OPINION OF ADVOCATE GENERAL SAGGIO

delivered on 23 March 1999 *

1. By application lodged at the Court Registry on 13 December 1995, the Kingdom of Belgium brought an action under Article 170 of the EC Treaty for a declaration that, by maintaining in force Royal Decree no 157/1988 and in particular Article 19(1)(b) thereof, which requires Rioja wine to be bottled in the area of production, and thereby preventing it from being exported in bulk, the Kingdom of Spain has failed to fulfil its obligations under Article 34 of the EC Treaty as interpreted by the Court of Justice in its judgment in Case C-47/90 *Delhaize* v *Promalvin* [1] (hereinafter '*Delhaize*').

The relevant Community provisions

2. There are many sources of Community law on the wine sector that are relevant for the purposes of the present case. [2] They will be considered when the time comes to examine the arguments of the parties as to substance. However, in view of its importance in the context of the dispute, mention should be made immediately of Council Regulation (EEC) No 823/87 of 16 March 1987 (hereinafter 'Regulation No 823/87'), [3] which provides a framework of uniform rules for the production and control of quality wines produced in specified regions (hereinafter 'quality wines psr' or 'quality wines').

Under Articles 1(2) and 15 of Regulation No 823/87 only wines which are covered by that regulation and 'by other specific or implementing regulations and which satisfy the provisions of national rules' (rules governing production) may be designated by one of the recognised Community terms (such as the term 'quality wines p.s.r') or by a specific term traditionally used in the Member States to designate certain wines. In Spain, such traditional terms include the terms 'denominación de origen' and 'denominación de origen calificada'.

* Original language: Italian.

1 — [1992] ECR I-3669.

2 — Sources include Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13) and Commission Regulation (EEC) No 2238/93 of 26 July 1993 on the accompanying documents for the carriage of wine products and the relevant records to be kept (OJ 1993 L 200, p. 10).

3 — Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions (OJ 1987 L 84, p. 59), as amended in particular by Council Regulation (EEC) No 2043/89 of 12 June 1989 amending Regulation (EEC) No 823/87 laying down special provisions relating to quality wines produced in specified regions (OJ 1989 L 202, p. 1) and most recently by Council Regulation (EC) No 1426/96 of 26 June 1996 amending Regulation (EEC) No 823/87 laying down special provisions relating to quality wines produced in specified regions (OJ 1996 L 184, p. 1). Regulation No 823/87 superseded the preceding regulation on the same subject, Council Regulation No 338/79 of 5 February 1979 (OJ 1979 L 54, p. 48).

As regards the production process in particular, Regulation No 823/87 (in conjunction with the national provisions expressly cited) identifies and lays down rules on a number of 'factors' characterising the production of quality wines. [4] Those factors include the demarcation of the area of production, production methods and techniques, and tests to determine the characteristics of such wines. The responsibility for specifying the production methods is left to the producer States. Thus Article 8(1) provides that 'the specific vinification and manufacturing methods used for obtaining quality wines psr shall be laid down for each of those wines by each producer Member State concerned'. The twelfth recital in the preamble to that regulation states that 'as regards the development of the particular quality characteristics of each quality wine psr, Member States should be given a certain amount of freedom to specify the wine-making and preparation methods for each wine within the framework of the oenological practices permitted in the Community'. Article 18 provides, in particular, that 'producer Member States may, taking into account fair and traditional practices, ... determine such other conditions of production as shall be obligatory for quality wines psr'. That regulation also lays down, for each production method, certain minimum criteria that States are in any event required to observe. [5]

As regards the tests to which wines must be submitted, Article 13 of Regulation No 823/87 (as amended by Regulation No 2043/89) provides that 'producers shall be obliged to submit wines for which they are requesting the designation "quality wine psr" to an analytical and to an organoleptic test' and specifies (a) that 'the analytical test shall at least measure the factors enabling the quality wine psr in question to be distinguished, as listed in Annex I' [6] and (b) that 'the organoleptic test shall relate to colour, clarity, smell and taste'. The 16th recital in the preamble to that regulation explains that such tests have been laid down 'to encourage producers to keep a constant watch on the quality of quality wines psr, and in particular the development of their special characteristics'. Article 16 provides that each Member State is to be responsible for the control and protection of quality wines. [7] It should also be noted that Regulation No 2048/89, [8] laying down general rules on controls in the wine sector, empowers the Commission to intervene in the sector in cooperation with the competent national authorities and establishes structures for

4 — Article 2 provides that 'without prejudice to the first indent of the first subparagraph of Article 18, the specific provisions referred to in the first subparagraph of the first paragraph of Article 1 shall, taking into account the traditional conditions of production in so far as these are not such as to prejudice the policy of encouraging quality production and the creation of a single market, be based on the following factors: (a) demarcation of the area of production; (b) vine varieties; (c) cultivation methods; (d) wine-making methods; (e) minimum natural alcoholic strength by volume; (f) yield per hectare; (g) analysis and assessment of organoleptic characteristics'.

5 — See Articles 7(2), 8(3) and 9(2), and the twelfth recital in the preamble.

6 — That Annex contains the 'list of factors which enable quality wines produced in specified regions to be distinguished and which may be selected for testing under Article 13', the upper and lower limits for such factors being laid down, pursuant to Article 13, by the producer Member State.

7 — That responsibility must be discharged in accordance with the procedure laid down in Article 83 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).

8 — Council Regulation (EEC) No 2048/89 of 19 June 1989 (OJ 1989 L 202, p. 32).

collaboration between the various control authorities.

The relevant national provisions

3. Under Spanish Law No 25 of 2 December 1970 laying down the basic rules concerning vines, wines and spirits (hereinafter 'Law No 25/70'), the term 'denominación de origen' [9] is to be applied to certain wines [10] and a Governing Council (Consejo Regulador) established for each of them. The Governing Council is responsible for: (a) drawing up a draft regulation relating to the designation of origin for adoption by order of the Minister for Agriculture; (b) directing, supervising and controlling the production, manufacture and quality of wines bearing the designation 'denominación de origen'; (c) promoting the image of the designation on the national market and on foreign markets; (d) taking action in respect of any improper use of the designation; and (e) recovering fines and implementing penalties imposed by virtue of that law. In the case of Rioja wine, the regulation drawn up by the Governing Council was adopted by Order of the Minister for Agriculture of 2 June 1976.

