OPINION OF MR ADVOCATE GENERAL CRUZ VILAÇA
delivered on 8 March 1988 *

Mr President,
Members of the Court,

1. These proceedings are concerned with a question submitted by the Verwaltungsgericht (Administrative Court), Trier, for a preliminary ruling by this Court on the interpretation of the Community regulations concerning the classification of vine varieties and the conditions under which wines may be regarded as quality wines produced in specified regions ('quality wines psr').

I — The facts of the case

2. During 1972 and 1973, the plaintiff in the main proceedings obtained from the Ministerium für Landwirtschaft, Weinbau und Umweltschutz (Ministry of Agriculture, Wine-growing and the Environment) of Rheinland-Pfalz approval for cultivation contracts for a variety known as 'Aris', obtained from interspecific crossings with vines of the species *Vitis* riparia. Until 1984, wines containing, within certain limits, products from grapes of the Aris variety were recognized in Rheinland-Pfalz as quality wines psr.

3. On 14 December 1985, the plaintiff in the main proceedings re-applied for an official control number recognizing as a quality wine psr a wine of which 10% came from the Aris variety. The application was rejected by the Landwirtschaftskammer (Agricultural Chamber) Rheinland-Pfalz on the ground that wines from interspecific varieties could no longer be given an official control number as quality wines psr.

4. The issue of such a number was precluded, in particular, by the combined provisions of Article 6 (1) (a) and the first subparagraph of Article 4 (1) of Council Regulation No 338/79 of 5 February 1979 laying down special provisions relating to quality wines psr [1], the effect of which is that only the species *Vitis vinifera* may be used for the production of such wines.

5. After unsuccessfully appealing against the rejection of its application, the plaintiff in the main proceedings brought an action before the Verwaltungsgericht Trier, relying in particular upon Paragraph 55 (2) of the German Law on Wines and Article 13 (4) of Council Regulation No 347/79 of 5 February 1979 on general rules for the classification of vine varieties. [2]

6. Having doubts as to the scope of Article 13 (4) of Regulation No 347/79, in the light of the combined provisions of Article

* Translated from the Portuguese.

1 — Official Journal 1979, L 54, p. 48.
2 — Official Journal 1979, L 54, p. 75.

6 (1) (a) and the first subparagraph of Article 4 (1) of Regulation No 338/79, the Verwaltungsgericht stayed the proceedings before it and referred the following question to this Court for a preliminary ruling:

'On the basis of the provision in Article 13 (4) of Regulation (EEC) No 347/79, may wine from vine varieties undergoing cultivation suitability trials, scientific research or selection or crossing experiments be recognized as quality wine produced in a specified region or would that be contrary to the first sentence of Article 6 (1) (a) in conjunction with the first sentence of Article 4 (1) of Regulation (EEC) No 338/79?'

II — Analysis of the question submitted

7. It is clear from what I have just said that the question submitted by the national court is in essence intended to determine whether a wine obtained from a variety not belonging to the species *Vitis vinifera* may be classified as a quality wine psr provided that the variety in question is undergoing cultivation suitability trials, scientific research or selection or crossing experiments.

8. As is apparent from the very wording of the question, the main difficulty stems from the contradictory guidance given by Article 6 (1) (a) and the first subparagraph of Article 4 (1) of Regulation No 338/79 on the one hand and, on the other, by Article 13 (4) of Regulation No 347/79.

9. The effect of the first two provisions is that a quality wine psr may be produced only from classified varieties belonging to the species *Vitis vinifera*; for its part, Article 13 (4) of Regulation No 347/79 treats as products derived from authorized varieties products obtained from a variety undergoing cultivation suitability trials, scientific research or selection or crossing experiments.

10. Will the result of that deemed equivalence be that wines obtained from a variety not belonging to the species *Vitis vinifera* but undergoing cultivation suitability trials may be regarded as quality wines psr, so that the restrictive provisions of Articles 4 (1) and 6 (1) of Regulation No 338/79 are over-stepped?

