JUDGMENT OF THE COURT (Fifth Chamber)
29 October 1998 *

In Case C-375/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Treviso, Sezione Distaccata di Conegliano, Italy, for a preliminary ruling in the proceedings pending before that court between

Galileo Zaninotto

and

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

on the validity of the fourth indent of Article 1(3) 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), of Article 1(1)(c), (2) and (3) of Commission Regulation (EC) No 465/94 of 1 March 1994 fixing for the 1993/94 wine year the percentages of table wine production to be delivered for compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87, in Regions 3 and 6 (OJ 1994 L 58, p. 2), as amended by Commission Regulation (EC) No 610/94 of 18 March 1994 (OJ 1994 L 77, p. 12), of Article 39(1) and (4) 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), of the fourth indent of Article 4(2) of Commission Regulation (EEC) No 441/88 of 17 February 1988 laying down detailed rules for applying compulsory

* Language of the case: Italian.

distillation as referred to in Article 39 of Regulation No 822/87 (OJ 1988 L 45, p. 15), and of Article 1(1) of Commission Regulation (EC) No 3151/94 of 21 December 1994 introducing a further derogation from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation in respect of the 1993/94 wine year (OJ 1994 L 332, p. 32),

THE COURT (Fifth Chamber),

composed of: P. Jann (Rapporteur), President of the First Chamber, acting as President of the Fifth Chamber, C. Gulmann, D. A. O. Edward, L. Sevón and M. Wathelet, Judges,

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

after considering the written observations submitted on behalf of:

— Mr Zaninotto, by Ivone Cacciavillani, of the Venice Bar, and Antonio Cimino, of the Padua Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by Danilo del Gaizo, Avvocato dello Stato,

— the Spanish Government, by Santiago Ortiz Vaamonde, Abogado del Estado, acting as Agent,

— the Council of the European Union, by Jan-Peter Hix and Antonio Tanca, of its Legal Service, acting as Agents, and

— the Commission of the European Communities, by Paolo Ziotti, of its Legal Service, acting as Agent, assisted by Alberto Dal Ferro, of the Vicenza Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Zaninotto, represented by Ivone Cacciavillani and Antonio Cimino; of the Italian Government, represented by Danilo del Gaizo; of the Spanish Government, represented by Santiago Ortiz Vaamonde; of the Council, represented by Antonio Tanca; and of the Commission, represented by Francesco Ruggeri Laderchi, of its Legal Service, acting as Agent, assisted by Alberto Dal Ferro, at the hearing on 26 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 28 May 1998,

gives the following

Judgment

1 By order of 2 November 1996, received at the Court on 26 November 1996, the Pretura Circondariale di Treviso, Sezione Distaccata di Conegliano (District Magistrate's Court, Treviso, Conegliano Division) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the validity of the fourth indent of Article 1(3) 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), of Article 1(1)(c), (2) and (3) of Commission Regulation (EC) No 465/94 of

1 March 1994 fixing for the 1993/94 wine year the percentages of table wine production to be delivered for compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87, in Regions 3 and 6 (OJ 1994 L 58, p. 2), as amended by Commission Regulation (EC) No 610/94 of 18 March 1994 (OJ 1994 L 77, p. 12), of Article 39(1) and (4) 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), of the fourth indent of Article 4(2) of Commission Regulation (EEC) No 441/88 of 17 February 1988 laying down detailed rules for applying compulsory distillation as referred to in Article 39 of Regulation No 822/87 (OJ 1988 L 45, p. 15), and of Article 1(1) of Commission Regulation (EC) No 3151/94 of 21 December 1994 introducing a further derogation from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation in respect of the 1993/94 wine year (OJ 1994 L 332, p. 32).

2 Those questions were raised in proceedings between Mr Zaninotto, a wine-grower, 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 a fine imposed on him under national law for contravention of the Community rules on the compulsory distillation of table wine. Mr Zaninotto alleges that the Community rules requiring Italian producers to distil certain quantities of table wine in the 1993/94 wine year are unlawful.

Community legislation

3 Community wine production is subject to common organisation of the market by virtue of Regulation No 822/87, which was adopted on the basis of Articles 42 and 43 of the EEC Treaty. That regulation has been amended, in particular by Council Regulations (EEC) Nos 1972/87 of 2 July 1987 (OJ 1987 L 184, p. 26), 1441/88 of 24 May 1988 (OJ 1988 L 132, p. 1), 1236/89 of 3 May 1989 (OJ 1989 L 128, p. 31), 1325/90 of 14 May 1990 (OJ 1990 L 132, p. 19), 1734/91 of 13 June 1991 (OJ 1991 L 163, p. 6), 1756/92 of 30 June 1992 (OJ 1992 L 180, p. 27) and 1566/93 of 14 June 1993 (OJ 1993 L 154, p. 39).

4 Title III of Regulation No 822/87 lays down a price system and rules governing intervention and other measures to improve market conditions. In order to enable the statistical information essential for knowledge of the market to be obtained, a system of harvest and stock declarations was introduced, with the compilation of an annual forward estimate. For that purpose Article 31 provides:

'1. A forward estimate shall be drawn up before 10 December of each year for the purpose of determining the Community's resources and estimating its needs, including foreseeable imports from and exports to third countries.

2. The forward estimate of the Community's wine resources and needs shall show the proportion of table wines and quality wines [psr], respectively.

3. For each wine year, the Commission shall provide the Council with a final statement of Community resources and utilisation in the preceding wine year.

4. Detailed rules for the application of this article shall be adopted in accordance with the procedure laid down in Article 83.'

5 In accordance with Article 1(6) of Regulation No 822/87, the wine year begins on 1 September each year and ends on 31 August of the following year.