4. Royal Decree No 157 of 22 February 1988 laid down the conditions for granting the designation 'denominación de origen calificada'. In particular, Article 19(1) provides that in order to qualify for that designation: (a) a wine must be marketed exclusively after being bottled in the cellars from which it originates (bodegas de origen); (b) the quantity and quality of the product must have been monitored by the Governing Council from its production to its release onto the market; and (c) the cellar from which the wine originates must affix numbered labels or seals to the containers in which it is placed. [11] Under the transitional provisions of the decree, condition (a) is to apply to wines exported from Spanish territory after a period of five years from the date on which the decree was published, that is with effect from 24 February 1993.

5. On 8 September 1988, the Governing Council for Rioja wine issued circular No 17/88, in which it stated that it had gradually increased the proportion of Rioja wine sold in bottles and reduced the proportion sold in bulk. As regards exports, it reported that sales in bulk accounted for 5% of total annual turnover. It therefore decided to stop bulk exports altogether, 'not only to protect the image and reputation of the wine' but to enable it

9 — Under Article 79 of Law No 25/70, 'Denominación de Origen' [designation of origin] means 'el nombre geográfico de la región, comarca, lugar o localidad empleado para designar un producto procedente de la vid, del vino o los alcoholes de la respectiva zona, que tengan calidades y caracteres diferenciales debidos principalmente al medio natural y a su elaboración y crianza' [the geographical name of the region, local administrative area, place or locality used to designate vines, wines or spirits produced in the area in question, possessing specific qualities and characteristics attributable principally to the environment and to the manner in which they are manufactured and aged].

10 — Under Article 84 of Law No 25/70, designations of origin are granted by the Ministry of Agriculture on a proposal from the National Institute for Designations of Origin acting at the request of the wine growers.

11 — The special characteristics required to qualify for the additional designation 'denominación de origen calificada' had already been set out in Article 86(2)(c) of Decree No 835/72 of 23 March 1972 approving the rules concerning vines, wines and spirits.

to qualify for the designation 'denominación de origen *calificada*'. Rioja wine was granted that designation by Ministerial Order of 3 April 1991. The new regulation on the 'Denominación de Origen Calificada Rioja' and its Governing Council [12] was annexed to the order. As regards, in particular, the obligation to bottle the wine and the conditions governing its movement, that regulation adds little to the rules governing Rioja wines of designated origin, [13] expressly requiring that they be bottled in the area of origin.

The judgment in *Delhaize*

6. In the context of a dispute between a Belgian company, Delhaize, and two other companies, Promalvin, registered in Belgium, and Bodegas Unidas SA, registered in Spain, arising from those two companies' failure to fulfil a contract to supply a bulk consignment of Rioja wine to Delhaize to be bottled in Belgium by that company, the court before which the case was brought asked the Court, pursuant to Article 177 of the Treaty, whether the Spanish legislation — in particular Royal Decree No 157/88 — on the production and marketing of quality wines, which required wines to be bottled in the region of production, constituted a measure having an effect equivalent to a restriction on exports within the meaning of Article 34 of the Treaty.

7. In reply to that question, the Court ruled that 'national provisions applicable to wine of designated origin which limit the quantity of wine that may be exported in bulk but otherwise permit sales of wine in bulk within the region of production constitute measures having equivalent effect to a quantitative restriction on exports which are prohibited by Article 34 of the EC Treaty'.

8. On the issue, not covered by the question but raised by the Spanish Government in the course of the procedure, of whether the contested rules could be regarded as justified within the meaning of Article 36 of the Treaty and specifically on grounds of

12 — Under that regulation, the Governing Council is to be composed of representatives of the wine sector, representatives of the autonomous community in the area of production, and a representative of the Ministry of Agriculture.

13 — Article 13 of the regulation reads as follows: '1. El embotellado de vinos amparados por la denominación de origen calificada Rioja deberá ser realizado exclusivamente en las bodegas inscritas autorizadas por el Consejo Regulador, perdiendo el vino en otro caso el derecho al uso de la denominación. 2. Los vinos amparados por la denominación de origen calificada Rioja unicamente pueden circular y ser expedidos por las bodegas inscritas en los tipos de envase que no perjudiquen su calidad o prestigio y aprobados por el Consejo Regulador. Los envases deberán ser de vidrio, de las capacidades autorizadas por la Comunidad Económica Europea a excepción de la gama de un litro' ['1. Wines protected by the designation "denominación de origen calificada Rioja" must be bottled exclusively in registered cellars authorised by the Governing Council, otherwise the wine may not bear the designation. 2. Wines protected by the designation "denominación de origen calificada Rioja" may be transported and despatched exclusively by registered cellars in bottles of a type which does not impair their quality or image and which is approved by the Governing Council. The bottles must be made of glass and designed to hold volumes authorised by the European Economic Community, other than one litre'].

the protection of industrial and commercial property, [14] the Court observed that 'it is for each Member State to define, within the terms of Council Regulation (EEC) No 823/87', cited above, 'the conditions applicable to the use of a name or geographical area within its territory as a registered designation of origin for wine from that area'. The Court added that 'in so far as those conditions constitute one of the measures referred to by Article 34 of the Treaty, they are not justified on grounds of the protection of industrial and commercial property within the meaning of Article 36 of the Treaty unless they are needed in order to ensure that the registered designation of origin fulfils its specific function'. It also stated that 'the specific function of a registered designation of origin is to guarantee that the product bearing it comes from a specified geographical area and displays certain particular characteristics' and that 'consequently, the requirement that the wine be bottled in the region of production, in so far as it constitutes a condition for the use of the name of that region as a registered designation of origin, would be justified by the concern to ensure that that designation of origin fulfilled its specific function if bottling in the region of production endowed the wine originating in that region with particular characteristics, of such a kind as to give it individual character, or if bottling in the region of production were essential in order to preserve essential characteristics acquired by that wine' (paragraphs 16, 17 and 18 of the judgment).

9. Essentially, the Court held that Article 34 precludes national rules requiring quality wines to be bottled in the area of production in so far as such rules prevent the export of such wines in bulk, but recognised at the same time that under Article 36 such rules could nevertheless be regarded as justified if the bottling requirement served to guarantee that the product came from a specified geographical area and displayed certain particular characteristics. The Court added that, in that particular case, it had not been 'shown that the bottling of the wine in question [Rioja] in the region of production was ... essential in order to maintain the specific characteristics acquired by it' (paragraph 19 of the judgment).

