JUDGMENT OF THE COURT (Second Chamber)
5 June 1997 *

In Case C-105/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale Civile e Penale di Ravenna (Italy) for a preliminary ruling in the proceedings pending before that court between

Ditta Angelo Celestini

and

Saar-Sektkellerei Faber GmbH&Co. KG

on the interpretation of Articles 30 and 36 of the EC Treaty and of Article 74(2)(c) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine (OJ 1987 L 84, p. 1), read in conjunction with Commission Regulation (EEC) No 2676/90 of 17 September 1990 determining Community methods for the analysis of wines (OJ 1990 L 272, p. 1),

THE COURT (Second Chamber),

composed of: G. F. Mancini, President of the Chamber, G. Hirsch (Rapporteur) and H. Ragnemalm, Judges,

* Language of the case: Italian.

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Ditta Angelo Celestini, by Fausto Capelli, of the Milan Bar, and Giacomo Damiani, of the Ravenna Bar,

— Saar-Sektkellerei Faber GmbH&Co. KG, by Elena Zanni, of the Ravenna Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Department of Contentious Diplomatic Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Maurizio Fiorilli, Avvocato dello Stato,

— the Government of the United Kingdom, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by Antonio Aresu, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Ditta Angelo Celestini, represented by Fausto Capelli, Saar-Sektkellerei Faber GmbH&Co. KG, represented by Klaus Rohwedder, Rechtsanwalt, Mainz; the German Government, represented by Ernst Röder, Ministerialrat at the Federal Ministry of the Economy; the Italian Government, represented by Maurizio Fiorilli, and the Commission, represented by Antonio Aresu, at the hearing at the hearing on 20 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 26 September 1996,

gives the following

Judgment

1 By order of 2 March 1994, received at the Court on 29 March 1994, the Tribunale Civile e Penale di Ravenna (Civil and Criminal Court, Ravenna) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Articles 30 and 36 of that Treaty and Article 74(2)(c) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine (OJ 1987 L 84, p. 1), read in conjunction with Commission Regulation (EEC) No 2696/90 of 17 September 1990 determining Community methods for the analysis of wines (OJ 1990 L 272, p. 1).

2 The questions were raised in proceedings between Ditta Angelo Celestini (hereinafter 'Celestini'), whose registered office is in Barbiano di Cotignola (Italy), a wine producer, and the company Saar-Sektkellerei Faber (hereinafter 'Faber'), whose registered office is in Trier (Germany), a producer of sparking wines, concerning the sale of a consignment of wine which the German authorities impounded and returned to Italy because it had allegedly been diluted with water.

3 In January 1991 the parties to the main proceedings concluded a contract of sale under which Celestini was to provide 10 000 hl of red table wine to Faber.

4 The wine was delivered in two more or less equal consignments. Unlike the first consignment, the second, which was accompanied by certificates of analysis, the precise content of which has not been clearly explained by the parties but which

did not concern the addition of water to the wine, was subjected, after being imported, to controls by the German authorities. At the hearing, the German Government stated that the wine had first been analysed according to traditional methods and that it was only to substantiate the results thus obtained that the laboratory in Trier subsequently applied the wine analysis method known as 'determination of O^{18}/O^{16} abundance ratio of water in wines' (hereinafter 'the oxygen 16/18 method').

5 The oxygen 16/18 method, also known as the 'magnetic resonance test' or 'method', is used to detect, by means of abundance ratio mass spectrometry, the addition of water to wine. It basically consists in analysing the isotopes of oxygen (O) in the molecules of water (H_2O) in the wine. Oxygen atoms occur in nature in three different isotopic forms: O^{16} (99.8% of the total), O^{17} (0.04% of the total) and O^{18} (0.16% of the total). In analysing the ratio of O^{18}/O^{16} isotopes in the water in the sample of wine, the method takes account of the fact that water of vegetable origin is richer in O^{18} isotopes than rainwater or spring water.

6 The analyses carried out at the laboratory in Trier indicated that water had been added to the wine concerned. The competent German authorities therefore impounded it. At the initiative of the parties to the main proceedings, other laboratories subsequently analysed the wine, with varying results.

7 At Faber's request, the German authorities eventually returned the wine to Italy, where some of it was sent for distillation and the remainder returned to Celestini's cellars. In the meantime Celestini had terminated the contract of sale.

8 Regulation No 822/87 defines wine in Annex I, paragraph 10, to which Article 1(4)(a) refers, as follows:

'Wine: the product obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, whether or not crushed, or of grape must.'

