JUDGMENT OF THE COURT (First Chamber)
19 October 2000 *

In Case C-155/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Pretore di Treviso, Sezione Distaccata di Oderzo, Italy, for a preliminary ruling in the proceedings pending before that court between

Giuseppe Busolin and Others

and

Ispettorato Centrale Repressione Frodi — Ufficio di Conegliano — Ministero delle Risorse Agricole, Alimentari e Forestali,

on the validity of Article 39(3), (4) and (11) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1), as amended by Council Regulation (EEC) No 1566/93 of 14 June 1993 (OJ 1993 L 154, p. 39), and of Commission Regulation (EC)

* Language of the case: Italian.

No 343/94 of 15 February 1994 opening compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87 and derogating for the 1993/94 wine year from certain detailed rules for the application thereof (OJ 1994 L 44, p. 9),

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, A. La Pergola and P. Jann (Rapporteur), Judges,

Advocate General: G. Cosmas,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Busolin alone, by I. Cacciavillani, of the Venice Bar, and A. Cimino, of the Padua Bar,

— the Spanish Government, by R. Silva de Lapuerta, Abogado del Estado, acting as Agent,

— the Council of the European Union, by J. Carbery and T. Gallas, Legal Advisers, acting as Agents,

— the Commission of the European Communities, by F. Ruggeri Laderchi, of its Legal Service, acting as Agent, and A. Dal Ferro, of the Vicenza Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Busolin, the Council and the Commission at the hearing on 18 May 2000,

after hearing the Opinion of the Advocate General at the sitting on 22 June 2000,

gives the following

Judgment

1 By order of 7 April 1999, received at the Court on 27 April 1999, the Pretore di Treviso, Sezione Distaccata di Oderzo (Treviso Magistrates' Court, Oderzo Division), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) six questions on the validity of Article 39(3), (4) and (11) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1), as amended by Council Regulation (EEC) No 1566/93 of 14 June 1993 (OJ 1993 L 154, p. 39) (hereinafter 'Regulation No 822/87'), and of Commission Regulation (EC) No 343/94 of 15 February 1994 opening compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87 and derogating for the 1993/94 wine year from certain detailed rules for the application thereof (OJ 1994 L 44, p. 9).

2 Those questions were raised in proceedings between Mr Busolin and others, who are all wine-growers, and the Ispettorato Centrale Repressione Frodi — Ufficio di Conegliano — Ministero delle Risorse Agricole, Alimentari e Forestali (Conegliano Office of the Central Inspectorate for the Prevention of Fraud in the Ministry of Agriculture, Food and Forest Resources; hereinafter 'the Ministry') concerning fines imposed on them under national law for contravention of the Community rules on the compulsory distillation of table wine.

3 For an account of the Community and national legislation, reference should be made to the judgment of the Court in Case C-375/96 *Zaninotto* v *Ministero delle Risorse Agricole, Alimentari e Forestali* [1998] ECR I-6629, where the same legislation was at issue.

Main proceedings

4 Mr Busolin is a wine producer in the area of Venetia. On 17 April 1996 the Ministry fined him for infringement of Article 39 of Regulation No 822/87, on the ground that, by failing to deliver 379.47 hectolitres of wine for compulsory distillation, he had failed to comply with his obligations regarding the compulsory distillation of table wine in the 1993/94 wine year.

5 On 31 May 1996 Mr Busolin brought proceedings contesting that decision before the national court. By separate actions, brought in due time, other wine-growers challenged decisions by the Minister imposing analogous penalties on them. All the actions were joined.

6 Mr Busolin and the other wine-growers pleaded that the Community rules requiring Italian producers to distil certain quantities of table wine in the 1993/94 wine year were unlawful.

7 The Pretore di Treviso, Sezione Distaccata di Oderzo, uncertain as to the validity of certain provisions of Community law relating to the compulsory distillation of table wine, decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is the Commission's decision to allocate the quantity for compulsory distillation between the various production regions for the wine year 1993/94 (contained in Regulation (EC) No 343/94) invalid for infringement of Article 39(11)(b) of Regulation (EEC) No 822/87 (as amended by Regulation (EEC) No 1972/87) through failure to establish the existence of the prerequisite laid down in that same legislation, namely a significant difference in the ratio between quantities available and normal consumption for 1993/94 compared with the ratio for the reference years 1981/82, 1982/83 and 1983/84?

2. In the alternative to Question 1:

Is the Commission's decision to allocate the quantity for compulsory distillation between the various production regions for the year 1993/94 (contained in Regulation (EC) No 343/94) invalid, inasmuch as it appears to be defective for infringement of Article 190 of the EC Treaty (or for an "inadequate statement of reasons") in that neither Regulation No 343/94 nor the measures and documents preceding it refer to any assessment as to the existence of the legislative precondition that the ratio between quantities available and normal consumption for the year 1993/94 should differ significantly from that for the reference years 1981/82, 1982/83 and 1983/84?

3. Is Regulation (EC) No 343/94, requiring Italy to distil 12 150 000 hectolitres, invalid for infringement of the principle of reasonableness, manifest

error and inconsistency in relation to the object pursued, in the light of the system of calculation used by the Commission as described in its answer of 13 March 1998, on account of the unreasonableness and illogicality of the updating of the figure of 85%, comparing parameters that were entirely divorced from the reality of the wine market in 1993/94?