10. Nor did the Court consider that the national rules at issue could be justified in Community law on the basis of Article 18 of Regulation No 823/87, cited above, under which the Member States may lay down additional or more stringent conditions of movement than those laid down in the regulation for quality wines. According to the Court, that article 'cannot be interpreted as authorising the Member States to impose conditions contrary to the Treaty

14 — It should be noted that the Kingdom of Spain had argued that, in any case, Royal Decree No 157/88 was justified on grounds of the protection of industrial property within the meaning of Article 36 of the EC Treaty inasmuch as it was designed to protect producers from unfair competition and consumers from commercial fraud and that the rules to protect designations of origin laid down in the Lisbon Arrangement on the protection of designations of origin and their international registration of 31 October 1958 are comparable to the rules on trade-marks and designations of origin and should therefore be regarded as 'collective trade-marks', that is to say trade-marks belonging to all producers operating in a given geographical area and using specific production techniques to manufacture a product that has particular characteristics attributable to the region in which it was produced.

rules on the movement of goods' (paragraph 26 of the judgment).

Substance

11. In its application, the Belgian Government claims that Spain is in breach of Articles 34 and 5 of the Treaty because the Spanish legislation at issue is contrary to Community law on the free movement of goods and that Spain has also failed to adopt the necessary measures to comply with the judgment in *Delhaize*.

12. In order to ascertain whether the Spanish Government has in fact failed to fulfil its obligations as claimed, it must first be determined whether the relevant Spanish legislation is contrary to the Community provisions on the free movement of goods, in particular Article 34 of the Treaty, and Article 18 of Regulation No 823/87, cited above, and, if so, whether that legislation is justified under Article 36 of the Treaty. It will also have to be ascertained whether, in requiring that Rioja wine be bottled in the region of production, Spain has failed to fulfil its obligations under Community law as interpreted in the judgment in *Delhaize*.

The infringement of Article 34

13. The Belgian Government, supported by Denmark, the Netherlands, the United Kingdom and Finland, considers that the Spanish Government is in breach of Article 34 of the Treaty as interpreted in *Delhaize* because it has neither repealed nor amended Royal Decree No 157/88 and in particular Article 19(1)(b) thereof, which requires as one of the conditions for allowing a wine to bear a designation of origin that it be bottled in a cellar situated in the area of production. As it is common ground that there has to date been no change either in the Community regulations or in the Spanish legislation referred to by the Court in the judgment in *Delhaize*, the applicant claims that the Court's reasoning is still completely valid and the Court therefore has no alternative in the present case but to confirm that the Spanish legislation is incompatible with Community law.

14. The Spanish Government contends on the contrary that its legislation is consistent with Article 34 of the Treaty inasmuch as it does not restrict the export of quality wine in bulk but merely prohibits any improper and uncontrolled use of designations of origin. In effect, the Spanish Government says, wine produced in the Rioja region could be freely exported in bulk to places outside the area of production and bottled there even though, in that case, it could not be marketed under the Rioja designation of origin.

15. That argument is not convincing. It is sufficient in this connection to observe that the Court has already stated, in *Delhaize*, that national rules such as those under consideration 'have the specific effect of restricting exports of wine in bulk and, in particular, of procuring a special advantage for bottling undertakings situated in the region of production' (paragraph 14 of the judgment). [15]

16. Moreover, the Spanish Government's argument that even within the area of production the sale of wine in bulk is allowed only between cellars registered with the Governing Council and only with express permission has no bearing on whether or not there has been a breach of Article 34, since it is still absolutely impossible for producers to export in bulk anywhere outside national territory. Permission may in fact be granted only for the sale (and consequently the transport) of wines in bulk within the area of production. [16] Consequently, as the Advocate General pointed out in *Delhaize*, 'differences in treatment arise in so far as it is possible for wine producers within the area of production to sell wine that has not yet been bottled while such wine cannot be sold outside that area' (point 29 of the Opinion). Moreover, whilst it is undoubtedly true that Article 18 allows States to include in their legislation provisions that may lead to restrictions on the movement of wines within the Community, those restrictions may not, as the Court stated in its 1992 judgment in *Delhaize*, be as comprehensive as those contained in the Spanish legislation, which effectively amount to a ban on bulk exports of quality wine and are thus clearly contrary to the EC Treaty rules on the movement of goods.

17. In short, the Court's interpretation of the relationship between the Spanish legislation and Article 34 of the Treaty in *Delhaize* must be confirmed without more ado, since nothing has occurred in fact or in law to justify a change of view.

18. Lastly, there is clearly no substance in the Spanish Government's argument, likewise intended to show that its legislation on quality wines is consistent with Community law, that the judgment in *Delhaize* did not declare that the Spanish rules were unlawful, since it was concerned only with the Community rules on the subject and also, more generally, with all the Member States' provisions on quality wines. It is sufficient in this connection to observe that, contrary to what the Agent for the Spanish Government says, the judgment in *Delhaize* takes specific account of the Spanish legislation

15 — See *inter alia* paragraph 11 of the judgment in Case 118/86 *Openbaar Ministerie* v *Nertsvoederfabriek Nederland* [1987] ECR I-3883, in which the Court stated that 'as regards Article 34, it is applicable to the extent to which the national rules, by imposing an obligation on producers ..., involve by implication a prohibition of exports'.

16 — It should be noted that the order issued on 3 April 1991, and thus after the questions were referred to the Court in *Delhaize*, confirmed the requirement that wines be bottled in the 'Rioja' area of origin.

on quality wines and states expressly that it is incompatible with the Community legal order.

19. It only remains, therefore, to note that the Spanish legislation at issue is contrary to Article 34 of the EC Treaty in so far as it has the effect of specifically restricting the flow of exports of Rioja wine and leading to unequal treatment of domestic trade and export trade, to the detriment of trade with other Member States and the disadvantage of bottling undertakings situated in other countries.

The application of Article 36 of the Treaty

20. It should be remembered, first of all, that the Court stated in *Delhaize* that 'the requirement that the wine be bottled in the region of production, in so far as it constitutes a condition for the use of the name of that region as a registered designation of origin, would be justified by the concern to ensure that that designation of origin fulfilled its specific function'. However, according to the Court, that applies *only* if 'bottling in the region of production endowed the wine ... with particular characteristics, of such a kind as to give it individual character, or if bottling in the region of production were essential in order to preserve essential characteristics acquired by that wine'. Proceeding from that general premiss, the Court nevertheless concluded on that occasion that in the particular case of wine produced in the Rioja region the conditions for the application of Article 36 were not satisfied, since it had not been 'shown that the bottling of the wine in question [Rioja] in the region of production was an operation which endowed it with particular characteristics or was essential in order to maintain the specific characteristics acquired by it'.