9 Article 15(4) of that regulation prohibits the addition of water to wine, except where otherwise decided by the Council. Such an oenological practice has never been authorized by Community rules; in particular, the addition of water to wine is not mentioned in Annex VI to that regulation, which contains a list of certain authorized oenological practices.

10 Article 73(1) of Regulation No 822/87 provides, essentially, that wines 'which have undergone oenological practices not allowed by Community rules or, where such rules do not exist, by national rules, may not be offered or disposed of for direct human consumption'.

11 In that regard, Commission Regulation (EEC) No 1972/78 of 16 August 1978 laying down detailed rules on oenological practices (OJ 1978 L 226, p. 11) provides, in Article 1, that:

'Wines which ... are not fit for direct human consumption may not be held without legitimate cause by a producer or trader. They may be destroyed but may be moved only to distilleries, vinegar factories or establishments where they will be industrially processed ...'.

12 As regards methods of control, Article 74(1) of Regulation No 822/87, as amended by Article 1 of Council Regulation (EEC) No 1972/87 of 2 July 1987 (OJ 1987 L 184, p. 26), provides that:

'1. [t]he following shall be adopted in accordance with the procedure laid down in Article 83:

(a) the methods of analysis for determining the composition of the products listed in Article 1 and the rules whereby it may be established whether these products have undergone processes contrary to authorized oenological practices;

...'.

13 Article 74(2) provides that:

'[h]owever, where no provision is made for Community methods of analysis or for the rules referred to in paragraph (1) for the detection and quantification of substances sought for in the product in question, the methods of analysis to be used shall be:

(a) those recognized by the General Assembly of the International Vine and Wine Office (IWO) and published by that Office; or

(b) ...

(c) in the absence of one of the methods referred to in points (a) and (b) and by reason of its accuracy, repeatability and reproducibility:

— a method of analysis allowed by the Member State concerned, or

— if necessary, any other appropriate method of analysis'.

14 Article 3 of Council Regulation (EEC) No 2048/89 of 19 June 1989 laying down general rules on controls in the wine sector (OJ 1989 L 202, p. 32), provides as follows:

'1. Member States shall take the necessary measures to improve control of compliance with the rules in the wine sector notably in the particular fields listed in the Annex.

2. The controls in the areas referred to in the Annex shall be carried out either systematically or by sampling ...'.

According to the second paragraph of Article 13 of Regulation No 2948/89, the methods of analysis are to be those referred to in Article 74 of Regulation No 822/87.

15 On the basis of Article 74(1) of Regulation No 822/87 the Commission adopted Regulation No 2676/90. However, that regulation fails to describe any methods for detecting whether water has been added to wine.

16 Celestini considers that the oxygen 16/18 method is unlawful. It therefore maintains that since Faber did not take delivery of the wine or object to its being impounded it must, pursuant to Article 2043 of the Italian Civil Code, a provision concerning unlawful acts, make good the damage caused.

17 On 23 June 1993 Celestini therefore initiated proceedings against Faber before the Tribunale Civile e Penale di Ravenna, seeking, first, a declaration that owing to those omissions Faber was liable for the damage caused and, secondly, a declaration that it was entitled to disregard the measure adopted by the German administrative authorities and to market the part of the wine deposited in its cellars.

18 Taking the view that, if the oxygen 16/18 method should prove to be lawful, Celestini's application should be dismissed, the national court requested the Court to give a preliminary ruling on the following questions:

'1) Is Article 30 of the EEC Treaty to be interpreted as prohibiting a Member State from adopting measures which prevent the importation and marketing on its territory of a quantity of wine coming from another Member State, if that wine is accompanied by *bona fide* certificates of analysis issued by research institutes lawfully authorized in the Member State of origin, stating that analysis of the wine has confirmed its full conformity with the relevant Community legislation?

2) Does Article 36 of the EEC Treaty allow the importing Member State in a case such as that described in Question 1 to disregard the results of the analyses of the wine conducted in the exporting Member State and to consider itself

entitled to meet the fundamental requirements of that article by using a method of analysing wine based on isotopic tests for oxygen and specified in Question 3?

3) Does Article 74(2)(c) of Council Regulation (EEC) No 822/87 in relation to the provisions of Regulation (EEC) No 2676/90 allow to be considered as lawful and reliable in terms of being accurate, repeatable and reproducible within the meaning of that article the results of an analysis conducted upon a batch of wine in isolation, using the method termed "isotopic tests for oxygen 16/18" in cases where (a) no data bank exists to supply the characteristics of the wine of a given area, systematically compiled over the course of several vintages and suited to serve as a genuine basis for comparison; (b) the only supporting data used are the analytic values of the magnesium, the ash content etc. which, other considerations apart, seem difficult to compare and inconsistent with the results of the analyses performed?'