6 As regards the procedure referred to in Article 31(4) of that regulation, Articles 82 and 83 provide:

Article 82

'1. A Management Committee for Wine (hereinafter called "the Committee") is hereby set up consisting of representatives of Member States and chaired by a representative of the Commission.

2. Within the Committee the votes of Member States shall be weighted in accordance with Article 148(2) of the Treaty. The Chairman shall not vote.'

Article 83

'1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its opinion on the draft within a time-limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority provided for in Article 148(2) of the Treaty.

3. The Commission shall adopt measures which shall apply immediately ...'.

7 The need to deal with surpluses in table wine production which were causing serious imbalance in the market led, in particular, to the introduction of compulsory distillation of table wine. The relevant legislation is to be found in Article 39 of Regulation No 822/87 which, following its amendment by Regulation No 1566/93, provides:

'1. If, in respect of a given wine year, the market in table wine and wine suitable for yielding table wine is in a state of serious imbalance, compulsory distillation of table wine and of wine suitable for yielding table wine shall be decided on.

A state of serious imbalance as referred to in the first subparagraph shall be deemed to exist where:

(a) availabilities recorded at the beginning of the wine year exceed the level of normal utilisation by more than four months' supply, or

(b) production exceeds the level of normal utilisation by more than 9%, or

(c) the weighted average of representative prices for all types of table wine remains below 82% of the guide price from the beginning of a wine year for a period to be determined.

2. The Commission shall fix the quantities that are to be delivered for compulsory distillation to eliminate production surpluses and thus restore a normal market situation, in particular as regards the levels of foreseeable availabilities at the end of a wine year and prices.

3. The total quantity to be distilled, determined in accordance with paragraph 2, shall be shared between the various wine-growing regions of the Community, grouped together by Member State.

The quantity for distillation for each wine-growing region shall be proportional to the difference between:

— on the one hand, the production of table wine and of products upstream of table wine to be determined, obtained in the region and in the year in question, and

— on the other hand, a uniform percentage of the average quantity of table wine and of products upstream of table wine to be determined, obtained in the region in question over three consecutive reference wine years.

Until the end of the 1993/94 wine year:

— the uniform percentage shall be 85,

— the consecutive reference years shall be 1981/82, 1982/83 and 1983/84.

...

4. The quantity for distillation determined in accordance with paragraph 3 shall be shared between table wine producers in each wine-growing region.

For producers subject to the obligation to distil, the quantity for distillation shall be equal to a percentage to be determined of their production, as indicated in their production declarations, of table wine and of products upstream of table wine to be determined.

This percentage

— shall be obtained from a progressive scale based on the yield per hectare and may vary between regions according to yields obtained in the past.

...

5. Member States shall notify the Commission of the quantities of table wine produced in each wine-growing region delimited in accordance with paragraph 9, broken down by yield class. These data shall be compiled on the basis of the production declarations referred to in Article 3.

These notifications shall serve as a basis for:

(a) setting the total quantity for distillation in the Community;

(b) allocating this quantity among the wine-growing regions referred to in paragraph 3;

(c) determining, in cooperation with the Member States concerned, the percentage to be applied to the production of each producer subject to the obligation to distil in order to attain the distillation volume laid down for each region.

...

9. The following shall be adopted in accordance with the procedure laid down in Article 83:

...

— the decision to carry out distillation referred to in paragraph 1,

— the criteria for applying paragraph 2 and the total quantity to be distilled referred to in that paragraph,

— the criteria for delimiting wine-growing regions, grouped together by Member State as referred to in paragraph 3, and the delimitation of those regions,

— the fixing of the uniform percentage and the consecutive reference years, and the allocation of the quantities to be distilled among the regions grouped together by Member State, referred to in paragraph 3,

— the progressive scale and the percentages referred to in paragraph 4,

...

11. If, during the 1987/88 to 1993/94 wine years, difficulties likely to jeopardise the execution or balanced application of the compulsory distillation operation referred to in paragraph 1 occur, the measures necessary in order to ensure effective application of the distillation scheme shall be adopted in accordance with the procedure laid down in Article 83.

Such measures:

...

(b) may contain an adjustment to the percentage of 85, referred to in the first indent of the third subparagraph of paragraph 3, only in so far as, for a given wine year, the ratio between the quantities available and normal consumption of table wine differs significantly from that of the reference years referred to in the third subparagraph of paragraph 3' (Regulation No 1972/87).

8 By Regulation No 441/88 the Commission adopted a number of measures amplifying the compulsory distillation scheme set up by Regulation No 822/87. In particular, Article 4(1) of Regulation No 441/88 provides:

'The production regions referred to in Article 39(3) of Regulation (EEC) No 822/87 shall be designated to take account, on the one hand, of production and climatic

conditions and, on the other, of the differences existing between Member States in terms of administrative structure and legal requirements, particularly as regards the internal organisation of cooperative wineries and producer groups.

...'

9 Article 4(2) of that regulation defines the production regions of the Community as follows: Region 1 corresponds to Germany, Region 2 to Luxembourg, Region 3 to France, Region 4 to Italy, Region 5 to Greece and Region 6 to Spain. Portugal was subsequently included in that list as Region 7.

10 Finally, Article 4(3) provides:

'Average production of table wine and products upstream of table wine in the regions referred to in paragraph 2 in the three consecutive wine years 1981/82, 1982/83 and 1983/84 was as follows:

— Region 1:	1 341 700 hectolitres
— Region 2:	57 300 hectolitres
— Region 3:	40 182 000 hectolitres
— Region 4:	64 163 000 hectolitres
— Region 5:	4 632 000 hectolitres
— Region 6:	27 500 000 hectolitres.'

The average for Region 7 was subsequently inserted as totalling 7 250 000 hl.