21. It therefore remains to be determined whether that has been shown in the present case. To do so, it will be necessary to ascertain in the light of the evidence produced in the course of the procedure whether the requirement that Rioja wine be bottled in the region of production is justified, under Article 36 of the Treaty, on grounds of the protection of industrial and commercial property and, in particular, by the concern to ensure that the Rioja designation of origin fulfils its function.

22. On that question, which is of central importance in the context of the present dispute, the parties are divided. The wine-importing States, that is to say Belgium and all the States that have intervened on its behalf (Denmark, the Netherlands, Finland and the United Kingdom), have expressed the view that bottling *in loco* is not an operation that is necessary to ensure the quality of the wine and protect its reputation. The wine-producing and exporting States (Spain, Italy and Portugal), on the contrary, have maintained that bottling *in loco* is essential to achieve those objectives. The Commission has taken the same view, thus departing from the position it took in

the proceedings for a preliminary ruling in *Delhaize*.

In particular, the Spanish Government contends that the requirement that wines bearing the designation 'denominación de origen calificada' be bottled in the place of production is justified essentially on two grounds: first, because exporting Rioja wine in bulk to other States involves transport in containers over considerable distances, with the result that the specific characteristics of the wine might be altered; second, because the circulation of wine of inferior quality bearing the designation 'denominación de origen calificada' which properly applies to wine bottled in the area of origin, could damage the reputation of the product in question.

23. That said, in order to determine whether in the present case the restrictions on the movement of Rioja wine resulting from the requirement that it be bottled in the region of production can be justified within the meaning of Article 36 of the Treaty, it is necessary, first, to ascertain whether in fact bottling outside the area of production has (or could have) effects on the quality of the product and then to consider whether those effects could damage the reputation of Rioja wine producers holding industrial and commercial property rights which may be protected under Article 36 of the Treaty. The first point involves technical considerations and the opinions of the experts consulted by both sides must therefore be taken into account; the second point concerns the reputation of the wine and consideration must therefore be given to the interests represented by the designation of origin and the instruments the Community legal order provides to protect those interests.

(a) The effects of bottling *non in loco* on the quality of wine

24. As regards the effects of bottling operations on the quality of wine, the experts all consider that those operations do not consist of merely filling empty bottles but usually involve, before the wine is actually decanted, a number of complex oenological procedures (filtration, clarification, cold treatment, and so on) which, if not properly conducted may impair the quality and alter the characteristics of the wine.

As the Commission expert, Professor Alain Bertrand, explained at the hearing, such operations are even more complex and consequently require special equipment and expert staff when appropriate procedures have to be employed to correct any deoxidation the wine may have suffered as a result of being transported for hundreds

of kilometres in containers [17] and such procedures may alter the colour, flavour and aroma of the product. The Commission expert therefore said he was convinced 'à titre personnel, après trente années de recherche en oenologie, que, sans qu'il soit possible de le démontrer de manière irréfutable, les caractères intrinsèques d'un vin d'une appellation donnée seraient certainement mieux préservés si les raisins étaient acheminés au lieu d'élaboration finale du vin, sans transport du vin avant la mise en bouteilles'. He said that, in any event, it was not absolutely impossible for the specific characteristics of the wine to be preserved even if the wine was bottled outside the area of production but for that to happen it would have to be transported under perfect conditions and all the operations before and during bottling would have to be performed properly. In that connection, Professor Bertrand said during the oral procedure that 'lorsque le vin est pompé dans la citerne de transport, il est oxydé, immanquablement. Lorsque ce transport s'effectue pendant une longue période, une partie de cette oxygène est consommée par le vin, la moitié, environ, pendant deux ou trois jours, surtout si la température est un peu élevée. Lorsqu'il est pompé de nouveau pour être déchargé dans les récipients du négociant éleveur, il est de nouveau oxydé. Entre-temps, se créent ... des peroxydes qui créent des transformations beaucoup plus nuisibles au vin que le simple pompage une fois, qui a lieu lors de la mise en bouteilles'.

25. The United Kingdom expert's opinion on the subject is, in substance, virtually the same as Professor Bertrand's. He maintains in his report that when wine is bottled outside the area of production the quality of the wine may still be guaranteed if special technical precautions are taken during transport, in particular if insulated containers are used which maintain low temperatures. He observes that, in any case, the risk of oxidation when wine is moved outside the area of production is also present when it is moved within that area, so that even in that case certain technical rules will have to be observed and the same measures will have to be taken during pumping operations if the risk is to be avoided (or at least reduced).

26. It is therefore clear from the experts' statements reported above that transporting wine in bulk alters, or may alter, the product — as regards aroma, flavour and colour — and that those disadvantages may be avoided if certain technical rules are observed during transport. Finally, it is clear that bottling operations are techni-

17 — Referring to Professor Bertrand's report, the Commission says in its statement in intervention of 17 September 1996 that 'le transport d'un vin d'un lieu à un autre s'accompagne toujours d'une perte d'éléments volatiles et donc d'une partie de son arôme naturel', that 'le transport et l'agitation constituent un dégazage spontané qui, outre la perte de dioxyde de carbone, peut également se traduire par une diminution de constituants très volatiles comme certains esters, voire d'éléments plus lourds, par un entraînement physique', that 'ce phénomène sera d'autant plus accentué que la durée du transport sera longue', and that 'il est donc envisageable qu'un transport sur plus d'un millier de kilomètres, dans des conteneurs qui ne sont pas climatisés, se traduise par la consommation de plusieurs millilitres d'oxygène'.

cally complex and may, if not properly performed, have an appreciable effect on the quality and characteristics of the wine.

27. That being so, the only effective way to provide producers and consumers with guarantees as to the quality of a product bottled by a purchaser in a country other than the country in which it is produced is to submit bottling operations to systematic controls in the country where they are carried out. It now remains to be seen whether, and if so what, arrangements are allowed or imposed by the relevant Community provisions to control the quality of wine and detect any alterations in wine transported in bulk.