The admissibility of the questions

19 The Commission, supported by the German Government, considers that the questions referred to the Court are inadmissible owing to the fact that the Italian courts do not have jurisdiction to hear the case in the main proceedings, the lack of a sufficiently complete and accurate description of the factual and legal background to the case in the order for reference, the artificial nature of the proceedings before the national court and, lastly, the irrelevance of the questions.

20 Those arguments cannot be upheld. As regards the alleged lack of international jurisdiction of the Italian courts and, accordingly, of the Tribunale Civile e Penale di Ravenna, it should be pointed out that it is not for the Court to determine whether the decision whereby a matter is brought before it was taken in conformity with the rules of domestic law governing the organization of the courts and their procedure (see, in particular, Case C-39/94 *SFEI and Others* v *La Poste and Others* [1996] ECR I-3547, paragraph 24). The position is the same where, as in this case, international jurisdiction falls to be determined on the basis of the

Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 77), unless the provisions of that convention are expressly made the subject of the reference for a preliminary ruling.

21 As regards the other arguments put forward to demonstrate that the questions referred to the Court are inadmissible, it is settled case-law that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, in particular, Case C-387/93 *Banchero* [1995] ECR I-4663, paragraph 15). Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, in particular, Case C-415/93 *Union Royale Belge des Sociétés de Football Association and Others* v *Bosman and Others* [1995] ECR I-4921, paragraph 59).

22 There have, however, been exceptional circumstances in which the Court has also taken the view that it fell to itself, in order to confirm its own jurisdiction, to examine the conditions in which the case had been referred to it by the national court (see, to that effect, Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, paragraph 21). A request from a national court may be refused only where it is manifest that the interpretation of Community law sought by that court has no relation to the actual facts of the main action or its purpose or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, in particular, *Bosman*, paragraph 61).

23 That is not the situation in this case. Admittedly, neither Celestini nor Faber, both of which contest the legality of the oxygen 16/18 method, brought the matter before the German courts, which alone have jurisdiction to rule on the validity of the measure whereby the German authorities declared the wine in question unfit for human consumption. However, that finding is not in itself sufficient for the reference for a preliminary ruling to be regarded as inadmissible. There is nothing

in the documents before the Court which clearly shows that the parties to the main proceedings had, as was the case in *Foglia*, jointly fabricated a dispute as a device for obtaining a preliminary ruling from the Court.

24 Moreover, in the present case the Court has before it sufficient factual and legal material to give a useful answer to the questions submitted to it.

25 Lastly, as regards the relevance of the questions submitted, the national court has explained that should it follow from the answers given by the Court that the oxygen 16/18 method is compatible with Community law, Celestini's action would have to be dismissed. It is not for the Court, in the context of these proceedings, to call that assessment in question.

26 It follows from the foregoing that the Court has jurisdiction to answer the questions referred to it by the Tribunale Civile e Penale di Ravenna.

First and second questions

27 By its first and second questions, which should be examined together, the national court essentially asks whether Articles 30 and 36 of the Treaty are to be interpreted as precluding a Member State from subjecting wine produced in another Member State to an appropriate control in order to test its conformity with Community rules, even where it is accompanied by *bona fide* certificates of analysis issued by research institutes duly authorized in the Member State of origin.

28 Celestini and the Italian Government submit that the German authorities' failure to have regard to the controls carried out in Italy infringes the general principle, resulting from Article 30 of the Treaty, of mutual recognition of national controls. Nor can the German authorities' conduct be justified on the basis of Article 36 of the Treaty.

29 That argument cannot be regarded as well founded. As the United Kingdom Government and the Commission have observed, the production and marketing of wine are subject to the rules of the common organization of the market, which are laid down in a detailed and precise manner.

30 Thus Article 15(4) of Regulation No 822/87 prohibits the addition of water to wine, which is an unauthorized oenological practice within the meaning of Article 73 of that regulation.

31 In order to ensure compliance with correct oenological practices, Article 3(1) of Regulation No 2948/89 requires Member States to take the necessary measures to improve controls. Article 3(2) provides that States are not required to do so on the basis of samples, but may employ systematic controls.

