OPINION OF ADVOCATE GENERAL ALBER

delivered on 21 September 2000 *

I — Introduction

1. By the present action the Italian Republic is seeking the complete or partial annulment of Regulation No 2815/98. [1] Italy is now pursuing only two of the original four pleas in law. The first plea in law essentially consists in the complaint that under Regulation No 2815/98 the location of the mill in which the olive oil is extracted has been set as the criterion for determining the geographical area from which the oil originates. An incorrect criterion has thus been selected, since that location does not give any indication as to the origin of the olives. In addition, because of a reference to rules contained in the Customs Code, abusive use of designations of origin is possible. In the other plea in law, Italy complains that Regulation No 2815/98 made unlawful registration of protected designations of origin possible during a transitional period between the publication of the regulation and the final deadline for registration.

II — The legal framework, in particular Regulation No 2815/98

A — *Preliminary observations on the manner of citation*

2. The legislation most frequently cited in the present case will be cited in the following abbreviated forms:

— Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats — hereinafter: Regulation No 136/66; [2]

— Council Directive 79/112/EEC of 18 December 1978 on the approxima-

* Original language: German.

1 — See point 2 below for the title of the regulation.

2 — OJ, English Special Edition 1965-1966, p. 221, last amended by Council Regulation (EC) No 2702/1999 of 14 December 1999 on measures to provide information on, and to promote, agricultural products in third countries (OJ 1999 L 327, p. 7).

tion of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer — hereinafter: Directive 79/112; [3]

— Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts — hereinafter: Regulation No 2392/89; [4]

— Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs — hereinafter: Regulation No 2081/92; [5]

— Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code — hereinafter: the Customs Code [6] — and

— Commission Regulation (EC) No 2815/98 of 22 December 1998 concerning marketing standards for olive oil — hereinafter: Regulation No 2815/98. [7]

B — *Regulation No 2815/98*

(1) General observations concerning the regulation

(a) Legal basis

3. Article 35a(1) of Regulation No 136/66 authorises the Commission to adopt mar-

3 — OJ 1979 L 33, p. 1, repealed and consolidated by Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29).

4 — OJ 1989 L 232, p. 13, repealed and consolidated by Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1). That regulation requires indications of the place where the processed grapes were harvested.

5 — OJ 1992 L 208, p. 1, last amended by Commission Regulation (EC) No 1068/97 of 12 June 1997 amending Annex II to Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1997 L 156, p. 10).

6 — OJ 1992 L 302, p. 1, last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council of 13 April 1999 amending Council Regulation (EEC) No 2913/92 with regard to the external transit procedure (OJ 1999 L 119, p. 1).

7 — OJ 1998 L 349, p. 56.

keting standards for oils and fats — including olive oil — which may cover 'in particular quality grading, packaging and presentation'.

4. The provision was introduced by Council Regulation (EEC) No 1915/87 of 2 July 1987 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats. [8] The relevant recital to the amending regulation states:

'Whereas in order to improve the marketing of oils and fats and increase their profitability, provision should be made for introducing marketing standards'.

(b) Reasons and recitals

5. Regulation No 2815/98, which is contested in the present dispute, was adopted on the basis of Article 35a of Regulation No 136/66. It governs the indication of designations of origin for virgin olive oil [9] for sale to the ultimate consumer. In the recitals to Regulation No 2815/98, it is stated that, as a result of agricultural traditions and local extraction and blending practices, directly marketable edible virgin olive oils may be of quite different taste and quality depending on their geographical origin, whilst there are no substantial differences linked to origin in other categories of edible olive oil. Regulation No 2815/98 governs the criteria for the use of designations of origin for virgin olive oil and prohibits in principle the indication of designations of origin in relation to the sale of other edible olive oils.

6. The third recital states:

'[I]n the case of imported olive oils, the provisions on non-preferential origin contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ... must be complied with'.

8 — OJ 1987 L 183, p. 7.

9 — The categories 'virgin olive oil' and 'extra virgin olive oil' in accordance with point 1 of the Annex to Regulation No 136/66, as amended by Council Regulation (EC) No 1638/98 of 20 July 1998 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats (OJ 1998 L 210, p. 32). Pursuant to Article 35(2) of Regulation No 136/66, the 'ordinary virgin olive oil' also mentioned in the Annex is not permitted to be sold to consumers.

