OPINION OF ADVOCATE GENERAL VAN GERVEN
delivered on 8 October 1992 *

Mr President,
Members of the Court,

1. The present proceedings relate to a request for a preliminary ruling from the Corte Suprema di Cassazione [Supreme Court of Cassation) on Article 9(3) of Regulation (EEC) No 1153/75 of the Commission of 30 April 1975 prescribing the form of the accompanying documents for wine products and specifying the obligations of wine producers and traders other than retailers. [1] The question arose in proceedings between the Prefetto di Ravenna and Attilio Contarini.

2. On 24 April 1986, the Prefetto di Ravenna fined Mr Contarini for failing to fill out column 14 of an accompanying document for a new wine still in fermentation. The Prefetto contended that *paragraph 1* of Article 9 of Regulation No 1153/75 required Mr Contarini to fill out that part of the document. That article, which has since been replaced by Regulation No 986/89, [2] is quoted in full in the Report of the Judge-Rapporteur. Mr Contarini disputes the view taken by the Prefetto and cites the last sentence of Article 9 in support of his argument: 'Entry of these particulars shall not be compulsory.' It is his view that that sentence refers to all the provisions of Article 9 and therefore not only to *paragraph 3* of that article. If Mr Contarini is right, he was entitled to refrain completely from filling out column 14. The Pretore di Lugo (Magistrate, Lugo), to whom Mr Contarini appealed against the Prefetto's decision fining him, shared his view.

3. The Prefetto di Ravenna appealed on a point of law against the Pretore's judgment to the Corte Suprema di Cassazione, which has referred to the Court of Justice the following question for a preliminary ruling: 'Does the last sentence of Article 9 of Commission Regulation (EEC) No 1153/75 ("entry of these particulars shall not be compulsory") refer to all the provisions of Article 9 (as was held in the contested judgment) or only to the provisions of paragraph 3 thereof (as the appellant maintains)?'

4. I take precisely the same view as the Commission and the Italian Government took in their written observations to the Court, namely that the last sentence of Article 9 does not relate to all the provisions of Article 9, but solely to paragraph 3 of that article.

The position of that sentence within Article 9 is an initial indication that this is the case. As the Commission has rightly pointed out, if the Community legislator had wished to make all the entries referred to in Article

* Original language: Dutch.

1 — (OJ 1975 L 113, p. 1).

2 — See Article 23 of Commission Regulation (EEC) No 986/89 of 10 April 1989 on the accompanying documents for carriage of wine products and the relevant records to be kept (OJ 1989 L 106, p. 1).

9 optional, it would have set this out in a separate last paragraph. That view is borne out by the fact (although it did occur after the material time) that when in 1986 a paragraph 4 (concerning Spanish red table wine) was added to Article 9, [3] the sentence in question remained in its original place. It was therefore no longer the last sentence of Article 9, but the last sentence of paragraph 3 of Article 9, which clearly shows that, within the whole set of provisions laid down by Article 9, that sentence was intended to refer solely to paragraph 3.

5. Moreover, there is a substantive reason for not making the entries listed in paragraph 1 optional. Both the Commission and the Italian Government rightly point out that Article 9 of Regulation No 1153/75 seeks to ensure that products do not undergo the same processing twice over. Obviously, the risk of double processing is at its greatest in the case of the non-finished products listed in the first subparagraph of Article 9(1) (which include the new wine still in fermentation at issue in this case). Consequently, those products warrant additional protection consisting of the compulsory entry of certain information on accompanying documents.

6. Lastly, the broad interpretation of the sentence in question put forward by Mr Contarini seems to be at odds with the spirit of Regulation No 1153/75. The fifth recital in the preamble to the regulation states that 'one of the purposes of accompanying documents should be to provide the consignee with *as much information as possible* about the product he is receiving' and that 'to this end, the products transported must be described on the documents *in the clearest possible way*' (my emphasis). In case of doubt, that recital militates in favour of compulsory, not optional, provision of information.

7. In conclusion, I would propose that the Court should answer the question referred by the Corte Suprema di Cassazione as follows:

The last sentence of Article 9 of Regulation (EEC) No 1153/75 refers solely to paragraph 3 of that article.

3 — See Article 5(2) of Commission Regulation (EEC) No 418/86 of 18 February 1986 amending various Regulations concerning wine as a result of the accession of Spain and Portugal (OJ 1986 L 48, p. 8). Regulation No 418/86 entered into force on 29 February 1986, that is, *before the decision* imposing the fine was taken.