11 Article 5 of the same regulation states:

'1. On the basis of the notifications from the Member States provided for in the first subparagraph of Article 39(5) of Regulation (EEC) No 822/87, the table wine production of each region shall be classified according to yield class. The definition of such classes shall take account of the quantity of table wine to be distilled in the region in question and the percentage of table wine production in the region which this quantity represents. The abovementioned classes shall be fixed on the basis of the yield classes laid down in Regulation (EEC) No 3929/87.

2. Where compulsory distillation is introduced, a rising scale shall be fixed for each region based on the yield classes referred to in paragraph 1. The steps in this scale shall be fixed at levels which ensure that, taking into account the foreseeable exemptions under Article 9, the total volume resulting from applying the scale to the quantities falling within each yield class for a given region corresponds to the volume to be distilled in the said region.'

12 Article 12 deals with the procedure for delivering table wine for distillation, including the time-limit. It must be delivered no later than July in the relevant wine year.

13 The consequences of failing to comply with the time-limit are set out in Article 23, which provides:

'Expiry of the time-limits referred to ... shall have no bearing whatsoever on the accomplishment of the requirement that the quantities due from each producer be distilled.

After expiry of the said time-limits, the purchase price for the quantities delivered and the price of the alcohol which is produced from those quantities and which is delivered to the intervention agency shall be reduced by an amount equal to the aid laid down for that distillation operation in respect of neutral spirits. No aid shall be paid for distillation products which are not delivered to the intervention agency.'

14 Since the Commission established for the 1993/94 wine year that, on the basis of the data in the forward estimate, there was a serious imbalance in the market for table wine, it decided to impose compulsory distillation for that period. That decision and the detailed rules for its application are laid down in Regulation No 343/94, Article 1 of which provides:

'1. Distillation as provided for in Article 39(1) of Regulation (EEC) No 822/87 is hereby adopted for the 1993/94 wine year.

2. The total quantity of table wine to be distilled shall be 18 200 000 hectolitres.

3. The quantities to be distilled in the regions as referred to in Article 4(2) of Commission Regulation (EEC) No 441/88 shall be as follows:

— Region 1:	—
— Region 2:	—
— Region 3:	2 550 000 hectolitres,
— Region 4:	12 150 000 hectolitres,
— Region 5:	500 000 hectolitres,
— Region 6:	3 000 000 hectolitres,
— Region 7:	—.

...'

15 By Regulation No 465/94 the Commission began to apportion the quantities to be distilled in each region among the various yield classes. Since, as stated in the sixth recital in the preamble to that regulation, the Italian Republic had not forwarded

the table wine production figures and the breakdown by yield class in good time, the provisions relating to that Member State are contained in Regulation No 610/94. Article 1 of Regulation No 465/94, as amended by Regulation No 610/94, states:

'1. Pursuant to Article 5(1) of Regulation (EEC) No 441/88, production from the 1993/94 harvest shall be broken down into the following yield classes:

...

(c) Region 4:

Production obtained with a yield, expressed in hectolitres per hectare:

— not exceeding 45:	1 887 143 hectolitres
— of more than 45, but not more than 70:	8 394 081 hectolitres
— of more than 70, but not more than 90:	11 843 922 hectolitres
— of more than 90, but not more than 110:	10 209 474 hectolitres
— of more than 110, but not more than 125:	4 853 825 hectolitres
— of more than 125, but not more than 140:	2 002 827 hectolitres
— of more than 140, but not more than 170:	1 261 827 hectolitres
— of more than 170, but not more than 200:	195 041 hectolitres
— exceeding 200:	238 774 hectolitres.

2. ...

The average yield in Region 4 shall be 77 hectolitres per hectare.'

16 Finally, Article 1(1) of Regulation No 3151/94, whose wording was subject to a corrigendum (OJ 1994 L 341, p. 76), extended the time-limit which applied in the 1993/94 wine year for the delivery of wine for compulsory distillation to 140 days after 11 September 1994, that is to say to 29 January 1995.

National legislation

17 Article 4(11) of the Italian Decree-Law of 7 September 1987, which was ratified, following amendment, by the Law of 4 November 1987 ('the Law'), provides for an administrative fine to be imposed in the event of a failure to comply with the obligation to distil referred to in Article 39 of Regulation No 822/87 and in the Community legislation implementing that regulation.

The main proceedings

18 Mr Zaninotto is a wine producer in the area of Treviso. On 15 February 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 hl 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.

19 On 30 April 1996 Mr Zaninotto brought proceedings contesting that decision before the referring court. Since that court had doubts as to the validity of certain provisions of Community law relating to the compulsory distillation of table wine, it decided to stay proceedings and to refer seven questions to the Court for a preliminary ruling, asking:

1. whether the fourth indent of Article 1(3) of Regulation No 343/94, and Article 1(1)(c), the second subparagraph of Article 1(2) and Article 1(3) (and the annex, to the extent that it concerns Region 4) of Regulation No 465/94, as amended by Regulation No 610/94 so far as concerns Region 4, are invalid because they contravene the prohibition against discrimination, laid down by Article 40(3) of the EC Treaty, and Article 23 of Regulation No 441/88;

2. whether the fourth indent of Article 1(3) of Regulation No 343/94 and Article 1(1), (2) and (3) of Regulation No 465/94, as amended by Regulation No 610/94, are invalid because they contravene the principle of the protection of legitimate expectations;

3. whether the fourth indent of Article 1(3) of Regulation No 343/94, and Article 1(1), (2) and (3) of Regulation No 465/94, as amended by Regulation No 610/94, are invalid because they infringe Article 31 of Regulation No 822/87 and their enactment is *ultra vires* because an essential precondition was not met;

4. whether Article 39(4) of Regulation No 822/87 is invalid because it contravenes the principle of proportionality in so far as it prescribes, in the case of each producer subject to the obligation, the volume to be distilled and is a wholly inappropriate means of attaining the objective sought;

5. whether the fourth indent of Article 4(2) of Regulation No 441/88 is invalid;

6. whether Article 1(1) of Regulation No 3151/94 is invalid because it contravenes Article 39(1) of Regulation No 822/87 and because an essential precondition was not met;

7. whether Article 1(1) of Regulation No 3151/94 is invalid because it contravenes the principle of proportionality with which Community policy should be consistent.

