March 1998, the Consejería de Agricultura y Medio Ambiente de la Junta de Comunidades de Castilla-La Mancha dismissed the objection lodged against that decision by the sisters Isabel and Adelina Parras Medina who now formed the community of property (hereinafter 'the appellants').

11. The court before which an appeal was lodged, the Tribunal Superior de Justicia de Castilla-La Mancha, expressed doubts as to the interpretation of the relevant provision of Community law and therefore, by order of 3 April 2001, referred the following questions for a preliminary ruling:

'(1) Must the concept of *force majeure* used in Article 12 of Regulation (EC) No 1294/96 be interpreted broadly so as to include unforeseen and compelling circumstances, as described in this order, of such a kind that negligence in the observance of the time-limit in question is not regarded as such?

(2) Are the consequences provided for in Article 12 in the nature of a sanction or penalty and, if that is the case, does that fact bear out the need for a broad interpretation of the abovementioned concept of *force majeure* (this question being asked only if it is considered necessary in order to answer the first question)?'

IV — Legal assessment

12. The common market organisation for wine, introduced in stages since 1962, seeks primarily to establish and maintain a balance between demand and production. [5] In pursuing this aim, it relies on a range of market interventions and controlled management of wine-growing potential.

13. Market interventions include aid in favour of private storage, aid for distil-

5 — For a discussion of the common market organisation for wine in 1987 (at issue here), see Gottsmann, *Der Gemeinsame Agrarmarkt*, III A 13a, p. 4.

lation and aid to support the use of grape must for purposes other than wine production.

14. Such intervention requires, in particular, that harvest, production and stock declarations be made. According to the fourth recital in the preamble to Regulation No 1294/96 a time-limit is to be laid down for submitting declarations in order to facilitate market management operations. The time-limit for submitting stock declarations is specified in Article 11(2) of that regulation.

15. Late submission of such declarations produces, except in cases of *force majeure*, the legal consequences provided for in Article 12 of Regulation No 1294/96, those consequences being graduated in accordance with the seriousness of the breach of obligations. The referring court seeks essentially to establish how the concept of *force majeure* is to be interpreted in this context.

16. It is therefore advisable to begin by considering the case-law of the Court on the concept of *force majeure*.

A — *Case-law of the Court on the concept of* force majeure

17. A first point is that in case of *force majeure* the legal consequences that would otherwise arise out of non-compliance with an obligation or failure to meet a condition do not ensue. This suspension of particular legal consequences is justified by the exceptional nature of the circumstances that constitute the case of *force majeure*. This points clearly to the proximity of the *force majeure* clause to the principle of reasonableness, in so far as that clause allows a particular rule not to be applied in cases where such application could be regarded as unreasonable. [6]

18. The Commission submits that the exceptional nature of the *force majeure* clause requires it to be given a restrictive interpretation. [7] The referring court, how-

6 — See also Case 25/70 *Einfuhr- und Vorratsstelle* v *Köster* [1970] ECR 1161, paragraphs 31 and 40: '... in assessing this burden, account cannot be taken of forfeiture of the deposit itself, since traders are adequately protected by the provisions of the regulation relating to circumstances recognised as constituting *force majeure*,' and 'it therefore appears that by limiting the cancellation of the undertaking to export and the release of the deposit to cases of *force majeure* the Community legislature adopted a provision which, without imposing an undue burden on importers or exporters, is appropriate for ensuring the normal functioning of the organisation of the market in cereals, in the general interest...'.

7 — This is the line taken as early as 1988 in Commission Communication C (88) 1696 concerning the concept of *force majeure* in the agricultural law of the European Communities (OJ 1988 C 259, p. 10).

ever, has recognised that the Court has not yet given a ruling to that effect.

19. It is settled case-law that '... since the concept of *force majeure* does not have the same scope in various spheres of application of Community law, its meaning must be determined by reference to the legal context in which it is to operate'. [8] The Court has concluded from this relative nature of the concept of *force majeure* that it cannot be limited to cases of absolute impossibility: '... the concept of *force majeure* is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice. This concept implies a sufficient flexibility regarding not only the nature of the occurrence relied upon but also the care which the exporter should have exercised in order to meet it and the extent of the sacrifices which he should have accepted to that end.' [9]

20. It can be seen from these general remarks concerning the concept of *force majeure* that the Court has consistently interpreted the concept as encompassing both an objective and a subjective element. The objective element consists of unusual and unforeseeable circumstances, 'beyond the trader's control'. [10] It is clear from individual language versions that the latter clause seeks precisely to bring out the external nature of the event concerned. [11] The subjective element consists of the assessment of the conduct of the party relying on *force majeure*: 'The subjective element entails the obligation to guard against the consequences of the abnormal occurrence by taking all appropriate measures (with the exception of those involving excessive sacrifices).' [12]

21. This definition of *force majeure* as a combination of an objective and a sub-

8 — See, for example, Case C-263/97 *First City Trading and Others* [1998] ECR I-5537, paragraph 41, which refers to Case C-12/92 *Huygen and Others* [1993] ECR I-6381, paragraph 30. This line of authority on the relative nature of the concept of *force majeure* was initiated by the judgment in Case 4/68 *Schwarzwaldmilch* [1968] ECR 377.