7. The fifth recital states:

'[W]hen the origin of a virgin olive oil relates to the European Community or to a geographical area covering the entire territory of a Member State there can be no confusion in practice with PDOs or PGIs; ... extraction practices and techniques, particularly in the olive oil production sector, influence the quality and taste of virgin oils; ... transfers of olives from one country to another are extremely limited, mainly because of the substantial reduction in the quality of the oil obtained which they entail;... extraction of the oil should therefore be regarded as conferring origin, which will also take account of the difficulties as regards control and changing the class of product which are involved for international trade'.

8. The seventh recital contains the following passage:

'... however, existing trade marks may continue to be used if they have been officially registered in the past in accordance with First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks,[10] as amended by Decision 92/10/EEC'.[11]

(2) The articles of Regulation No 2815/98 which are relevant to the present case

9. The relevant provisions of Regulation No 2815/98 state:

'Article 1

The designation of the origin of extra virgin and virgin olive oil as defined in points 1(a) and (b) of the Annex to Regulation No 136/66/EEC on packagings intended for consumers in the Member States or on labels attached to those packagings shall be optional. If that option is taken up by an operator designation of the origin shall be authorised solely in accordance with the provisions of this Regulation.

The designation of the origin of other olive oils and olive-residue oils as referred to in

10 — OJ 1989 L 40, p. 1.

11 — Council Decision of 19 December 1991 postponing the date on which the national provisions applying Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks are to be put into effect (OJ 1992 L 6, p. 35).

the Annex to the above Regulation on packagings intended for consumers in the Member States or on labels attached to those packagings shall not be authorised.

2. Without prejudice to the national rules adopted pursuant to Directive 79/112/EEC, the labelling and presentation of the designation of origin for the final consumer shall be in accordance with this paragraph.

Article 2

1. The designation of origin shall relate to a geographical area and may mention only:

(a) a geographical area whose name has been registered as a protected designation of origin or protected geographical indication in accordance with Regulation (EEC) No 2081/92;

and/or

(b) for the purposes of this Regulation:

— a Member State,

— the European Community,

— a third country.

The designation of origin shall be indicated on the packaging or the label attached to the packaging within the meaning of Article 1(3) of Directive 79/112/EEC in such a way that it can be easily understood by the final consumer.

Any reference to a geographical area on the packaging or the label attached to the packaging shall be regarded as a designation of origin bound by the provisions of this Regulation, with the exception of:

— the names of brands or firms whose registration was applied for before 1 January 1999 in accordance with Directive 89/104/EEC,

— designations granted pursuant to Regulation (EEC) No 2081/92.

Article 3

1. In the case of oils benefiting from a protected designation of origin or from a protected geographical indication, the designation of origin shall be in accordance with the provisions laid down pursuant to Regulation (EEC) No 2081/92.

2. The designation of origin, where this indicates the European Community or a Member State, in cases other than those referred to in paragraph 1, shall correspond to the geographical area in which the "extra virgin olive oil" or "virgin olive oil" was obtained.

...

An extra virgin or virgin olive oil shall be deemed to have been obtained in a geographical area for the purposes of this paragraph only if that oil has been extracted from olives in a mill located within that area.

3. In the case of an extra virgin or virgin olive oil imported from a third country, the designation of origin shall be determined in accordance with the provisions regarding non-preferential origin contained in Articles 22 to 26 of Regulation (EEC) No 2913/92.

Article 4

1. The "extra virgin olive oil" and "virgin olive oil" whose origin is designated in accordance with Article 3(2) shall be packaged in an establishment approved for that purpose. Approval shall be granted by the Member State concerned in whose territory the packaging facilities are situated.

2. Approval shall be granted and alphanumeric identification allocated to any establishment so requesting which:

— possesses packaging facilities,

— undertakes to keep documentary records and separate storage facilities permitting, to the satisfaction of the Member State concerned, checks on the provenance of the oils whose origin is designated and, where necessary, of the constituents of the olive oil blends whose origin is designated,

— agrees to the checks laid down in application of this Regulation.