28. As I have already pointed out, under Article 13 of Regulation No 823/87 producers are required to carry out a number of analytical and organoleptic tests for their wines to be designated as quality wines psr but only producers are required to carry out those tests and the regulation does not state when they are to be carried out. The Commission observed in this connection during the oral procedure that in wine-producing States such tests have to be carried out before and after bottling.

In addition, Regulation No 2048/89, cited above, laying down general rules on controls in the wine sector, provides for a number of controls to be carried out at the various stages of production and marketing. In order to prevent infringements of the wine rules, the regulation empowers officials of the Commission 'to intervene in this sector in cooperation with the authorities instructed by the Member States to carry out controls in the wine sector' (Article 1(1)). Article 8 of that regulation also provides for various forms of 'horizontal' cooperation between the national control authorities, specifying that at the reasoned request of the competent authority of a Member State, the corresponding authority of the State in which the wine to be controlled is situated 'shall perform or take the necessary steps to perform special surveillance or controls enabling the desired objectives to be achieved' (Article 8(2)). The applicant authority in agreement with the 'requested' authority may also send its own officials to the Member State where the wine is, to obtain information relating to the application of the rules in the wine sector or to control activities (Article 8(4) and (5)). In that context, the said officials 'may request the competent authority of another Member State to collect samples' which they may hold for analysis (Articles 12 and 13).

Controls on wine placed on the market outside the Member State in which it is produced are also provided for in Council Regulation No 2392/89 laying down general rules for the description and presentation of wines and grape musts. [18] Article 42 of that regulation provides that 'for the purposes of the monitoring and control of products to which this Regulation applies,

18 — See footnote 2.

the competent authorities may, with due regard to the general rules of procedure adopted by each Member State, require the bottler or a person who has been involved in distribution and who is indicated either in the description or on the presentation of those products to furnish proof of the accuracy of the information used in the description or the presentation concerning the nature, identity, quality, composition, origin or provenance of the product concerned or of the products used in its production'. The request for proof may be made by the competent authority of the Member State of establishment of the bottler or by the competent authority of another Member State. In that case, the authority is required to 'provide the competent authority of the country of establishment of the bottler ... with all the information necessary to enable the latter authority to require such proof ...'. 'If the competent authorities find that such proof is not provided, the information in question shall be regarded as not complying with this Regulation'.

Lastly, Regulation No 2238/93 on the accompanying documents for the carriage of wine products and the relevant records to be kept [19] contains a number of uniform rules on the documentation required for the transport of wine products within Community territory. Article 3(1) of that regulation provides that persons 'who carry out or cause to be carried out a carriage operation involving a wine product must complete on their own responsibility a document which must accompany the carriage' and which is called 'the accompanying document'. That document 'shall be regarded as attesting the designation of origin of quality wines psr or the provenance of table wines entitled to a geographical ascription' when those indications are 'validated by the competent authority by means of its stamp, the date and the signature of the person responsible, as appropriate' Article 7(1)(c). Additional information is required for the transport of wine products in bulk (Article 3(4)) which, as such, are 'more susceptible to fraudulent practices than are labelled, bottled products' (sixth recital in the preamble).

29. As regards national legislation on the subject, it is clear from the information supplied by the parties that some Member States expressly lay down when and how controls on quality wines are to be carried out. The Spanish legislation, in particular, provides that quality wines must be submitted to organoleptic and analytical tests (Article 10(2) of Royal Decree No 157/1988). In the case of Rioja wine, it is also provided that the Governing Council must carry out quality controls batch by batch before granting the designation 'denominación de origen calificada' (Article 15 of the Ministerial Order of 3 April 1991). As a result, the controls on wines transported within national territory are strict and much more detailed than on wine transported abroad in bulk. [20] It was also clear from the statements made by the parties during the oral procedure that not all the Member States had made provision for systematic controls on the quality of

19 — See footnote 2.

20 — In Italy, Article 13 of Law No 164 of 10 February 1992 on the new rules governing designations of origin of wines provides that, in the case of wines bearing the designation 'denominazione d'origine controllata e garantita' (DOCG), 'l'esame organolettico deve essere ripetuto, partita per partita, nella fase dell'imbottigliamento' ('the organoleptic examination must be repeated for each batch at the bottling stage') (*GURI* No 47 of 26 February 1992, p. 3).

imported wine.[21] Belgium was a case in point. The Belgian Government representative himself acknowledged that the controls generally carried out on wines sold in national territory were those laid down in Regulation No 2238/93 on the carriage of wines and that they related only to accounts and quantities, and to the aspect covered by the generic term 'health': thus the controls were not concerned at all with the oenological characteristics of the product and could not therefore provide producers and consumers with any guarantee as to the quality of the wine.

30. Consequently, apart from the controls which producer States are required to carry out under Article 13 of Regulation No 823/87, it is possible that wine exported to another Member State may not be submitted to any other quality controls before it is sold to the final consumer. It must therefore be concluded that, as Community law now stands, the authorities of the importing State are not obliged to carry out appropriate general controls on the quality of wine imported in bulk and bottled in that State but merely have the option of doing so.

31. The question arises at this point whether bottling in the region of production is still the only true guarantee that, when it reaches the consumer, quality wine has its specific characteristics or at least that those characteristics have not suffered any alteration during bottling. There is no doubt that performing bottling operations in the region of production is important in order to ensure that the wine has the qualities and characteristics associated with its origin. One has only to remember that, as the Spanish Government has pointed out, when the wine is bottled at the place of production it does not have to be submitted to the complex procedures that must on the contrary be employed to remedy the alterations that occur when it is exported. Moreover, even when it is transported within the region of production, not only does the risk of alteration to the wine appear to be less likely because the distance between the place where it is produced and the place where it is bottled is less (in the Rioja region, according to information supplied by the defendant State and not contested by the other parties, the maximum distance is 100 kilometres), but any alteration to the wine would in any case be detected by the strict controls to which the product is submitted before it is granted the designation 'denominación de origen calificada Rioja'.[22] It remains to be seen whether

21 — This was pointed out by the Commission, in particular, which cited it to justify the change in its position since *Delhaize*. It stated that 'le régime de surveillance mis en place par le règlement (EEC) no 2238/93 relatif aux documents accompagnant les transports des produits vitivinicoles et aux registres à tenir dans le secteur viti-vinicole ne garantit ni la préservation de la qualité du vin transporté en vrac, ni son identité d'origine ou état originaire, puisqu'il établit un contrôle purement documentaire des quantités transportées avec, dans la pratique, prédominance des contrôles fiscaux'.

