OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 26 NOVEMBER 1975 [1]

Mr President,
Members of the Court,

Arising out of criminal proceedings brought under French legislation relating to the detection and suppression of fraudulent practices as respects wines, the Cour d'Appel, Lyon, has referred to the Court for a preliminary ruling the following question: 'Are the Community methods for the analysis of wines laid down in Regulation (EEC) No 1539/71 of 19 July 1971 mandatory for the investigation into and punishment for the adulteration of wine?'

Although this question is couched in wider terms than the similar questions which have already been referred to the Court on the same subject by the Cour d'Appel, Bordeaux, in connexion with the same subject-matter (Joined Cases 89/74 and 18 and 19/75), it is clear from its decision that the court making the reference is merely seeking to establish whether the authorities of the French State are entitled to use the legal presumption of over-alcoholization, based on the ratio of alcoholic strength to the dry extract obtained by the evaporation method at 100°C, as provided under Article 8 of the so-called 'Code du Vin'. The question of law which, in the view of the court making the reference, is of decisive importance for the settlement of the dispute before it is, therefore, substantially the same as that already referred by the Cour d'Appel, Bordeaux, in the aforesaid cases, and, moreover, also appears in the questions referred for a preliminary ruling by the Cour d'Appel, Aix-en-Provence, in Joined Cases 10 to 14/75.

The Court of Justice gave its ruling on 30 September 1975. This means that we are dealing with a question of interpretation which is the same as that raised on the basis of similar facts on which the Court has already given a preliminary ruling.

It is clear from these judgments that Regulation (EEC) No 1539/71 on Community methods of analysis laid down for the classification of wines is, in principle, also applicable for the detection and suppression of fraudulent practices which infringe Community rules. In fact, inasmuch as a Community method is recognized as the only valid one for the determination of a given constituent element for the purpose of classifying a wine, there can be no reason for not using it also for the determination of that same element for the purpose of suppressing fraudulent practices. Moreover, the requirements of uniformity demand that, in so far as this is technically possible, use of the Community method should become general.

On the other hand, in view of the lacunae in the relevant Community rules, this general principle does not prevent the French authorities from continuing, for the moment, to apply, as and when necessary, methods laid down under national law for the suppression of fraudulent practices, provided that certain safeguards are observed.

Nothing new was disclosed during the course of the proceedings which might impel met to reconsider the solution proposed in the opinion which I gave in Joined Cases 89/74 and 18 and 19/75, referred to above, and which the Court substantially adopted.

1 – Translated from the Italian.

I therefore recommend that the reply to be given to the Cour d'Appel, Lyon, should consist of the operative part of the judgment in Joined Cases 89/74 and 18 and 19/75, which was repeated in paragraph (3) of the operative part of the judgment in Joined Cases 10 to 14/75, and that the Court should once more rule that:

'A Member State may in the present state of Community law apply as a national measure of control a presumption in law of over-alcoholization which is based on the proportion of alcohol to the dry extract measured by the 100° method, provided that that presumption is capable of being rebutted and that it is applied in such a way as not to place at a disadvantage, in law or in fact, wines from other Member States'.