3. The packaging or label attached to the packaging shall bear the alphanumeric identification of the approved packaging plant.

Article 5

1. Member States shall carry out designation of origin checks in the packaging plants concerned so as to verify correspondence between the designations of origin of the virgin olive oils leaving the plants and the designations of origin of the quantities of virgin olive oils used.

2. Member States shall adopt the necessary measures, in particular by establishing a system of financial penalties, to guarantee compliance with this Regulation. They shall notify the Commission of the measures adopted to that end.'

C — *Regulation No 2081/92*

10. Article 2(2) of Regulation No 2081/92 states:

'For the purposes of this Regulation:

(a) designation of origin: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

(b)...'.

D — *Provisions of the Customs Code*

11. The provisions of the Customs Code referred to in Article 3(3) of Regulation No 2815/98 state *inter alia*:

'*Article 22*

Articles 23 to 26 define the non-preferential origin of goods for the purposes of:

...

(c) the preparation and issue of certificates of origin.

...

Article 24

Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.'

III — Facts, procedure and forms of order sought

12. In Italy there are national rules on the indication of designations of origin for olive oil. [12] These are connected in particular to the location of the olive groves whose olives were used to produce the oil. After the provisions of the contested Regulation No 2815/98 had been heavily criticised in the competent committee of the Italian Parliament, the Italian Government brought the present action. It withdrew two pleas in law during the written procedure.

13. The Italian Republic claims that the Court should:

— annul Regulation (EC) No 2815/98 of 22 December 1998 or at least Article 1, Article 2(1) and the third sub-

12 — See the description in the Opinion of Advocate General Jacobs delivered on 27 January 2000 in Case C-443/98 *Unilever Italia* v *Central Food* [2000] ECR I-7535, I-7537, paragraph 10 et seq.); that case concerns the claim that, in adopting those rules, the Italian Republic infringed Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8).

paragraph of Article 2(2), the third subparagraph of Article 3(2), and Article 3(3);

— order the Commission to pay the costs.

14. The Commission claims that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

IV — Legal assessment

A — *Determination of the area of origin through the location of the mill*

Submissions of the parties

15. The Italian Republic takes the view that Article 3(2) of Regulation No 2815/98 infringes its legal basis — Regulation No 136/66 [13] — which relates to the cultivation of olives, and not only to pressing, which may take place anywhere. Therefore, the entire production cycle for the production of olive oil — from olive-growing to pressing — must form the basis of a designation of origin. This is also clear from Directive 79/112 [14] and from Regulation No 2081/92, [15] under which geographical designations of origin are connected to the region of production. Regulation No 2392/89 adopts a similar approach for wine.

16. The recitals are also inconsistent and illogical. According to general experience, both the place of cultivation of olives and the place of pressing and the procedures typically used there are of crucial importance for the characteristics which may justify the individualisation of olive oil on the basis of its origin. Even the grounds adopted by the Commission concede, in the first recital, that olive oils differ 'as a result of agricultural traditions'. The Commission cannot ignore the fact that genetic factors and the environment — in particular climate — will determine the product's characteristics. Thus, they influence the proportions of the different fatty acids and

13 — See point 3 et seq. above.

14 — Cited in footnote 3; the directive prohibits, without further clarification, information which might mislead the consumer as to the true origin of a product.

15 — Cited in footnote 5, see also point 10.

polyphenols in the olive oil. Pressing is certainly important, but cannot compensate for an absence of factors resulting from agricultural traditions.

17. Whilst transportation of olives over long distances generally results in losses of quality, technical developments which would make it possible to produce virgin olive oil or extra virgin olive oil from imported olives cannot be ruled out. Regulation No 2815/98 encourages producers to accept a loss of quality in order to be able to use a special designation of origin. Such encouragement is not consistent with the statement that transportation reduces quality. Moreover, because of that encouragement, it is not possible to argue that the negligible imports before the entry into force of Regulation No 2815/98 rule out their increase in the future.

18. Furthermore, those rules may result in an increase in actual imports of olives from third countries into the Community, with the result that the oil extracted from those olives is regarded as being produced in the Community merely on the basis of the pressing.

19. With the criterion of the location of the oil mills, the Commission is unilaterally promoting the interests of industrial oil mills to the detriment of olive farmers.