22 — Furthermore, under Article 15a of Regulation No 823/87, following such controls as may be carried out after it has been transported, the authorities of the producer State may downgrade a quality wine, such as Rioja wine, to a table wine.

such a situation justifies the requirement that wine be bottled exclusively in the region of production as a condition for it to be designated a quality wine. The answer can only be that it does, for the following reasons. It must in point of fact be considered that, since there is a real risk that the quality and characteristics of the wine may be altered if it is transported over considerable distances and bottled in a region other than the region of production and *above all* since the Community provisions do not require appropriate controls of the product in the country where it is bottled and such controls are in any case not carried out in an appropriate manner in all countries, the producer State, in order to protect its own quality wines, must be free to decide that the designation of quality wine will be granted only to wines produced and bottled exclusively in the area where it is certain that all the operations in that connection have been properly performed, as may reasonably be supposed to be the case when those operations take place in the area of production under the control of the producers, that is to say the traders primarily interested in guaranteeing the quality of the product. That conclusion does not appear to be inconsistent with the Court's decision in *Bagli Pennacchiotti* with regard to the requirement imposed by the national legislature that the operations in connection with the vinification of quality wines be carried out in the area of origin. In the judgment in that case, Regulation No 823/87 was interpreted as requiring 'all operations concerning, or storage of, products in the course of vinification which have not yet become quality wine psr or quality sparkling wine psr to be carried out within the specified region of production'. [23]

32. It might appear that the Court took a different view in its judgment in *Delhaize*, a view that is inconsistent with the analysis now proposed, but on closer examination it is clear that the inconsistency is only apparent. In fact, as we have already seen, the Court confined itself in that judgment to considering the case in the light of the facts submitted by the parties on that occasion. But the situation is different now. The documents in the case contain a considerable and consistent body of technical evidence regarding the effect of transport and bottling operations on the quality of wine and specific facts about the controls that are carried out — notably in Belgium — when it is bottled in the place where it is imported: that evidence and those facts clearly lead to a different conclusion in the present case from the

23 — Case C-315/88 *Bagli Pennacchiotti* [1990] ECR I-1323. It is interesting to note that, in his Opinion in that case, the Advocate General stated that he shared the Commission's view that it is 'only after the processing of the grapes into wine, whether sparkling or not, is *completely* finished — that is to say, at the end of the minimum ageing period ... — that any movement outside the "specified region" may take place without the wine losing its right to the designation "quality wine psr" or "quality sparkling wine psr"' (point 15). As regards the period of maturing ('ageing') of Spanish wines bearing a designation of origin, Article 8(2)(a) of the Royal Decree of 22 February 1988 provides that the required minimum period is two years and that during that time the wine must 'lie' in wooden casks or, for part of that time, in bottles. Article 13 of the Ministerial Order of 3 April 1991 prescribes a similar procedure for the ageing of 'Rioja' wine bearing the designation 'denominación de origen calificada'. For a decision on the same lines as the judgment in *Bagli Pennacchiotti*, see the judgment in Case 311/87 *Goldenes Rheinhessen* [1988] ECR 6295, in which the Court adopted a strict interpretation of the provisions of Regulation No 355/79 laying down general rules for the description and presentation of wines and grape musts, holding that the use of the description 'Erzeugerabfüllung' by a group of vineyards 'is subject to the condition that the entire operation must take place under the actual direction and strict, continuous supervision of that group and at its sole responsibility' (operative part of the judgment).

conclusion reached in the specific context of the earlier preliminary ruling procedure.

(b) The effects of bottling *non in loco* on the reputation of quality wines

33. In justification of the measures restricting the export of Rioja wine, the Spanish Government cites the risk that the quality of the product may be altered as a result of being transported in containers over long distances — the aspect of the dispute that I have just been considering — and also contends that the circulation of a wine that bears the designation 'denominación de origen calificada Rioja' but has been bottled outside the area of origin and consequently does not exhibit the specific characteristics of traditional Rioja wine bearing that designation would damage the reputation that wine now enjoys. The defendant State points out that Rioja wine is intended for a particular clientele and cannot therefore be released onto the market without an assurance that the traditional production procedure has been followed, ending with bottling in the area of origin. The purpose of the Spanish legislation is therefore to protect the reputation of the Rioja designation and consequently the associated industrial and commercial property rights of producers in the Rioja area.

The other parties in the case do not deny that Rioja wine has a particular reputation among consumers but they have advanced various arguments to show that bottling in an area other than the area of production has nothing to do with that reputation. The Belgian Government argues that that reputation is based not only on the quality the wine has acquired as a result of careful observance of specific rules on production, which are stricter than the rules governing the production of table wines, but also on the excellent work done by dealers who have invested time and money over a long period in promoting knowledge and appreciation of the wine among consumers. The United Kingdom submits that the reputation of Rioja wine was established at a time when it was exported in bulk and that the name 'Rioja' is consequently associated with wine that comes from the Rioja region but is not necessarily bottled there.

34. The reference to the reputation of Rioja wine developed by the Spanish Government in its defence draws attention to a specific interest attaching to certain characteristics of the product, which are only partly protected by the provisions of Community law on designations of origin and the instruments available to ensure their exclusive use. I shall therefore now consider, first, what the reputation of the product at issue actually is, then whether and to what extent Community secondary legislation is appropriate for the purpose of ensuring respect for the reputation of Rioja quality wine and, lastly, to what extent the contested national legislation may be justified within the meaning of Article 36 of the Treaty inasmuch as it affords a measure of protection to the Rioja designation of origin.

35. As regards the first aspect, there can in my view be no doubt that Rioja is a wine intended for members of the public who are particularly demanding in respect of the quality and integrity of the product. The designation 'denominación de origen calificada' is used to designate high-quality wines in cases where all stages of production and bottling are carried out under the direction and control of the producer. This is confirmed by the strict rules producers are required to observe in order to be allowed to use the designation. I note, in this connection, that according to information supplied by the Commission only 10% of the quality wines exported in the European Community are subject to the requirement that they be bottled in the area of production. So, given the reputation of those wines, it cannot be precluded that the distinctive sign by which they are known and, in the present case, the designation of origin appearing on the label affixed to the bottles may be equally susceptible to damage. As the designation of origin is intended not only to show where the wine comes from but also to protect the reputation a particular product has acquired on the market, the right to retain that reputation, advanced by the defendant State, must be regarded as being entitled to protection under the Community legal order.