4. Is Regulation (EC) No 343/94, requiring Italy to distil 12 150 000 hectolitres, unlawful for infringement of Article 39(11)(b) of Regulation (EEC) No 822/87 (as amended by Regulation (EEC) No 1972/87) because the amendment of the percentage by the Commission was determined by the extent to which the ratio between production in 1981/82, 1982/83 and 1983/84 (145 000 000 hectolitres) and normal consumption in 1984/85 for table wine differed in relation to the ratio between production in 1981/82, 1982/83 and 1983/84 (145 000 000 hectolitres) and normal consumption for 1993/94, an approach which does not appear to be in conformity with the provision in question?

5. In the alternative to Questions 3 and 4:

In the event that Article 39(11)(b) of Regulation (EEC) No 822/87 (as amended by Regulation (EEC) No 1972/87) is to be interpreted as authorising such a system of calculation, is Article 39(11)(b), for the reasons and in the light of the calculations set out in the order for reference, unlawful for infringement of the principle of reasonableness, manifest error and inconsistency in relation to the object pursued, and for infringement of the prohibition on discrimination under Article 40 of the Treaty?

6. Are Article 39(3), (4) and (11) of Regulation (EEC) No 822/87, as amended by Regulation (EC) 1566/93, and Regulation (EEC) No 343/94 which

implements the former measures, unlawful for infringement of the principle of reasonableness, manifest error, misuse of powers and infringement of the principle of proportionality, in the light of the matters set out in the order for reference?'

Consideration of the questions referred for a preliminary ruling

8 It should be noted at the outset that in its judgment in *Zaninotto*, cited above, which was given on a preliminary reference from the Pretura Circondariale di Treviso (Treviso District Magistrates' Court) and related to identical facts, the Court held that examination of the numerous questions raised in that case had disclosed no factor of such a kind as to affect the validity of the legislation at issue allocating, for the 1993/94 wine year, the quantities to be distilled in the context of the compulsory distillation of table wine and setting the total quantity to be distilled by Italy at 12 150 000 hectolitres. The Court held, in particular, that the reference percentage of 85%, provided for initially by the third subparagraph of Article 39(3) of Regulation No 822/87, could lawfully be adjusted by the Commission in the exercise of its powers to 55.01% for the 1993/94 wine year, in order to take account of the change in consumption which had decreased significantly over time (*Zaninotto*, paragraph 25 et seq.). Furthermore, as regards the application of that percentage, the Italian Republic did not suffer from different treatment in relation to the other Member States (*Zaninotto*, paragraph 31).

9 The present case again concerns the legality of the adjustment to the reference percentage of 85% made by the Commission for the 1993/94 wine year, on the basis of which it set the quantity to be distilled by each Member State. Before the national court, Mr Busolin and the other wine-growers raised further, similar, questions relating to the legality of the obligation to distil imposed on Italy. The national court found that those questions were new in relation to *Zaninotto* and not manifestly unfounded. For that reason it considered it necessary to make a further reference to the Court.

10 Although the angle from which the questions in the present case are asked is different from that in *Zaninotto*, they none the less concern the same aspects of the relevant Community legislation and of its effects on wine-growers in Italy, a fact which the national court has acknowledged.

11 The aspects pleaded in the present case, that is to say:

— a significant difference in the ratio between the quantities available and normal consumption for the 1993/94 wine year compared with the reference years was not established in adopting Article 1 of Regulation No 343/94 (first and fourth questions) and the duty to state reasons was therefore infringed (second question),

— the adjustment of the reference percentage calculated by the Commission for the 1993/94 wine year is misconceived (third question),

— the method of calculating the adjustment of the reference percentage, as established by Council Regulation (EEC) No 1972/87 of 2 July 1987 amending Regulation (EEC) No 822/87 (OJ 1987 L 184, p. 26), is unlawful (fifth question), and

— the general allegation that the scheme for the compulsory distillation of table wine in its entirety is, and always has been, unsuited to market conditions (sixth question),

are not such as to affect the conclusion reached by the Court in *Zaninotto* and recalled in paragraph 8 of this judgment, namely that the compulsory distillation scheme is valid.

12 That outcome is supported by the Opinion of the Advocate General at points 42 to 54, relating to the first and fourth questions, points 58 to 62, relating to the second question, points 66 to 71, relating to the third question, points 79 to 82, relating to the fifth question, and points 88 to 100, relating to the sixth question.

13 It follows from the foregoing that examination of the questions raised has disclosed no factor of such a kind as to affect the validity of Article 39(3), (4) and (11) of Regulation No 822/87 or of Regulation No 343/94.

Costs

14 The costs incurred by the Spanish Government, the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Pretore di Treviso, Sezione Distaccata di Oderzo, by order of 7 April 1999, hereby rules:

Examination of the questions raised has disclosed no factor of such a kind as to affect the validity of Article 39(3), (4) and (11) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine, as amended by Council Regulation (EEC) No 1566/93 of 14 June 1993, or of Commission Regulation (EC) No 343/94 of 15 February 1994 opening compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87 and derogating for the 1993/94 wine year from certain detailed rules for the application thereof.

Wathelet La Pergola Jann

Delivered in open court in Luxembourg on 19 October 2000.

R. Grass

Registrar

M. Wathelet

President of the First Chamber