20. The Commission first points out that the institutions possess a wide discretion in agricultural policy decisions. In reviewing the legitimacy of the exercise of that discretion, the Community Courts may not substitute their own assessments for those of the competent authorities, but must restrict themselves to examining whether those assessments contain a manifest error or constitute a misuse of power. [16]

21. The Commission stresses that the criterion disputed by the applicant which is laid down in the third subparagraph of Article 3(2) of Regulation No 2815/98 — the location of the mill — concerns only the indication of a Member State or the European Community as the area of origin.

22. Regulation No 136/66 does not contain any express or implicit rules regarding the origin of olive oils. Regulation No 2815/98 is not hierarchically subordinate to Directive 79/112 and Regulation

16 — The Commission relies on Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333.

No 2081/92. As subsequent and more specific legislation, Regulation No 2815/98 can lay down exceptions to the rules laid down in them.

23. In the alternative, the Commission disputes that Regulation No 2815/98 is contrary to Directive 79/112 and Regulation No 2081/92. It is merely apparent from their general provisions that a designation of origin is connected to the place of production. The third subparagraph of Article 3(2) of Regulation No 2815/98 defines that place as the place of extraction.

24. This plea in law is thus reduced to a criticism by Italy of the exercise of the scope which the Commission enjoys in exercising its law-making power. In this respect, however, Italy can succeed only if it can be shown that, in exercising its discretion, the Commission committed a serious error, a misuse of power in the narrow sense established in Community law, or exceeded the bounds of its discretion.

25. The Commission does not dispute that the region where the olives are grown influences the characteristics of the olive oil. However, detailed rules governing the indication of such a region in the case of olive oil — including the origin of the olives — are laid down in Regulation No 2081/92. On the other hand, no particular quality characteristics result from the cultivation of olives in a Member State or the European Community as a whole, since the differences between the different possible places of cultivation are too great. Consumers are not given any useful information when informed merely that the olives used have been grown in a certain Member State.

26. The provisions of Regulation No 2081/92 likewise cannot call in question Regulation No 2815/98 on the basis of the difference between the indications of origin concerned.

27. Differences in practice between the criteria of the location of the mill and the origin of the olives are conceivable only in the case of low-quality refined olive oil, which, however, under Regulation No 2815/98, may not be sold with an indication of origin. Olives have to be processed within a few days, otherwise the extracted oil no longer achieves the quality of virgin olive oil. Generally, the transportation of olives thus permits only the production of refined olive oil which may not be given a designation of origin. On the other hand, methods of transportation which preserve the quality of the olives (presumably using refrigerated containers or similar means) involve very high costs.

28. Moreover, the weight of the oil obtained is equivalent to only around 20% of the weight of the olives used. The transportation costs for the olives to be pressed would therefore also be higher, based on weight, than the transportation costs for the equivalent quantity of olive oil.

29. The Commission submits statistics in support of its argument that trade in olives for the purpose of olive oil production is negligible. Olive oil is easier to transport than olives in every respect.

30. Therein lies the fundamental difference between olive oil and wine. The comparison with Regulation No 2392/89, [17] which lays down rules for designations of origin for wines and grape musts, is therefore completely irrelevant.

31. If there were to be a significant increase in transportation of olives in the future, the Commission could, without difficulty, react appropriately by making a corresponding adjustment to Regulation No 2815/98.

17 — Cited in footnote 4.

32. The objections raised by the applicant could thus be significant at most at political level, but do not give grounds for an action for annulment, since the Commission enjoys a wide discretion in agricultural policy.

33. The Commission also adds that the practical application of its chosen criterion is very much easier to verify, since there are far fewer olive presses than olive farmers. Olive presses are already subject to various checks. In addition, it would hardly be possible, by analysing the oil, to determine the origin of olives which in the case of 'Italian olive oil' could come from anywhere in Italy. Since it minimises costs, the mill criterion adopted in Regulation No 2815/98 is also more proportionate than the criterion of the location of the olive trees demanded by Italy.

