JUDGMENT OF THE COURT
2 August 1993 *

In Case C-289/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Neustadt an der Weinstraße, Federal Republic of Germany, for a preliminary ruling in the proceedings pending before that court between

Klaus Kuhn

and

Landwirtschaftskammer Rheinland-Pfalz

on the interpretation of Article 11 of 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),

THE COURT,

composed of: O. Due, President, G. C. Rodríguez Iglesias and M. Zuleeg (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: C. Gulmann,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: German

after considering the written observations submitted on behalf of:

— the Government of the Federal Republic of Germany, by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, and Joachim Karl, Regierungsdirektor at the said Ministry, acting as Agents,

— the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiff in the main proceedings, represented by Carlos Schulz-Knappe, Rechtsanwalt, Neustadt, the Federal Republic of Germany and the Commission at the hearing on 16 December 1992,

after hearing the Opinion of the Advocate General at the sitting on 16 February 1993,

gives the following

Judgment

1 By order of 31 October 1991, received at the Court on 18 November 1991, the Verwaltungsgericht (Administrative Court) Neustadt an der Weinstraße referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 11 of 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. 5, hereinafter 'the Regulation').

2 That question was raised in the course of proceedings between Mr Kuhn and the Landwirtschaftskammer Rheinland-Pfalz concerning an application made by Mr Kuhn seeking, for a quantity of wine he had produced, an official control number entitling him to market it under the designation 'Quality wine, Heuchelheimer Herrenpfad Kerner Auslese 1989'.

3 Article 11(1) of the Regulation provides that a maximum yield per hectare expressed in quantities of grapes, of grape must or of wine is to be fixed by the Member States for each quality wine produced in a specified region (hereinafter 'quality wine psr') and possibly distinguishing the sub-region, local administrative area or part thereof or the vine variety or varieties. Article 11(2) goes on to provide that use of the designation claimed is to be prohibited for the entire harvest if the permissible yield is exceeded, save where derogations are provided for, on a general or individual basis, by the Member States under conditions which they lay down.

4 Article 11 was implemented in Germany by Paragraph 2a of the Weingesetz (Wine Law). Paragraph 2a(1) provides that the Governments of the *Länder* are to fix the permissible yield per hectare for quality wines psr and defines that permissible yield as being the maximum quantity of wine and grape must in fermentation which may be disposed of to other persons, used or processed per year. Paragraph 2a(2) lays down, moreover, that where the quantity harvested in a wine-growing undertaking exceeds the permitted quantity, the surplus quantity may be disposed of to other persons, used or processed as basic wine intended for producing vinegar or grape juice. Finally, Paragraph 2a(3) provides that the surplus quantity may be stored beyond the year of harvest in order to offset a subsequent smaller harvest and may also be disposed of to other persons, used or processed in place of the permissible quantity harvested in a particular year.

5 In the context of those provisions Mr Kuhn applied for the grant of an official control number for 1 500 litres of 1989 Heuchelheimer Herrenpfad Kerner Auslese 1989. The Landwirtschaftskammer took the view that 1 425 of the 1 500 litres had been produced in excess of the permissible yield, and granted a number to Mr Kuhn only in respect of 75 litres. Mr Kuhn brought an action before the Verwaltungsgericht in order to obtain a control number for the whole of his production.

6 Mr Kuhn claims that Paragraph 2a of the Weingesetz does not comply with Article 11 of the Regulation, since the German Law restricts marketing whilst Article 11 seeks to restrict production. Whereas under Community law, a wine-grower who exceeds the permissible yield loses the right to use the designation 'quality

wine psr' for the whole of his production, in German law forfeiture of that right concerns only the surplus part of his production. Such a rule frustrates the objective of the Community rule, which is to limit wine production in order to improve quality. Since it is incompatible with Community law, the German Law cannot be applied to him. Since Article 11 of the Regulation does not have direct effect, a legal vacuum is created and no rule of law can preclude the granting of his application to use the designation 'quality wine psr'.

7 Since it shared Mr Kuhn's doubt, the Verwaltungsgericht decided to stay the proceedings pending the Court's answer to the following question referred to it for a preliminary ruling:

'Can Article 11 of Regulation (EEC) No 823/87 be interpreted in such a way that a scheme under Paragraph 2(a)(1), (2) and (3) of the Weingesetz (Wine Law) — inserted by the Sixth Gesetz zur Änderung des Weingesetzes (Law amending the Wine Law) of 11 July 1989 (BGBl. I, p. 1424), and amended by the Gesetz zur Änderung des Weingesetzes und des Weinwirtschaftsgesetzes (Law amending the Wine Law and the Law on trade in wine) of 30 August 1990 (BGBl. I, p. 1863), is permissible on the basis thereof?'

8 In its order for reference, the Verwaltungsgericht considers that the refusal to grant Mr Kuhn a control number is valid only if the fixing of a yield per hectare, which defines the existence of a surplus production capacity within the meaning of Paragraph 2a of the Weingesetz in conjunction with the relevant Rheinland-Pfalz legislation, is compatible with superior rules of Community law. If it is not, Mr Kuhn should succeed in his action; since, if national laws which are not compatible with superior rules of Community law, are inapplicable, Paragraph 2a of the Weingesetz (Wine Law) in conjunction with the applicable legislation of the *Land* could not be relied on against him.

9 Those were the grounds on which the Verwaltungsgericht referred the question of the lawfulness of Paragraph 2a of the Weingesetz to the Court.

10 It should be pointed out, however, that in proceedings under Article 177 of the Treaty it is not for the Court to give a ruling on the compatibility of a national legislative provision with Community law. It may, however, provide the national court with an interpretation of relevant points of Community law in order to enable the national court to give judgment in the main proceedings.

11 In this case, Mr Kuhn's application concerns only the administration's refusal to grant him a control number to enable him to market under the designation 'quality wine psr' that part of his production which exceeds the yield per hectare fixed by the national legislation in application of Article 11(1) of the Regulation.

12 However, it is apparent from the wording of Article 11(2) of the Regulation that that provision prohibits, at least, the marketing as quality wine psr of a grower's production which exceeds the yield per hectare fixed by the domestic legislation.

13 Accordingly, it is sufficient to state in reply to the question put to the Court that Article 11 of the Regulation must be interpreted as meaning that in any event no quantity of wine which exceeds the yield per hectare fixed by the Member State may be marketed as quality wine psr.

Costs

14 The costs incurred by the German Government and the Commission of the European Communities, 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,

in answer to the question referred to it by the Verwaltungsgericht Neustadt an der Weinstraße, by order of 31 October 1991, hereby rules:

Article 11 of Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions must be interpreted as meaning that in any event no quantity of wine which exceeds the yield per hectare fixed by the Member State may be marketed as quality wine produced in a specific region (psr).

Due		Rodríguez Iglesias	Zuleeg	Mancini
	Joliet	Schockweiler	Moitinho de Almeida	
Grévisse		Diez de Velasco	Kapteyn	Edward

Delivered in open court in Luxembourg on 2 August 1993.

J.-G. Giraud — O. Due

Registrar — President