Question 1

20 By its first question, the referring court wishes to know whether the provisions by which the total quantity of table wine to be distilled was set at 12 150 000 hl for Italy in respect of the 1993/94 wine year are valid. It asks (i) whether the Italian Republic was not discriminated against in relation to the other Member States, (ii) whether the provisions at issue were not adopted arbitrarily inasmuch as the Italian authorities had not supplied accurate data and (iii) whether the Commission was justified, when it calculated the total quantity for distillation, in taking into account the quantities which, in breach of the Law, had not been distilled during the previous wine year and were therefore still on the market.

Alleged discrimination against the Italian Republic in relation to the other Member States

21 The referring court inquires whether the fourth indent of Article 1(3) of Regulation No 343/94, and Article 1(1)(c) and the second subparagraph of Article 1(2) of Regulation No 465/94, as amended by Regulation No 610/94, which determine the quantity for distillation applicable to Italy and the breakdown of that quantity

within that State, do not infringe, first, the prohibition against discrimination enshrined in Article 40(3) of the Treaty and, secondly, Article 23 of Regulation No 441/88, which provides that expiry of the time-limits is to have no bearing on the accomplishment of the requirement that the quantities due from each producer be distilled.

22 The applicant in the main proceedings and the Italian Government consider that the total quantity for distillation set for Italy was such that the obligation to distil was apportioned among the Member States concerned in a discriminatory manner and Italy was penalised significantly. Under Regulation No 343/94, two-thirds of the 18 200 000 hl of wine to be distilled in the Community in the 1993/94 wine year were Italian although its production was much less than two-thirds of total Community production. Italian wine-growers were thus required to distil a greater quantity of wine than those in other Member States whose production conditions are similar. They add that the Commission's calculations are incomprehensible; it would appear to have applied a different reference percentage to the various Member States when determining the respective amounts to be distilled, which is not provided for by the applicable legislation. Nor has the Commission ever revealed the reference percentage applied. While it is true that the initial percentage of 85% laid down in the third subparagraph of Article 39(3) of Regulation No 822/87 may be adjusted under the conditions set out in Article 39(11), the Commission must at least explain those criteria and apply them without discrimination.

23 The applicant in the main proceedings and the Italian Government refer in that regard to the judgment in Case 106/83 *Sermide* v *Cassa Conguaglio Zucchero* [1984] ECR 4209, which stated that the various elements in the common organisation of the markets may not be differentiated according to region or according to other factors affecting production or consumption except by reference to objective criteria which ensure a proportionate division of the advantages and disadvantages for those concerned without distinction between the territories of the Member States. The Commission manifestly offended against that principle.

24 The Commission has pointed out, first of all, that Community table wine production in the 1993/94 wine year showed a large surplus until January 1994, so that it was appropriate for compulsory distillation to be undertaken in order to safeguard the price and quality of table wine. Since Italy's production was much larger than that of any other region, it had to bear the costs of distillation in proportion to its overall production.

25 In that regard, the Commission set out its method of calculation in response to a written question put by the Court. Its reply shows that, according to the forward estimate for the 1993/94 wine year (OJ 1994 C 49, p. 12), overall Community production of table wine amounted to 98 610 000 hl, of which 91 365 000 hl were intended for winemaking. Table wine production, net of wine deliveries and losses, was assessed at 87 385 000 hl, while normal utilisation which, under Article 1 of Regulation No 441/88, is defined as the sum of the quantities intended for human consumption, industrial uses and export, minus the quantity of imported wine, was assessed at 79 807 000 hl. It follows that the total surplus for the wine year at issue amounted to 7 578 000 hl (87 385 000 hl -79 807 000 hl = 7 578 000 hl). Taking into account the stocks at the start of the wine year of 46 886 000 hl and those at the end of the year assessed at 33 253 000 hl, surplus stocks amounted to 13 633 000 hl. The total surplus to be eliminated thus corresponded to the difference between the total quantities available (87 385 000 hl +46 886 000 hl = 134 271 000 hl) and the total needs for the wine year (79 807 000 hl +33 253 000 hl = 113 060 000 hl), that is to say 21 211 000 hl.

26 The Commission stated, next, that the initial reference percentage of 85% laid down in the first indent of the third subparagraph of Article 39(3) of Regulation No 822/87 had to be adjusted in order to take account of the change in consumption, which had decreased significantly over time. Such an adjustment is provided for by subsubparagraph (b) of the second subparagraph of Article 39(11) of Regulation No 822/87, as amended by Regulation No 1972/87, which allows the percentage to be adjusted in so far as, for a given wine year, the ratio between the quantities available and normal consumption of table wine differs significantly from that in the reference years, which was the case here.

27 That is why, in the 1993/94 wine year, the ratio had to be determined between normal utilisation of 79 807 000 hl and the total reference quantity for the Community set out in Article 4(3) of Regulation No 441/88, namely 145 069 000 hl (as Region 2, which corresponds to Luxembourg, had been excluded from the calculation by reason of its low production). The result was a percentage of 55.01% (79 807 000 hl multiplied by 100 and then divided by 145 069 000 hl).