The Spanish Government makes essentially the same point when it maintains that a designation of origin has two principal aims: (a) to guarantee that the product from a particular geographical area has certain specific characteristics and meets the requirements as to quality laid down by the public authorities, and (b) by recognising the exclusive right conferred by the designation, to prevent producers from other areas from using the designation and taking advantage of the reputation associated with it. The Commission adds that the function of a designation of origin, which is to guarantee the origin and quality of a product, cannot be fully effective unless the industrial property right of the person entitled to use the designation is itself protected. That right, according to the Commission, is identified with the commercial assets of the holder of the designation of origin and therefore with his reputation.

In my view, those arguments, to the effect that a designation of origin is an instrument designed to protect the reputation of a product and is therefore itself entitled to protection, are well founded. The reputation of a product cannot in fact be dissociated from the fame and prestige of the distinctive sign that is one of the marks by which that product is identified on the market and one way of protecting that reputation is to protect the distinctive sign. I note that, on the subject of trade-marks — which, like designations of origin, are a distinctive sign of the product — the Court stated as long ago as 1978 in its judgment in *Hoffmann-La Roche*[24] that 'in relation to trade-marks, the specific subject-matter is in particular to guarantee to the proprietor of the trade-mark that he has the exclusive right to use that trade-mark ... and therefore to protect him against competitors wishing to take advantage of the status and *reputation* of the trade-mark by selling products illegally bearing that trade-mark' (paragraph 7). There can be no

24 — Case 102/77 *Hoffmann-La Roche* [1978] ECR 1139, in particular paragraph 7.

doubt that the producers of a wine bearing a designation of origin are entitled to similar protection in respect of the reputation of their product. In its judgment in *Exportur* too, the Court held that the reputation of a distinctive sign was important and was entitled to protection. It ruled that 'geographical names [which, like designations of origin, are registered distinctive signs within the meaning of Regulation No 2081/92] used for products which cannot be shown to derive a particular flavour from the land and which have not been produced in accordance with quality requirements and manufacturing standards laid down by an act of public authority ... *may nevertheless enjoy a high reputation amongst consumers and constitute for producers established in the places to which they refer an essential means of attracting custom*'. The Court consequently concluded that geographical names 'are therefore entitled to protection'.[25] Similarly, in its judgment on 'méthode champenoise', the Court held that in order to achieve the objective of protecting registered designations or indications of geographical origin it is essential 'that the producer should not derive advantage, for his own product, from a reputation established for a similar product by producers from a different region'.[26]

36. The applicant State claims that, to avoid damaging the reputation of Rioja wine, it is sufficient to state on the label that the wine was bottled in a region other than the region of production. I cannot share that view. As the Spanish and Italian Governments point out, such a statement would have the opposite of the desired effect, in that it would ultimately damage the reputation of the product. This adverse effect appears to be unavoidable in the case of goods such as Rioja wine which have particular characteristics and are produced with due regard to a great number of requirements laid down in specific rules. Indeed, as the Italian Government observes, the consumer might be led to suppose that the wine was not Rioja with the designation 'denominación de origen calificada' or at least that it was of inferior quality — as already explained — and in this way, contrary to the general rule that products bearing a designation of origin must be specific and unique, two separate markets might gradually be created, one for Rioja with the designation 'denominación de origen calificada' which is produced and bottled in the same region and one for Rioja also bearing the designation 'denominación de origen calificada' which undergoes operations that differ from the normal production process and is subject to controls that are less rigorous than the controls on wine bottled in the area of origin. In support of this view I note that, in the judgment in *Exportur* cited above, the Court held that a label mentioning the actual place of origin or provenance of a product in accordance with Directive 97/112 on labelling would not suffice to protect a geographical name which enjoys 'a high reputation', even if such indications serve to distinguish the product in question from products traditionally associated with a certain geographical name. Similarly, in its judgment in *Bristol-Myers Squibb* concerning the repackaging of a pharmaceutical product by a person other than the

25 — Case C-3/91 *Exportur* [1992] ECR I-5529, in particular paragraph 28. See also the judgment, cited in *Exportur*, in Case 12/74 *Commission* v *Germany* [1975] ECR 181, in which the Court held that 'to the extent to which these appellations are protected by law they must satisfy the objectives of such protection, in particular the need to ensure not only that the interests of the producers concerned are safeguarded against unfair competition, but also that consumers are protected against information which may mislead them' (paragraph 7) and Advocate General Ruiz-Jarabo's Opinion delivered on 24 June 1997 in Case C-317/95 *Canadane Cheese Trading* [1997] ECR I-4681.

26 — Case C-306/93 *Winzersekt* [1994] ECR 5555. The issue in that case was the validity of a provision of Regulation No 2333/92 of 13 July 1992 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1992 L 231, p. 9).

owner of the trade-mark, the Court confirmed that the trade-mark owner is entitled to oppose repackaging by a third party if the presentation of the repackaged product may damage the reputation of the trade-mark and its owner (paragraph 75), even if the person who carried out the repackaging is indicated on the packaging. [27]

37. As regards the last aspect of my analysis, namely whether the Community legal order contains specific provisions on methods of protecting the reputation of designations of origin of quality wines, it must be observed that the provisions on the subject do not cover cases like the present one. Regulation No 823/87 on quality wines psr, cited above, only sets out the conditions that must be satisfied for wine to be regarded as a quality wine and does not lay down any rules on the sort of improper use of designations of origin that might arise in the present case. Even Regulation No 2081/92, a general regulation on geographical indications and designations of origin for agricultural products and foodstuffs [28] — which does not purport to apply to the wine sector (see the second subparagraph of Article 1(1)) — does not contain specific provisions on damage to reputations caused by failure to comply with the rules on production and packaging, merely identifying in Article 13(1) instances of the use of names by unauthorised persons and taking no account of a case such as the present one, which is characterised by the fact that the product is submitted to operations performed by a person other than the proprietor of the name before it is sold to the final consumer. [29] Even if such operations were allowed by the undertaking exporting the wine, they could alter the quality of the product and consequently damage its reputation.