9 — Judgment cited in footnote 6, paragraph 38.

10 — See for example Case 266/84 *Denkavit France* [1986] ECR 149, paragraph 27.

11 — Judgment cited in footnote 10, French version: '... de circonstances étrangères à l'adjudicataire...'; Italian version: '... circonstanze estranee a colui che la fa valere...'.

12 — Commission Communication C (88) 1696 (cited in footnote 7; p. 11). This definition goes back to the *Schwarzwaldmilch* judgment (cited in footnote 8).

jective element has remained essentially unchanged since the judgments of 17 December 1970. [13]

B — *Application to the main proceedings*

22. The concept of *force majeure* within the meaning of Article 12 of Regulation No 1294/96 should thus be interpreted for the purposes of the main proceedings with reference to the legal framework described above. In this connection I have already referred to the importance of timely submission of the required declarations. [14] I therefore consider it appropriate generally to apply strict criteria in considering whether to accept that there is a case of *force majeure* within the meaning of Article 12 of Regulation No 1294/96.

23. Proceeding on the premiss established by the referring court that the deceased was sole director of the agricultural undertaking, it is clear that as regards the objective element of *force majeure*, the unexpected death of such a director constitutes an unusual and, in principle, unforeseeable event over which the obligees had, in the nature of things, no control. It is true that by definition death represents a highly personal event, one that cannot therefore be regarded as 'external' in the narrow sense; [15] a decease can nevertheless generally be qualified as independent of the will of the person concerned and can usually, in view of its suddenness, be regarded as unforeseeable.

24. Whether or not *force majeure* can be taken to apply in the main proceedings thus turns on the subjective element and hence on an assessment of the obligees' conduct and of the extent to which they were in a position to deal appropriately with the event.

25. The Commission rightly points out that it falls to the referring court to examine whether the relevant circumstances of the individual case render the concept of *force majeure* applicable. Assuming the deceased was indeed sole director of the agricultural undertaking concerned (an assumption apparently disputed by the defendant administration), the national court will have therefore to determine whether, in the circumstances, his death could be regarded as unexpected and hence, for the heirs, unforeseeable, as lack of foreseeability would also imply an inability on the

13 — In Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125 and Case 25/70 (cited in footnote 6).

14 — See point 14 above.

15 — In this sense the referring court describes the death in graphic terms as an event occurring 'within the undertaking'.

part of the heirs to make appropriate preparations for taking over the business.

26. If unforeseeability is established, the national court will also have to consider whether, in the period between the death of Mr Moreno López and the time-limit, his heirs exercised due care. On this point account would need to be taken of the time which elapsed between the death, the time-limit for submitting the declaration and the actual date of submission. *Force majeure* would for example appear out of the question if the national court were to acquire the conviction that the state of mind engendered by the family ties with the deceased person and the need to settle various items of business in relation to administration of the estate did not suffice, bearing in mind that the death occurred less than two months previously, to explain the 10-day delay in submitting the declaration.

C — *The second question*

27. The second question was asked only in case it was considered necessary in order to answer the first question. It follows however from the above considerations that the legal status of the provision in Article 12 of Regulation No 1294/96 does not affect its interpretation; the second question does not therefore appear necessary in order to answer the first.

28. It should be added that there does not in principle seem to be any doubt that the prescribed legal consequences of a failure to comply or comply fully with the obligations in respect of the declaration concerned are independent of fault as such. [16] The point should also be made that the provisions in Article 12 of Regulation No 1294/96 do not concern farmers in their capacity as such but rather in their capacity as recipients of aid. The authority responsible for granting such aid should in principle, however, be in a position to make the grant of advantages conditional upon observance of certain conditions.

16 — See my observations in the Opinion in Case C-210/00 *Käserei Champignon* [2002] ECR I-6453.

V — Conclusion

29. In the light of the foregoing, I propose that the questions referred by the Tribunal Superior de Justicia de Castilla-La Mancha for a preliminary ruling be answered as follows:

The concept of *force majeure* used in Article 12 of Regulation (EC) No 1294/96 should be interpreted as encompassing unforeseeable and unusual circumstances that are outside the control of the person concerned and whose consequences, despite the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice. A death is in principle an unusual circumstance that is outside the control of those concerned. It is incumbent upon the national judge to consider whether the other conditions obtain in the particular case. Provided that the deceased person can be shown to have been the sole director of the agricultural undertaking concerned, the national judge must consider, in cases such as the main action, whether the death can be regarded as having been unexpected for the heirs and whether the heirs who assumed management of the undertaking can be regarded, in view of the specific circumstances and more particularly of their family and professional situation and of the time-lapse between the death, the time-limit for submitting the declaration and the actual date of submission, as having exercised all due care.