28 That percentage had to be applied uniformly to the reference quantity of each region, as laid down in Article 4(3) of Regulation No 441/88. On the basis of the difference between the annual production of each region and the updated reference quantity, each region's share of the total difference was calculated as follows:

Member State	Reference quantity	Reference quantity 1993/94 wine year	Production 1993	Surplus	Difference %
D	1 342	738	630	—	—
F	40 182	22 104	23 500	1 396	11.09
I	64 163	35 296	45 025	9 729	77.31
GR	4 632	2 548	3 645	1 097	8.72
E	27 500	15 128	15 490	362	2.88
P	7 250	3 988	3 050	—	—
Total	145 069	79 802	91 365	12 584	100.00

29 The relatively high share of the Italian Republic compared with the other Member States thus results from the exceptional size of the surpluses in Italy.

30 As regards, finally, the apportionment of the obligation to distil, the Commission stated that the total surplus of 21 200 000 hl was divided between compulsory distillation (18 200 000 hl) and voluntary support distillation as provided for by Article 38 of Regulation No 822/87 (3 000 000 hl). Thus, an obligation of 14 070 420 hl (77.31% of 18 200 000 hl) was imposed on the Italian Republic. Following discussions within the Management Committee for Wine, which met in accordance with the procedure laid down in Articles 82 and 83 of Regulation No 822/87, Italy's quantity for distillation was even reduced somewhat, from 14 070 420 hl to 12 150 000 hl, in return for a lesser degree of participation in support distillation.

31 The Court finds, on the basis of those calculations, that the Italian Republic did not suffer from different treatment in relation to the other Member States. On the contrary, the Management Committee for Wine even decided to reduce Italy's quantity for distillation (from 14 070 420 hl to 12 150 000 hl). It therefore does not appear that the fourth indent of Article 1(3) of Regulation No 343/94 led to any discrimination, within the meaning of Article 40(3) of the Treaty, against the Italian Republic in relation to the other Member States. Nor has that latter provision been shown to have been infringed by Article 1(1)(c) and the second subparagraph of Article 1(2) of Regulation No 465/94, as amended by Regulation No 610/94, which establish different yield classes per hectare for the region corresponding to Italy.

32 As regards Article 23 of Regulation No 441/88, infringement of which has also been alleged, it should be recalled that under that provision expiry of the time-limits for the delivery of wine for distillation, on 15 or 31 July each year, 'shall have no bearing whatsoever on the accomplishment of the requirement that the quantities due from each producer be distilled'.

33 It has not been specified in what way the provisions determining the total quantity for distillation applicable to Italy and the breakdown of that quantity within that State were contrary to Article 23 of Regulation No 441/88. Consequently, since

there is no apparent inconsistency between those provisions and Article 23, the argument to the effect that Article 23 was infringed cannot be upheld.

Inaccuracy of the data forwarded by the Italian Republic

34 The applicant in the main proceedings considers that the obligation to distil the prescribed quantity of wine resulted in discrimination against Italian wine-growers, because the figure of 12 150 000 hl was calculated on the basis of inaccurate national data. In the preceding wine year, that is to say 1992/93, the reserves actually recorded at the end of the year were 80% higher than the estimates, which shows that the Commission relied on a forward estimate which was manifestly incorrect.

35 The applicant in the main proceedings states that on 15 February 1994, the date on which Regulation No 343/94 opening compulsory distillation for the 1993/94 wine year was adopted, the Commission was not yet in possession of the table wine production figures which were to be forwarded by the Italian Republic. He points out that, according to the sixth recital in the preamble to Regulation No 465/94, it had not forwarded the abovementioned figures by 1 March 1994; those figures are, however, essential for determining the total quantities to be distilled in the Community and apportioning them among the various wine-growing regions.

36 In that regard, it must be noted that the third recital in the preamble to the forward estimate for the 1993/94 wine year records that the Member States had forwarded information to the Commission on harvest and stock declarations relating to wine products in accordance with the provisions of Commission Regulation (EEC) No 3929/87 of 17 December 1987 on harvest, production and stock declarations relating to wine-sector products (OJ 1987 L 369, p. 59).

17 Under Article 8 of that regulation, the Member States are to communicate to the Commission, within the time-limits set out, a summary of the producers' harvest, production and stock declarations and the final results of the breakdown of production by yield class of the table wine production obtained on their territory.

18 Even though the Italian Republic had not forwarded the table wine production figures and the breakdown of that production by yield class by 1 March 1994, as is recorded in the sixth recital in the preamble to Regulation No 465/94, the Commission nevertheless had, on the opening of compulsory distillation, the data forwarded by the Member States, and therefore also by the Italian Republic, for the purpose of the drawing up of the forward estimate.

19 As is clear from the first recital in the preamble to Regulation No 343/94, the forward estimate had already been drawn up, at the very latest, by 15 February 1994. On that date the Commission was in possession of the data of the Member States relating to the harvest and stock declarations for products in the wine sector and also had, as is apparent in particular from paragraph 28 above, information forwarded by the Member States on wine production.

10 As regards the purported inaccuracy of the data supplied by the Italian authorities, it should be noted that, in any event, the fact that the reserves actually recorded at the end of the 1992/93 wine year were 80% higher than the estimates is irrelevant when assessing the accuracy of the forward estimate for the 1993/94 wine year.

11 It thus has not been established that the data supplied by the Italian authorities were inaccurate. Even if they were inaccurate, the applicant in the main proceedings has not, in any event, adduced any evidence that their inaccuracy operated against Italian producers rather than in their favour.