Assessment

34. This plea in law raised by the Italian Republic is based on the view that, in adopting the rules on the indication of a Member State as the area of origin of virgin olive oil, the Commission infringed Community law. On the evidence of the arguments submitted, this can mean only the infringement of the legal basis of Regulation No 2815/98 — Article 35a(1) of Regulation No 136/66. That provision

authorises the Commission to adopt marketing standards *inter alia* for virgin olive oil in order to increase sales. It is not disputed that Regulation No 2815/98, which is the subject of the present case, lays down marketing standards.

35. An infringement of the legal basis is therefore possible only if the Commission has exceeded the limits of the lawful scope which it enjoys — its discretion. There is, however, no reason to suppose that the Commission has exceeded the limits of the legal basis and the discretion accorded to it therein.

36. The legal basis imposes no express restriction on the Commission's discretion. Neither Article 35a of Regulation No 136/66 nor other provisions of that regulation contain indications as to the way in which the area of origin of olive oil is to be determined.

37. It is theoretically possible to derive guidance for the interpretation of Regulation No 136/66 from the other legislation cited by the Italian Republic. However, there are no connecting factors for such an interpretation of Regulation No 136/66 with regard to determination of area of origin in it. Moreover, Regulation No 2081/92 and Regulation No 2392/89 govern matters which differ from the point to be decided in the present case, that is to say, on the one hand, the general rules on the indication of certain *regions* of origin and, on the other, the special rules for the indication of areas of origin for wines and grape musts. As far as Regulation No 2081/92 is concerned, the indication of certain regions as the area of origin is of considerably greater importance for the quality of olive oil than the indication of a whole Member State. It is also much easier to verify the origin of olives from particular regions than the origin from an entire Member State. On account of the specific conditions of its production, olive oil is not at all comparable with wines and grape musts, which are the subject of Regulation No 2392/89.

38. The third piece of legislation referred to by the Italian Republic — Directive 79/112 — does not contain any substantive provisions at all regarding the manner in which the area of origin of olive oil is to be determined.

39. Thus, as the Agent of the Italian Republic conceded in the oral procedure, the Commission has a wide discretion in the exercise of its law-making competence under Article 35a of Regulation No 136/66.

40. The Court has set out the general principles for the review of discretion-

ary decisions, for example in Case C-285/94:

'In so far as an assessment of a complex economic situation is involved,... where... the Commission enjoys significant freedom of assessment, the Community judicature, when examining the lawfulness of the exercise of such freedom, cannot substitute its own assessment of the matter for that of the competent authority but must restrict itself to examining whether the assessment of the competent authority contains a manifest error or constitutes a misuse of power.' [18]

41. In laying down marketing standards, the Commission is required to assess complex economic situations. That assessment relates primarily to whether, on the basis of the facts relating to the market and to the product in question, it is necessary to introduce rules governing the indication of Member States as the area of origin of olive oil and how those rules should, where necessary, be enforced. Judicial review, in the sense described, is thus restricted.

42. In the present case there is nothing to suggest that using the location of the mill in order to determine the Member State which may be described as the area of origin of virgin olive oil constitutes an error or a misuse of power. According to the submissions of both parties, as technology and the market in olive oil stand at present, the entire production cycle for virgin olive oil always takes place in the Member State in which the mill extracting the olive oil is located. Both sides state that transportation of olives over longer distances for pressing results in losses of quality. It is not disputed that for that reason too transportation of olives between Member States or from third countries into the Community for the purpose of pressing can at present be disregarded. Furthermore, it is very much easier to monitor a mill than olive-growing. Those considerations can be seen in the explanatory statement for Regulation No 2815/98. The Italian Republic has not been able to demonstrate convincingly that there is a risk of increased cross-border transportation of olives in future if it is possible to obtain certain designations of origin on the basis of pressing. It therefore appears appropriate to adopt the location of the mill as the criterion for claiming area of origin in a Member State.

43. There is even less evidence of the existence of a *manifest* error. This objection must therefore be rejected.

B — *The reference to Articles 22 and 24 of the Customs Code*

Submissions of the parties

44. The Italian Republic takes the view that Article 3(3) of Regulation No 2815/98

18 — Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 39, with further references.

unlawfully refers to Articles 22 and 24 of the Customs Code. [19] The determination of the area of origin under those articles on the basis of the last processing of a product can have effect only under customs law. Otherwise, there would be a risk that the blending of oils from different places of origin carried out in a certain Member State could by itself provide that mixture with a designation of origin from that Member State without its containing even a minimum quantity of domestic oil.