32 Those provisions, which form part of secondary Community law, must however be given, as far as possible, an interpretation which renders them consistent with the provisions of the Treaty and the general principles of Community law (see, in particular, Joined Cases C-90/90 and C-91/90 *Neu and Others* v *Secrétaire d'Etat à l'Agriculture et à la Viticulture* [1991] ECR I-3617, paragraph 12).

33 Accordingly, the measures of control referred to in Article 3 of Regulation No 2048/89 would not be permissible if their application were such as to place wines from other Member States at a disadvantage and, as a result, to constitute a

measure having an effect equivalent to a quantitative restriction, prohibited by Article 30 of the Treaty (Joined Cases 89/74, 18/75 and 19/75 *Procureur Général, Bordeaux* v *Arnaud and Others* [1975] ECR 1023, paragraph 13). Those controls must, therefore, not be discriminatory.

34 In its judgment in Case 42/82 *Commission* v *France* [1983] ECR 1013, paragraph 54, the Court held, in regard to the Community legislation applicable at the material time, that the measures of verification carried out must be necessary for attainment of the objectives pursued and must not create obstacles to trade which were disproportionate to those objectives. It follows that the authorities of the importing Member States are under a duty to take into account the existence of the checks carried out in the country of origin of the wine (see, in that regard, *Commission* v *France*, cited above, paragraph 56). Thus the spirit of cooperation and mutual assistance between national authorities responsible for controls, referred to in Regulation No 2048/89, requires that the Member State into which the wine is imported must accept the certificates of analysis drawn up by the Member State in which the wine was produced.

35 That case-law does not preclude, however, a second or additional analysis from being justified where there is a reasonable presumption that the wine does not meet the requirements of the Community rules.

36 The same applies where, as in the situation in point in the main proceedings, the further analyses carried out by the importing State are designed to check characteristics of the wine which were not checked in the analysis carried out by the Member State in which the wine was produced.

37 The reply to the first and second questions should therefore be that Articles 30 and 36 of the Treaty must be interpreted as not precluding a Member State from subjecting wine produced in another Member State to an appropriate control in order to test its conformity with Community rules, even where that wine is accompanied by *bona fide* certificates of analysis issued by research institutes duly authorized in the Member State of origin, provided that those controls are applied in a

non-discriminatory manner, that they observe the principle of proportionality and that account is taken, in particular, of the controls already carried out in the Member State of origin.

Third question

38 By its third question the national court seeks to ascertain whether the oxygen 16/18 method is compatible with the criteria of accuracy, repeatability and reproducibility laid down in Article 74(2)(c) of Regulation No 822/87.

39 In that regard, it should be pointed out that those criteria are scientific. Accordingly, as the Advocate General stated in paragraph 53 of his Opinion, it is possible to determine whether the oxygen 16/18 method complies with those requirements only on the basis of appropriate scientific evidence and findings of fact based on that evidence. In a case such as that in point in the main proceedings it is for the national court, acting in accordance with the rules of procedure applicable in that Member State, to make such findings. It should be pointed out, however, that in that context the national court should also ascertain whether in the meantime the General Assembly of the International Vine and Wine Office has recognized the method in question and, if so, under what conditions.

40 The answer to the third question must therefore be that it is for the national court to determine, in accordance with the rules of procedure applicable in that Member State, whether the wine analysis method known as 'determination of O^{18}/O^{16} abundance ratio of water in wine' is consistent with the criteria of accuracy, repeatability and reproducibility laid down in Article 74(2)(c) of Regulation No 822/87.

Costs

41 The costs incurred by the Italian, German and United Kingdom Governments, 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 (Second Chamber),

in answer to the questions referred to it by the Tribunale Civile e Penale di Ravenna by order of 2 March 1994, hereby rules:

1. Articles 30 and 36 of the EC Treaty must be interpreted as not precluding a Member State from subjecting wine produced in another Member State to an appropriate control in order to test its conformity with Community rules, even where that wine is accompanied by *bona fide* certificates of analysis issued by research institutes duly authorized in the Member State of origin, provided that those controls are applied in a non-discriminatory manner, that they observe the principle of proportionality and that account is taken, in particular, of the controls already carried out in the Member State of origin.

2. It is for the national court to determine, in accordance with the rules of procedure applicable in that Member State, whether the wine analysis method known as 'determination of O^{18}/O^{16} abundance ratio of water in wine' is consistent with the criteria of accuracy, repeatability and reproducibility laid down in Article 74(2)(c) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine.

Mancini Hirsch Ragnemalm

Delivered in open court in Luxembourg on 5 June 1997.

R. Grass G. F. Mancini

Registrar President of the Second Chamber