Carrying-over of undistilled quantities from one wine year to the next

42 The applicant in the main proceedings further asserts that the total quantity for distillation imposed on Italy also discriminated against wine-growers subject to the obligation to distil, because they were required to assume responsibility for quantities of table wine which should have been distilled by other (defaulting) producers during the preceding wine year. Those quantities, which were still on the market a year later, were treated as part of the stock of the current wine year, so that the calculation of the current quantity for distillation was distorted by taking them into account (having a 'decanting effect'). That calculation is therefore unlawful.

43 In the submission of the applicant in the main proceedings, producers who have discharged their obligation may not be penalised to the benefit of those who have contravened the law. The effect of that measure was that honest producers had to buy wine from their fellow producers for distillation because they had already sold their own production. In that way a market in distillation was created, from which criminal organisations benefited.

44 The Spanish Government considers that an apportionment of the costs is unavoidable in order for the system to work each year and that a similar apportionment is made in all sectors. Furthermore, a producer such as the applicant in the main proceedings who is late in complying with his obligations cannot use such an increase in the quantity to be distilled in the following year as an excuse for not discharging those obligations.

45 The Commission states that the calculation of wine stocks on the market must include quantities which, in breach of the legislation in force, were not distilled, but were put on sale and are therefore on the market. It refers, in that regard, to the second recital in the preamble to Regulation No 343/94, which states that 'in view of the prices and the desirable level of availability at the end of the year, the distillation of 18 200 000 hectolitres of table wine appears necessary in the Community; ... that quantity is based on the forward estimate to take account of the unbalanced

situation, characterised in particular by stocks carried over from one wine year to the next, which are higher than the estimates used as the basis for establishing the financial data for the wine year'. The Commission states that if wine which was not distilled during the preceding wine year were to remain on the market indefinitely without being incorporated into the following year's stock, that would undermine the purpose of compulsory distillation and harm all producers, in particular those who had duly fulfilled their obligations and might thus, by reason of infringements committed by others, be in the position of having distilled wine to no avail because market conditions had not improved; that objective therefore justified taking account of stocks of the preceding wine year. The burden of the surplus at issue was not placed on Italian producers alone; it was redistributed among all Community producers in accordance with the principle of solidarity, an approach consistent with the prohibition of discrimination as interpreted by the Court. Irrespective of the fact that defaulting producers are punished severely, there is an overriding need to remove undistilled quantities from the market in order for the objective of the system to be achieved.

46 In that regard, it should be recalled that the Community institutions have a wide discretionary power in regard to the common agricultural policy which reflects the responsibilities which the Treaty imposes on them (see, in particular, Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* v *Fattoria Autonoma Tabacchi and Donatab* [1994] ECR I-4863, paragraph 31). Thus, by virtue of the enabling provision contained in Article 39(2) of Regulation No 822/87, the Commission has a wide discretion when, in pursuit of the objective of improving conditions in the wine market, it sets the quantities for distillation.

47 In the context of that objective, all Community producers, regardless of the Member State in which they are based, must together, in an egalitarian manner, bear the consequences of the decisions which the Community institutions are led to adopt in the exercise of their powers in order to respond to the risk of an imbalance which may arise in the market between production and market outlets (*Crispoltoni and Others*, paragraph 52).

48 Accordingly, it does not appear that the carrying over of undistilled quantities from one wine year to the next, as effected by the Commission, gave rise to discrimination between wine-growers subject to the obligation to distil.

Question 2

49 By its second question, the referring court asks whether the fourth indent of Article 1(3) of Regulation No 343/94, and Article 1(1)(c) and the second subparagraph of Article 1(2) of Regulation No 465/94, as amended by Regulation No 610/94, are not invalid on the ground that they contravene the principle of the protection of legitimate expectations. It inquires whether the unequal apportionment of the quantity for distillation, the obvious inaccuracies in the calculation of that quantity and the carrying over of quantities not distilled during the 1992/93 wine year as stocks of the 1993/94 wine year did not thwart the legitimate expectations of Italian wine-growers who, having fulfilled the obligation to distil in the 1992/93 wine year, believed that they would not subsequently be burdened with other liabilities which relate in reality to the 1992/93 wine year and were imposed on them only because other wine-growers had not complied with their own obligations.

50 It is settled case-law that in the sphere of the common organisation of the markets, whose purpose involves constant adjustments to meet changes in the economic situation, economic agents cannot legitimately expect that they will not be subject to restrictions arising out of future rules of market or structural policy (see Case C-63/93 *Duff and Others* v *Minister of Agriculture and Food, Ireland, and the Attorney General* [1996] ECR I-569, paragraph 20). Moreover, the principle of the protection of legitimate expectations may be invoked as against Community rules only to the extent that the Community itself has previously created a situation which can give rise to a legitimate expectation (Case C-177/90 *Kühn* v *Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraph 14). The arguments relied on by the referring court, and adopted by the applicant in the main proceedings, in support of the contention that the legitimate expectations of Italian wine-growers were thwarted are not such as to establish that the Community created such a specific situation.

Question 3

51 By its third question, the referring court asks whether the fourth indent of Article 1(3) of Regulation No 343/94, and Article 1(1)(c) and the second subparagraph of Article 1(2) of Regulation No 465/94, as amended by Regulation No 610/94, are not invalid because their enactment by the Commission was *ultra vires* and, in particular, because Article 31 of Regulation No 822/87 was infringed.

52 More precisely, the referring court inquires whether the Commission's setting of the quantity for compulsory distillation applicable to Italy was not misconceived in so far as the yield per hectare, which is calculated by dividing the volume of production by the area under vines, could not be determined correctly for that region in the absence of a reliable national register. Notwithstanding its legal obligation and the extra time granted to it, the Italian Republic has failed to set up the necessary vineyard register. As a result, it forwarded incorrect data. It follows that the entire mechanism for allocating quantities for distillation to producers is distorted, which could result in serious harm to wine-growers.