27 — To be precise, the Court stated in Joined Cases C-427/93, C-429/93 and C-436/93 *Bristol-Myers Squibb* [1996] ECR I-3457 that 'even if the person who carried out the repackaging is indicated on the packaging of the product, there remains the possibility that the reputation of the trade-mark, and thus of its owner, may nevertheless suffer from an inappropriate presentation of the repackaged product', that 'in such a case, the trade-mark owner has a legitimate interest, related to the specific subject-matter of the trade-mark right, in being able to oppose the marketing of the product', and that 'in assessing whether the presentation of the repackaged product is liable to damage the reputation of the trade-mark, account must be taken of the nature of the product and the market for which it is intended' (paragraph 75). See also the judgment to the same effect in Case C-349/95 *Loendersloot* [1997] ECR I-6227, in which the Court ruled on a question about the relabelling of bottles of whisky by an unauthorised third party that 'Article 36 of the Treaty must be interpreted as meaning that the owner of trade-mark rights may, even if that constitutes a barrier to intra-Community trade, rely on those rights to prevent a third party from removing and then reaffixing or replacing labels bearing the mark which the owner has himself affixed to products he has put on the Community market, unless ... it is shown that the relabelling cannot affect the original condition of the product [and] the presentation of the relabelled product is not such as to be liable to damage the reputation of the trade-mark and its owner ...' (paragraph 50 and the operative part of the judgment). See also the judgment in Case C-337/95 *Parfums Christian Dior* [1997] ECR I-6013, paragraphs 42 to 45, on the opposition rights of the proprietor of a prestigious trade-mark.

28 — 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 (OJ 1992 L 208, p. 1).

29 — It should be noted that Article 4(1) of Commission Regulation (EC) No 881/98 of 24 April 1998 laying down detailed rules for the protection of the additional traditional terms used to designate certain types of quality wine produced in specified regions provides for a similar form of protection for 'additional traditional terms', that is terms which refer in particular to 'a method of production, preparation or ageing or to a quality, colour or type of wine' (Article 1(2)).

38. In those circumstances, given the characteristics of the product in question, the reputation it has acquired on the market and the fact that Community secondary legislation contains no specific provisions to protect quality wine against intervention by undertakings other than the producers before it is sold to the final consumer, national rules such as the Spanish rules at issue in the present case may be regarded as consistent with Community law on grounds of the protection of one of the general interests covered by Article 36, namely the interest in the correct use of a designation of origin constituting industrial and commercial property of producers in the Rioja area. That interpretation is supported by the recent *Gorgonzola* judgment, in which the Court held that Articles 30 and 36 of the Treaty do not preclude the application of non-Community rules on the protection of indications of provenance and designations of origin and that '*a fortiori* they do not preclude Member States from taking the measures necessary for the protection of names registered in accordance with Regulation No 2081/92', including designations of origin. [30]

39. In conclusion, given the reputation of Rioja wine and the damage it would suffer were the designation 'denominación de origen calificada' to be used for wine not bottled in the area of origin and given the fact that Community law contains no specific provisions to protect against situations such as the situation at issue in this case, the Spanish legislation, which requires that wine bearing the designation 'denominación de origen calificada' be bottled *in loco* and is consequently a measure having equivalent effect to a quantitative restriction on exports within the meaning of Article 34 of the Treaty, must be regarded as justified under Article 36 on the ground that it is designed to protect industrial and commercial property, in this case the right to exclusive use of the designation 'denominación de origen calificada Rioja' and the associated right to preserve the reputation of the product.

30 — Case C-87/97 *Consorzio per la Tutela del Formaggio Gorgonzola* v *Käserei Champignon Hofmeister and Bracharz* [1999] ECR I-1301, in particular paragraph 20.

Infringement of Article 5 of the EC Treaty

40. As regards the claim that Spain is in breach of Article 5 of the Treaty, the Belgian Government claims that, by failing to take the necessary measures to comply with Article 34 of the Treaty as interpreted by the Court in the judgment in *Delhaize*, the defendant State has disregarded the principle of cooperation incumbent on it by virtue of Article 5 of the EC Treaty.

Clearly, where the Court has delivered an interpretative judgment to the effect that certain national legislation is incompatible with Community law, every Member State is required to take all the necessary measures to bring its own law into line with the Community legal order in accordance with the indications given in that judgment.

In the present case, the applicant State claims that the Court should declare that, by not taking appropriate measures to remedy the incompatibility between Community law and national law identified in the grounds and the operative part of the judgment in *Delhaize*, Spain has failed to fulfil its obligations. In order to determine whether that incompatibility still exists, account must be taken of the interpretation of Community law given in the preliminary ruling and all the elements of fact and law which were not examined in the previous case but are relevant for the purpose of reaching a decision on the substance in the present one. That said, in view of the fact that the Court's ruling in 1992 was based on the information supplied by the parties and was confined to the aspects of law raised in the question referred by the national court, in considering the present action brought under Article 170 of the EC Treaty to determine whether a Member State has failed to fulfil its obligations, the Community Court must take account of all the information supplied and all the arguments advanced by the parties, even if this is the first time that it has been called upon to consider that information and those arguments. If new elements have been presented that were not presented in the course of the procedure for a preliminary ruling, the Community Court may after examining them and assessing them in their entirety reach the conclusion that the alleged conflict between the Community and national legal orders does not exist.

In the present case, since — as I have already shown — the Spanish legislation, although embodying a measure having equivalent effect to a restriction on exports, is nevertheless to be regarded as justified under Article 36 of the Treaty on the ground that it is designed to protect industrial and commercial property, there is no incompatibility between the Community legal order and the Spanish provisions, which require that wine bearing the designation 'denominación de origen calificada Rioja' be bottled *in loco*, and the claim that the Kingdom of Spain has failed to fulfil its obligations under Community law, including its obligations under Article 5 of the Treaty, is consequently unfounded.

Costs

41. Under 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. In the present case, the Kingdom of Spain has asked for the Kingdom of Belgium to be ordered to pay the costs. Since the Kingdom of Belgium has been unsuccessful, it must be ordered to pay the costs incurred by the Kingdom of Spain that are recoverable under Article 73 of the Rules of Procedure.

Under Article 69(4) of the Rules of Procedure, the Commission and the intervening States must bear their own costs.

Conclusion

42. In the light of the foregoing considerations, I therefore suggest that the Court:

(1) dismiss the action brought by the Kingdom of Belgium;

(2) order the Kingdom of Belgium to pay the costs incurred by the Kingdom of Spain;

(3) order the interveners to bear their own costs.