11. That is the view expressed by the plaintiff in the main proceedings which — as we learn from the the German court's order for reference — relies *inter alia* on the following arguments:

(a) Article 13 (4) of Regulation No 347/79 is a special provision and is more recent than Regulation No 338/79;

(b) It appears from Articles 31 (1)[3] and 49 (1) of Council Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine[4] that the Council wished to

3 — Formerly Article 30 (1). The new version is the result of the amendments made to Regulation No 337/79 by Council Regulation No 454/80 of 18 February 1980 (Official Journal 1980, L 57, p. 7).

4 — Official Journal 1979, L 54, p. 1.

reserve to itself the possibility of derogating, or authorizing derogations, from the principle laid down in Article 6 of Regulation No 338/79 that only the recommended or authorized varieties referred to in Article 4 (1) of the same regulation may be used for the production of quality wines psr. Article 13 of Regulation No 347/79 in fact provided for such derogations in cases of officially authorized cultivation trials; those cases therefore are covered exclusively by Article 13 (4) which, by treating the products of such trials as if they came from authorized varieties, enables them to be used for the production of quality wine psr.

(c) In the negotiations leading up to the adoption of the rules on the common organization of the market in wine, the German delegation took the view that trials involving cultivations of new vine varieties were not covered by Article 3 of Regulation No 817/70 (which preceded Regulation No 338/79).

12. I do not, however, find the arguments which I have just summarized very convincing, in so far as they do not appear conducive to the best possible interpretation of the legislation in question.

13. To demonstrate this, it is useful to distinguish, as the Commission has done, between two groups of Community rules which are applicable to the case: the general rules on the classification of vine varieties — contained in Regulations Nos 337/79 and 347/79 — and the rules specifically applicable to quality wines psr — Regulation No 338/79.

14. A. The first indent of Article 30 (1) [5] of Regulation No 337/79, which established the common organization of the market in wine, authorized the Council to adopt general rules on the classification of varieties; such classification is to be by administrative unit or part thereof and comprises recommended, authorized and temporarily authorized varieties.

15. At the same time, the second indent of Article 30 (1) provided that, in the framework of those general rules, the Council might authorize the Member State to derogate, with a view to investigating suitability for cultivation, scientific research, and so forth, from the rule laid down in paragraph 2 that only recommended or authorized varieties might be planted, replanted or grafted in the Community.

16. Article 49 of the same regulation, No 337/79, laid down the rule that only grapes from those varieties could be used for the production of grape must, table wine, liqueur wine or quality wine psr; however, it allowed the Council to make exceptions to that rule.

17. It was on the basis of the authority granted by Article 30 of Regulation No 337/79 (now Article 31, with the wording introduced by Regulation No 454/80) that the Council adopted Regulation No 347/79 on general rules for the classification of vine varieties permitted to be grown in the Community, which superseded Council Regulation No 1388/70 of 13 July 1970. [6] According to Article 1 of Regulation No

5 — Now Article 31 (1).

6 — Official Journal, English Special Edition 1970 (II), p. 420.

347/79, the classification of vine varieties is to include all vine varieties of the genus *Vitis*, including those derived from interspecific crossings; it therefore extends also to the 'Aris' variety, an interspecific crossing with *Vitis riparia* varieties.

18. Article 5 of Regulation No 347/79 refers to the division of varieties into three groups (recommended, authorized and temporarily authorized), and the following articles indicate which varieties are to be included in each of the categories, according to the normal use of the grapes obtained from them (Article 6, for example, deals with grape varieties for wine).

19. Article 13 (1) reiterates the prohibition of planting unclassified varieties and temporarily authorized varieties, already included in Article 30 (2) of Regulation No 337/79,[7] although Article 13 (2) allows the Member States to permit derogations from that prohibition, for the purposes mentioned therein, as provided for in the second indent of Article 30 (1) of Regulation No 337/79.

20. Article 13 (4) provides for products obtained from varieties planted for certain of the purposes referred to in Article 13 (2) to be treated as products from authorized varieties.

21. The Commission explains that the purpose of that provision is to ensure that products obtained in those circumstances can be disposed of.

22. But does it also mean that the products in question are *ipso facto* suitable for the production of quality wines psr?

23. That does not appear to be the case.

24. All that can be said is that by treating products from varieties undergoing cultivation suitability trials, and so forth, as equivalent to products from authorized varieties, Article 13 (4) constitutes an exception to the rule contained in Article 49 (1) of Regulation No 337/79, according to which the only varieties suitable for wine production are recommended and authorized varieties. In other words, by virtue of Article 13 (4) of Regulation No 347/79, unclassified varieties undergoing cultivation suitability trials, which could already be planted or grafted by virtue of Article 13 (2), can also be used for the manufacture of grape must, concentrated grape must, wine suitable for the production of table wine, table wine and liqueur wine, by way of exception to the principle laid down in Article 49 (1) of Regulation No 337/79.

25. Specifically, their being treated as authorized varieties means that it is recognized that they can normally provide 'sound and marketable wine of a quality which, while of an acceptable standard' is lower than that

7 — Initial version — now Article 31.

of the wine obtained from recommended varieties (Article 6 (1) (b) of Regulation No 347/79).

26. That possibility would even extend to the production of quality wines psr, had no stricter requirements also been laid down for the production of such wines.

27. The specific conditions for classification of a wine as a quality wine psr are not laid down in Regulation No 347/79: as the Commission emphasizes, that regulation gives no guidance whatsoever concerning the suitability of the various varieties of grapes for wine (in particular, those of the recommended or authorized varieties) as far as the production of quality wines psr is concerned.

28. B. It is Regulation No 338/79 which contains the special provisions concerning quality wines psr, in particular the specific requirements for a wine to be classifiable as such. It is apparent from the combined provisions of Articles 6 (1) (a) and 4 (1) that the only suitable varieties for the production of quality wine psr are varieties which:

(a) belong to the recommended or authorized categories referred to in Article 31 [8] of Regulation No 337/79;

(b) are of the species *Vitis vinifera*;

(c) appear in the list drawn up by each Member State of the varieties suitable for the production of quality wines psr.

8 — Old Article 30.

29. It follows that, as a result of Article 13 (4) of Regulation No 347/79, varieties undergoing cultivation suitability trials fulfil only the first of the abovementioned conditions for the production of a quality wine psr, namely that they are varieties belonging to recommended or authorized categories. But, since those varieties have not been treated as equivalent to those of the species *Vitis vinifera*, they would also have to fulfil the other two conditions laid down by Article 4 (1) of Regulation No 338/79 for the production of quality wines psr: they would have to belong to the species *Vitis vinifera* and appear in the special list prepared by the Member State in question.

30. Thus, it can only be concluded from the combined provisions of Article 13 (4) of Regulation No 347/79 and Articles 6 and 4 of Regulation No 338/79 that varieties undergoing cultivation suitability trials must necessarily belong to the species *Vitis vinifera* if they are to be allowed to be used for the production of a quality wine psr and must be included in the list prepared by each Member State.

31. That means — notwithstanding the considerable latitude allowed to the Member States by Regulation No 338/79 (the Commission mentions in that respect Articles 2, 3 (2), 7, 11 (2) and 19) — the Community legislature was anxious to apply particularly severe requirements to the production of quality wines psr, in conformity with the objectives of 'a policy

of encouraging quality production in agriculture and especially in wine-growing' (second recital in the preamble).

32. As was explained at the hearing, the intention is to achieve the controlled adaptation of the plants grown to the progress achieved in the ecological and oenological fields by means of tests and experiments which first involve long-term technical investigations into the value of a species for cultivation purposes, before its suitability for the production of quality wine psr can be examined.

33. As regards such suitability, the express choice made by the legislature at the present stage of development has been to limit it to the varieties of the species *Vitis vinifera*, and the deemed equivalence under Article 13 (4) cannot override the clear prohibition of using varieties of different species (in particular of the species *Vitis riparia*).

34. Accordingly — notwithstanding the deemed equivalence under Article 13 (4) of Regulation No 347/79 — the legislature did not make use of the possibility of derogations referred to in Article 49 (1) of Regulation No 337/79 in order to enable varieties undergoing cultivation suitability trials to be used for the production of quality wine psr.

35. The equivalence provided for in Article 13 (4) must therefore be kept within the scope of Regulation No 347/79, which lays down general classification rules for vine varieties, without therefore extending to the field covered by Regulation No 338/79, which lays down the special conditions for quality wine psr.

36. Although Regulation No 338/79 may be regarded as preceding Regulation No 347/79,[9] each of those measures has a specific area of application and it is not correct to regard the latter (and in particular Article 13 (4) thereof) as a *lex specialis* with respect to the former.

37. In actual fact, the position is that both are special laws with respect to Regulation No 337/79, to which express reference is made in the preamble to each of them and of which they implement or develop the principles within the area specific to each of them.

38. It may even be said — as the Commission did in its observations — that, since Article 13 (4) of Regulation No 347/79 is a derogating provision (and therefore one which departs from the general rule contained in Article 49 of Regulation No 337/79), it must be interpreted not extensively but restrictively.

39. If any other meaning were to be attached to Article 13 (4), the absurd result would follow that a wine obtained from vine varieties which were the subject of experiments could be classified as a quality wine psr whereas a wine obtained from a variety which was classified but did not belong to the species *Vitis vinifera* could not be accorded that classification.

40. Moreover (as the Commission pointed out at the hearing) Article 49 (2) of Regulation No 337/79 expressly provides that 'grapes from vineyards planted with varieties classified as temporarily authorized shall

9 — This only becomes clear if account is taken of the dates of the regulations which they replaced: Regulation No 817/70 of 28 April 1970, which preceded Regulation No 338/79; and Regulation No 1388/70 of 13 July 1970, which preceded Regulation No 347/79.

also be regarded as suitable for yielding products listed in paragraph 1 with the exception of quality wines psr', where such grapes belong, *inter alia*, to varieties obtained from interspecific crossings.

41. In other words, even where the varieties are temporarily authorized and are obtained (like the 'Aris' variety) from an interspecific crossing, the legislature precluded their use for the production of quality wines psr although it expressly allowed them to be used for the preparation of the other products referred to in Article 49 (1) (and even then subject to the time limit of 31 December 1979).

42. The conclusion which I have outlined is not in any way undermined by the statement made by the German delegation at the time of the adoption of the rules on the common organization of the market in April 1970, which was relied upon by the plaintiff in the main proceedings. Besides being a unilateral, unpublished statement, and therefore of no interpretative value for this Court, it is unconnected with the relationship between Articles 4 and 6 of Regulation No 338/79 and Article 13 (4) of Regulation No 347/79 since, as has been emphasized by the Commission, it merely indicates that experiments with new varieties are not affected by Article 3 of Regulation No 817/70. [10]

III — Conclusion

43. I therefore propose that the Court should give the following answer to the questions submitted by the Verwaltungsgericht Trier:

By virtue of the combined provisions of Article 13 (4) of Regulation No 347/79, on the one hand, and, on the other, the first subparagraph of Article 6 (1) (a) and the first subparagraph of Article 4 (1) of Regulation No 338/79, wine obtained from varieties undergoing cultivation suitability trials, scientific investigation or crossing or selection experiments may only be recognized as quality wine produced in specified regions if the varieties used belong exclusively to the species *Vitis vinifera*.

10 — Now Article 4 of Regulation No 338/79.