53 The applicant in the main proceedings, who agrees with that analysis, adds that the Commission was perfectly aware that the national data were inaccurate. In those circumstances, the fact that the act at national level, on which the measures of the Commission are founded, is unlawful means that those measures are void.

54 The Commission, while finding it regrettable that there is no operational vineyard register in Italy despite the obligation in that regard, states that the purpose of such a register is nevertheless merely to facilitate checks and not to provide data relating to the collection and the stocks of a particular product. As the Spanish Government has also pointed out, the data on which the criteria as to yield per hectare are based are duly provided by the Member States on the basis of the wine-growers' production declarations, and not on the basis of acreage, which is all that a register could prove.

55 In that regard, it is apparent from Article 39(3) of Regulation No 822/87 that, when determining the volume of table wine to be distilled in respect of each Member State, account is not taken of the surface areas from which the wine originates, but only of that State's volume of production, which is ascertained on the basis of the harvest declarations in particular. It follows that the absence of a vineyard register did not affect the determination of the quantities for distillation.

56 While particulars contained in a vineyard register may make it easier to determine the yield per hectare which, as has been stated, is calculated by dividing the volume of production by the area under vines, there is nothing to support the conclusion that, in the absence of such a register, the calculation would be distorted. It is from the information provided by wine-growers that the Member States collate the data on which the criteria of yield per hectare are based, and which are then forwarded to the Commission. The accuracy of those data does not depend on there being an operational vineyard register.

Question 4

57 By its fourth question, the referring court asks whether Article 39(4) of Regulation No 822/87, under which the quantities for distillation are to be apportioned among the various producers in a region on the basis of yield per hectare, is not invalid because it contravenes the principle of proportionality.

58 According to the applicant in the main proceedings, the criterion of yield per hectare adopted by the Council is inappropriate for pursuing the objective of improving conditions in the wine market and penalises excessively winegrowers who are not overproducing, while simultaneously encouraging those producing poor quality wine.

59 He points out, moreover, that to resort to the criterion of yield per hectare alone is not appropriate for establishing either that the wine obtained is of mediocre quality or that it is the result of overproduction. On the contrary, high-yield wines often sell very easily, which gives rise to the absurd situation of producers subject to the obligation to distil having already sold all their production and being constrained to buy an additional quantity in order to have it distilled.

60 Furthermore, it is possible to envisage another method which is equally effective, but less prejudicial than relying on yield per hectare, namely the criterion of end-of-year stocks, which shows perfectly whether or not there is overproduction. The Commission itself has acknowledged that that criterion is more relevant than the criterion of yield per hectare, since it had recourse to it in its proposals for the reform of the common organisation of the market in wine.

61 The Council, the Commission and the Spanish Government consider, however, that the validity of Article 39(4) of Regulation No 822/87 cannot be called into question. In their view, to select one intervention measure or another, such as the criterion of yield per hectare, is a political choice falling within the responsibilities of the Council itself. The Community legislature cannot be in a position to foresee accurately all the future effects of an adopted measure and, if certain measures subsequently prove less effective than anticipated, it does not automatically follow that they were unlawful when adopted.

62 The Council and the Commission assert that the criterion of yield per hectare is appropriate for fulfilling the objective of improving market conditions, because high yields generally correspond to lower-quality wines which do not find a market easily. The criterion of yield per hectare is also necessary, inasmuch as there are no alternative criteria in view of the objective pursued: a criterion based on end-of-year stocks would be too difficult to monitor; a criterion based on the reduction of areas under vine could result in a loss of producer activity, while preserving high

yields; a criterion based on wine prices could result in all low-priced wine being eliminated from the market without taking account of market segmentation. The principle of proportionality was therefore complied with.

63 In that regard, it is to be remembered that the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, *Crispoltoni and Others*, cited above, paragraph 41, and Case C-157/96 *The Queen* v *MAFF and Another*, ex parte *National Farmers' Union and Others* [1998] ECR I-2211, paragraph 60).

64 So far as concerns judicial review of compliance with the abovementioned conditions, in matters concerning the common agricultural policy the Community legislature has a discretionary power which corresponds to the political responsibilities given to it by Articles 40 to 43 of the Treaty. Consequently, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see *Crispoltoni and Others*, paragraph 42, and *National Farmers' Union and Others*, paragraph 61).

65 In this case, as the Advocate General has observed in point 128 of his Opinion, the choice to apportion obligations between wine producers from the same region according to their yield per hectare is not vitiated by a manifest error, since it is designed to impose most of the burden of compulsory distillation on the producers who are principally responsible for the overproduction in the table wine market, while not penalising producers who achieve low yields. That measure therefore cannot be regarded as disproportionate in relation to the objective pursued which is to absorb surpluses of table wine on the market, as is apparent from the 45th recital in the preamble to Regulation No 822/87.

66 As regards the argument put forward by the applicant in the main proceedings that the Commission has acknowledged, in its new legislative policy for the common organisation of the market in table wine, that the criterion of end-of-year stocks was more appropriate than that of yield per hectare, it should be recalled that the legality of a Community act cannot depend on retrospective considerations of its efficacy (*Crispoltoni and Others*, paragraph 43). It is clear from settled case-law that, where the Community legislature is obliged to assess the future effects of rules to be adopted and those effects cannot be accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question (see *Crispoltoni and Others*, paragraph 43).

67 Accordingly, since it has been found that it was not manifestly incorrect, when the rules were adopted, to take account of the criterion of yield per hectare, the fact that other criteria are envisaged for the future cannot render the initial criterion unlawful retroactively.

Question 5

68 By its fifth question, which concerns the validity of the fourth indent of Article 4(2) of Regulation No 441/88, the referring court calls into question the decision of the Commission to equate the territories of the Member States with the wine-growing regions in the Community, in particular to equate Italy with wine-growing zone C.