Assessment

46. There is no obvious reason to interpret Regulation No 2815/98 differently from the Commission. Article 3(3) does not therefore make it possible to give olive oil pressed in third countries the designation of a Member State on the basis of blending in that Member State. Consequently, that objection must also be rejected.

C — *Infringement of Directive 89/104/EEC*

45. The Commission objects that Italy misinterprets Article 3(3) of Regulation No 2815/98. Under the third indent of Article 2(1)(b) of Regulation No 2815/98, in the case of olive oil from a third country only that third country can be indicated as the area of origin. Article 3(3) of Regulation No 2815/98 does not therefore establish any right to use an area of origin within the Community, but merely governs which place outside the Community is to be regarded as the area of origin of olive oil from third countries. That can be clearly seen from the third recital in Regulation No 2815/98. [20] By contrast, in order to be able to claim an area of origin within the Community, olive oil must meet the requirements laid down in Article 3(2) of Regulation No 2815/98.

Submissions of the parties

47. The Italian Republic submits that the first indent of the third subparagraph of Article 2(2) of Regulation No 2815/98 provides, seemingly in accordance with Directive 89/104/EEC, [21] for an exception for applications for registration of a brand made before 1 January 1999. However, Regulation No 2815/98, unlike the directive, not only contains no reference to good faith, but has actually made it possible to register applications between the date of publication of Regulation No 2815/98, 24 December 1998, and 1 January 1999,

19 — Cited in footnote 6. For the text of the provisions see point 11 above.

20 — For the text see point 6 above.

21 — Cited above, point 8.

which legitimised real and definitely possible abuses.

48. The Commission considers that it is not possible in practice for a registration to be made effectively within that short period. Moreover, Regulation No 2815/98 neither expressly nor implicitly contains an exception to Directive 89/104. A registration of a brand in bad faith before 1 January 1999 in order to circumvent the rules laid down in Regulation No 2815/98 is therefore unlawful under Article 3 of that directive. Rather than encouraging the abusive use of trade marks, Regulation No 2815/98 extends the possibilities for combating such abuse, also with regard to brands registered at an earlier date. Under Article 3(1)(g) of the directive, trade marks which are of such a nature as to deceive the public are not permitted. Under Article 3(3), the Member States are able to prohibit trade marks registered in bad faith. Regulation No 2815/98 does not affect those powers.

Assessment

49. The first indent of the third subparagraph of Article 2(2) of Regulation No 2815/98, which is to be considered here, provides that references to a geographical area on the packaging or the label attached to the packaging of olive oil are to be regarded as a designation of origin. They must therefore in principle meet the requirements of Regulation No 2815/98, unless they are the names of a brand or a firm whose registration was applied for before 1 January 1999 in accordance with Directive 89/104.

50. As can be seen from the seventh recital, that provision seeks to ensure only the continued existence of trade marks which were registered before the entry into force of Regulation No 2815/98. On the other hand, it follows implicitly from Regulation No 2815/98 that subsequently registered trade marks are not to justify the use of a designation of origin for olive oil.

51. It must be conceded that, in view of the publication of Regulation No 2815/98 on 24 December 1998, setting 1 January 1999 as the closing date for the registration of a trade mark does make it possible to circumvent the rules of Regulation No 2815/98 by registering a trade mark.

52. However, the Italian Government would also have to show, with regard to that objection, a manifest error or misuse of powers by the Commission in order for its application to be successful. The risk of

abusive registration of a trade mark within the period of slightly more than one week between the publication of Regulation No 2815/98 and the expiry of the prescribed period appears highly theoretical, particularly since that period included the Christmas holidays, with the result that only a few working days remained to make such a registration. In order for its action to be successful in this respect, Italy would, in view of the time which has now passed, have had to prove that that risk in fact materialised.

53. That plea in law must therefore also be rejected.

V — Costs

54. Under the first sentence of Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

VI — Conclusion

55. As a consequence of the foregoing considerations, I propose that the Court should:

(1) dismiss the action;

(2) order the Italian Republic to pay the costs.