69 The applicant in the main proceedings argues that, since Italy's national territory is made up of areas which obviously differ widely both from a geographical and from an oenological point of view, the Commission, which did not take account of those realities, exceeded the limits of its discretion.

70 He also asserts that the classification adopted by the Commission fails to take account of the fact that production has developed differently in the various regions of the Community due to the effects of climate and of structural policy. It was accordingly necessary to delimit the wine-growing regions according to their homogeneous features and not to place the whole of Italy in a single region, an approach which appears irrational and inequitable.

71 The Commission and the Spanish Government consider, however, that determining the production regions by reference to the territories of the various Member States is, from an administrative point of view, the only method which reliably enables data on stocks and production to be collected by the national authorities. Thus, the historical bases, namely the reference wine years, which are used to determine whether compulsory distillation must be carried out under Article 39(3) of Regulation No 822/87, are constituted from the data collated by the Member States for their territory. The same approach should prevail with regard to the data forming the basis of the forward estimate, which itself is at the origin of a decision as to whether or not there should be compulsory distillation. The Commission points out in addition that, as regards climate and oenology, the different characteristics of certain production areas in Italy in any event cancel each other out naturally, so that the determination finally proves to be balanced. Besides, the Italian Government gave its agreement to that delimitation.

72 In that regard, it must be held that in an entity composed of Member States, such as the European Community, it is clearly reasonable to take the territory of those Member States as a point of reference for administrative purposes. Even though geographical and economic conditions may not be identical in the various parts of national territory, the Commission was therefore entitled, in the exercise of its discretion, to regard the whole of the territory of a Member State as a single region, provided that such a decision was not manifestly unsuited to the structures of the Member State in question (for the comparable case of a decision of a Member State to regard the whole of its territory as a single region for the purposes of implementing the additional levy on milk within a regional framework, see Joined Cases C-267/88 to C-285/88 *Wuidart and Others* v *Laiterie Coopérative Eupenoise and Others* [1990] ECR I-435, paragraph 35).

73 The choice of the Commission to determine the wine-growing regions by reference to the territory of the wine-growing Member States being therefore prima facie a reasonable solution, which, moreover, was adopted with the agreement of the Member State concerned, only serious arguments based on specific circumstances could result in its being called into question. In this case, the mere reference, in general terms and without supporting evidence, to variable climatic conditions and the effects of structural policy cannot establish such circumstances.

Questions 6 and 7

74 By its sixth and seventh questions, the referring court asks whether Article 1(1) of Regulation No 3151/94, which extended to 29 January 1995 the time-limit for delivering table wine to a distillery in respect of the 1993/94 wine year, is valid. In accordance with Article 12 of Regulation No 441/88, that time-limit would normally have expired in July 1994. In the view of the referring court, compulsory distillation, as a short-term instrument, is founded on the premiss that it helps to stabilise the imbalance in the current wine year. When it takes place subsequently, that premiss is absent and the measure is unlawful because it is adopted in breach of Article 39(1) of Regulation No 822/87 and of the principle of proportionality, inasmuch as it appears to be neither appropriate nor necessary in order to achieve the objective of stabilisation in the 1993/94 wine year.

75 The applicant in the main proceedings adds that the surpluses of the 1993/94 wine year were in fact exhausted by August 1994 and that, in order to comply with their obligation to distil, producers had to resort to their new harvest. That reduces distillation to a formal obligation devoid of any real and tangible purpose.

76 In the Commission's view, the answer to those questions has no relevance to the outcome of the dispute since the applicant in the main proceedings did not make use of the extended period.

77 In that regard, it is clear from the order for reference that the Ministry imposed a penalty on Mr Zaninotto for the non-distillation of the quantities to be delivered by him during the 1993/94 wine year. That presupposes, therefore, that Mr Zaninotto did not make use of the additional possibility of carrying out distillation subsequently and avoiding the penalty in that way.

78 The validity of the provision in issue thus manifestly has no bearing on the outcome of the main proceedings.

79 In accordance with settled case-law, it must be held that the questions referred to the Court for a preliminary ruling do not involve an interpretation of Community law objectively required for the decision to be taken by the national court (see, in particular, Case C-361/97 *Nour* v *Burgenländische Gebietskrankenkasse* [1998] ECR I-3101, paragraph 15 and the case-law cited).

80 Accordingly, the Court lacks jurisdiction to answer the sixth and seventh questions.

81 The answer to the questions raised by the Pretura Circondariale di Treviso must therefore be that examination thereof has disclosed no factor of such a kind as to affect the validity of the provisions referred to.

Costs

82 The costs incurred by the Italian and Spanish Governments, 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 (Fifth Chamber),

in answer to the questions referred to it by the Pretura Circondariale di Treviso, Sezione Distaccata di Conegliano, by order of 2 November 1996, hereby rules:

Examination of the questions raised has disclosed no factor of such a kind as to affect the validity of:

— **the fourth indent of Article 1(3) 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;**

— **Article 1(1)(c) and (2) of Commission Regulation (EC) No 465/94 of 1 March 1994 fixing for the 1993/94 wine year the percentages of table wine production to be delivered for compulsory distillation as provided for in Article 39**

of Council Regulation (EEC) No 822/87, in Regions 3 and 6, as amended by Commission Regulation (EC) No 610/94 of 18 March 1994;

— Article 39(1) and (4) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine; or

— the fourth indent of Article 4(2) of Commission Regulation (EEC) No 441/88 of 17 February 1988 laying down detailed rules for applying compulsory distillation as referred to in Article 39 of Regulation No 822/87.

Jann Gulmann Edward

Sevón Wathelet

Delivered in open court in Luxembourg on 29 October 1998.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber